

Mangi Lal

Vs

K. R. Pawar and Another

Civil Appeal No. 1229 of 1970

(J. M. Shelat, V. Bhargava, I. D. Dua JJ)

07.05.1971

JUDGMENT

DUA, J. -

1. Mangi Lal Joshi has appealed to his court under Section 116-A of the Representation of the People Act 43 of 1951, (hereinafter called 'the Act') from the judgment and order of the Madhya Pradesh High Court (Indore Bench) dismissing his election petition under Section 81 of the Act, challenging the election of respondent No. 1 Krishnaji Rao Pawar an ex-Ruler of the erstwhile Dewas Senior State, to the Legislative Assembly of Madhya Pradesh from the General Dewas assembly Constituency No. 256 in the bye-election held in June, 1968. This seat had fallen vacant on account of the death of Shri Hattasing, the successful candidate from this Constituency in the General Election held in February, 1967. The appellant had contested the election on the ticket of the Indian National Congress whereas respondent No. 1 had contested it as an independent candidate. The charges on which the appellant's learned counsel has concentrated before us relate to

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(i) the alleged corrupt practice of publication of false statement relating to the personal character and conduct of the appellant;

(ii) the incurring of election expenses in excess of the prescribed limit; and

(iii) the alleged disqualifications of the respondent on the ground that he had a subsisting contract with the State within the contemplation of Section 9-A of the Act. The charge of bribery pressed in the High Courts was not re-agitated in this appeal.

2. The first point canvassed before us relates to the alleged corrupt practice of publication of false statement of fact in relation to the personal character or conduct of the appellant as contemplated by Section 123, sub-section (4) of the Act. Arguments on this point were confined to sub-issues (a), (b), (c), (d), (e), (f) and (g) of Issue No. 5 and the relevant sub-issues of Issue No. 6. The aforesaid sub-issues of Issue No. 5 cover the plea contained in Para 13(b)(i) of the election petition. It was averred in that sub-para that at a public meeting held at about 8 p.m. on June 13, 1968 at Jawahar Chowk at which the returned candidate was present, Abdul Rehman Talib of Dewas, Kanhaiyasingh Thakur of Dewas, Kr. Virendrasingh, Deputy Minister of Labour, Government of Madhya Pradesh and Khasherao Ghorpade of dewas, in the course of their speeches, made statement relating to the personal character and conduct of the petitioner/appellant which were false and which the speaker sand the returned candidate either believed to be false or did not believe to be true and those statements were reasonably calculated to prejudice the petitioner/appellant's prospects of election.

Abdul Rehman Talib was alleged to have said :

"No votes should be given to such Congress candidate who has misappropriated the money."

Kr. Virendrasingh has imputed the following statement :

"I have come from Labour Colony. Water tank is lying empty. All the money of water subscription has been misappropriated by Congress candidate INTUC, Mangilal Joshi, The workers will not vote for him."

Kanhaiyasingh Thakur was stated to have said :

"The workers' subscription has been misappropriated by INTUC Joshi. There is also a case pending against him in Court."

Khasherao Ghorpade was alleged to have said :

"No votes be given to the corrupt candidates of Congress who has misappropriated workers' subscription money"

3. The relevant parts of Issue No. 6 cover the plea contained in Para 13(b)(ii) of the election petition. The controversy covered by this issue which now survives is confined to the statements alleged to have been published in the issue of the weekly 'Ranchandi', dated June 16, 1968. From that issue the following extracts published in connection with the election in question were relied upon by the appellant in support of the allegations of the corrupt practice :

"Voters beware of Joshi misappropriator of the workers' subscription"

"Corrupt Congress candidate Mangilal Joshi."

"Appeal to remain careful of the misappropriator of mill workers' subscription, corrupt candidate Mangilal Joshi."

4. According to the written statement on behalf of the returned candidate (respondent No. 1 in the Court) all that the speakers at the meeting on June 13, 1968, in Jawahar Chowk had pointed out was that a prosecution was pending against Mangilal Joshi and that he was charged with embezzlement of the funds of the Mazdoor Sangh and of the donations of the workers. Though in the written statement the returned candidate denied that he had continued to be present at the meeting, the court below held that he was present throughout and this finding in our view must be accepted. He also denied that the statement made by the speakers at the meeting had been made with his consent but in the circumstances of the case we would assume that he cannot disown those statements which were made in his interest and therefore, they were in all probability made with his approval.

5. In regard to the publication in 'Ranchandi' the respondent pleaded in the written statement that the Editor of the weekly used to publish election material on his own responsibility and that the respondent had no concern with the statement published therein. The subject-matter published in the issue of June 16, 1968, was stated not to have been published with the respondent's consent. He, however, proceeded, without prejudice to add that the statement of fact contained therein were not believed by him to be either false or untrue.

6. It is not disputed that on the evening of June 13, 1968, at about 8.00 p.m., an election meeting was actually held in Jawahar Chowk, Dewas, and it was called in support of the respondent's election and also that this meeting was addressed by Abdul Rehman Talib, Kr. Virendrasingh and Kanhaiyasingh Thakur. In regard to Khasherao Ghorpade, however the respondent did not admit that he had addressed the meeting. The High Court after considering the evidence on the record and the arguments addressed before it came to the conclusion that Abdul Rehman Talib had, during the course of his address at that meeting, stated that Mangilal Joshi had misappropriated the amount of subscription realised from the labourers and that a case was pending in Court against him and no votes should be cast in his favour. In regard to Kr. Virendrasingh, the High Court came to the conclusion that the speech attributed to him had not been proved. About Kanhaiyasingh Thakur's speech also, the High Court accepted the evidence of the appellant's witnesses to the effect that Kanhaiyasingh Thakur had said that Mangilal Joshi had embezzled the amount realised by him as subscription from the labourers and a case in this connection was also going on against him in Court. The High Court took notice of the fact that Kanhaiyasingh Thakur was called as witness by the returned candidate and he was actually present in Court on September 23, 1969 but was given up. In regard to Khasherao Ghorpade, the High Court accepted the appellant's case that he had addressed the meeting in which he had stated that the appellant had misappropriated the money realised as subscription from the labourers. The High Court then considered the offending publication in the issue of 'Ranchandi', dated June 16, 1968. The Court after considering the material to which its attention was drawn observed that in this case the word 'corrupt' had been used in the context that Mangilal Joshi had misappropriated or embezzled the subscription amount of the labourers and that Mangilal Joshi's description as a corrupt person was intended to convey the fact that he had embezzled or misappropriated the subscription realised from the labourers. The use of word 'Bhrastachar' in this connection was held to connote a corrupt person. After considering some decisions of this Court on the construction to be placed on Section 123, sub-section (4) of the Act which were cited in the High Court, that Court came to the conclusion that the appellant had failed to prove that the impugned statements were false or were either believed to be false or not believed to be true by the speakers and returned candidate. This conclusion was arrived at in the background of the fact that the criminal complaint had been filed against the appellant by one Lal Singh, as far back as July, 1965, Lal Singh appeared as witness for the respondent as R. W. 13 in the High Court and proved his complaint from the original record of criminal case No. 52 of 1965, in the Court of Additional Magistrate (Jud.), Dewas, A certified copy of that complaint (Ex. D-1) was also placed on the record. According to that complaint it was alleged that Mangilal Joshi was the president of Dewas mill Mazdoor Sangh and had held that office for the preceding nine years. Several amounts relating to membership fee were stated to have been collected from the workers and the amount of several thousand rupees were neither deposited with the mazdoor Sangh officer nor entered in the related registers. It was principally on the basis of the pendency of this complaint that the High Court came to the conclusion that the appellant had not discharged the onus of showing that the offending statements of facts were false and were believed by the returned candidate, the speakers at the meeting in question and the Editor of 'Ranchandi' to be false or were not believed by them to be true.

7. The charge relating to disqualifications of the returned candidate was based on the averments that the returned candidate was a Chairman of the Board of Directors of the Dewas Senior Electric Supply Company private Limited and that this Company generated electricity and supplied the same to the State Government under a contract. On this basis it was pleaded that under Section 9-A of the Act the returned candidate must be held to be disqualified from seeking selection to the Assembly. The High Court repelled this contention holding that the returned candidate could not be held to

have directly entered into any contract with the Government merely by reason of the fact he was the Chairman of the board of Directors of the Electric Supply Company. Reliance for this view was placed on a decision of the Madhya Pradesh High Court reported as Satya Prakash v. Bashir Ahmed Qureshi (AIR 1963 MP 316).

8. In regard to the allegations of the election expenses incurred by the returned candidate being in excess of the prescribed limit it was contended that petrol worth about Rs. 2,000 had been purchased by respondent No. 1 between May 31, 1968 and June 15, 1968, and if the whole of this amount was to be added to the expenditure admitted by the returned candidate to have been incurred then this would exceed the prescribed limit, thereby contravening Section 77 of the Act. This contravention according to the appellant's learned counsel is a corrupt practice covered by Section 123, sub-section (6) of the Act. The High Court did not agree with this submission and held that the petrol and oil purchased from May 30, 1968 to June 15, 1968, included petrol and oil for various other requirements of the returned candidate and the whole of its was not proved to have been used for election purposes. The whole of this amount, therefore, could not be included in the election expenses. The election petition as already observed was dismissed by the High Court.

9. On appeal, Dr. Singhvi has re-agitated all these points. We may first dispose of the point of disqualification. Section 9-A of the Act on which the entire argument rests, reads :

"Disqualification for Government contracts. - A person shall be disqualified if, and for so long as, there subsists a contract entered into by him in the course of his trade or business with the appropriate Government for the supply of goods to, or for the execution of any works undertaken by, that Government."

It is necessary for the purpose of this case to reproduce the explanation. It is clear that this section only covers contracts which have entered into by a person in the course of his trade or business with the appropriate Government for the supply of goods to or for the execution of any works undertaken by that Government. Dr. Singhvi contended that the supply of electricity would amount to the supply of goods. That perhaps is so But, in our opinion, the contract of supply of electricity by the Electric Supply Company can by no means be considered to be a contract entered into by respondent No. 1 in the course of his trade or business as contemplated by Section 9-A of the Act. The legal position is so clear that the appellant's learned counsel, after an unsuccessful attempt to persuade as to the contrary view, felt constrained not to pursue this point seriously.

10. Coming now to the charge of the alleged corrupt practice covered by Section 23(4) of the Act, we do not consider it necessary to go into the evidence in detail or to consider at length the arguments addressed on the question of the impression conveyed to the people who had heard the speeches or read the offending publication in the newspaper 'Ranchandi'. We will accept the position that the offending statements, both oral, made in the various speeches referred to earlier and those contained in print as published in the Ranchandi, dated June 16, 1968 (Ex. P/8) do prima facie offend Section 123(4) of the Act if false and either believed to be so or not believed to be true. Now it is not disputed that the criminal complaint, dated July 27, 1965, under Sections 403 and 406, I.P.C., was filed against Mangilal Joshi appellant and Kanhaiyasingh by one Lal Singh in the Court of the Magistrate, Ist Class, Dewas. In that complaint it was alleged that the accused had collected from the workers of Dewas Mill the following amounts :

#1. Membership Rs. 15,000/-2. Wageboard Fund Rs. 1,500/-3. Gratuity Fund
... Rs. 1,500/-4. Mazdoor Sangh Rs. 900/-5. Travelling Fund Rs. 1,000/-6.

Water Tax Rs. 1,000/-##

It was also averred in the complaint that except for a sum of Rs. 5 or 6 thousands the remaining amounts were neither deposited with the Mazdoor Sangh's office nor were they entered in the relevant registers Mangilal was in the complaint as the president of the Dewas Mill Mazdoor Sangh Kanhaiyasingh accused No. 2 as the Secretary of the said Union. The appellant Mangilal in his cross-examination as P.W. 32 admitted that this complaint, dated July 27, 1965, had been filed against him which was pending at the time of the bye-election in question and that a charge had also been framed in that case on August 22, 1968, (Ex. P/9). He further admitted that Lal Singh was a mill worker in the Dewas standard Mill and was also a representative of the Indian National Trade UNION Congress of Dewas. Lal Singh appeared as P.W. 13 and proved the complaint and also a part of his statement, dated April 12, 1968, made in the Court of the Magistrate. The returned candidate appearing as R.W. 17 stated that he knew of this complaint. The High Court on appraisal of the entire material on the record expressed its final conclusion on Issues 5(f) and 6(a) to (h), which are the relevant issues, in these words :

"Assuming, though not admitting, that the petitioner has succeeded in proving the falsity of the impugned statement, even then he is not out of the woods. As held in Sheopalsingh v. Rampratap (AIR 1965 SC 677), even if the statement is false the candidate making it is protected unless he makes it believing it to be false nor believing it to be true, i.e., to say statements which are not true but made bona fide are also outside the ambit of the provisions of Section 123(4) of the Act. We have seen above that the criminal complaint against the petitioner for having committed criminal misappropriated or criminal breach of trust was filed in the criminal Court in the year 1965 when this bye-election was not even in contemplation. It is no body's case that either the three speakers, namely, Shri Abdul Rehman Talib (R.W. 2), Shri Kanhaiyasingh Thakur and Khasherao Ghorpade or the Editor Shri Rameshwar Sen (R. W. 5) or the returned candidate Shri Krishnajirao Pawar (R.W. 17) were in any way instrumental in getting the said complaint filed against the said petitioner. This very complaint was pending at the time of this bye-election in question and a number of witnesses examined by the petitioner and also examined by the returned candidate have stated that such a complaint was filed in criminal Court against the petitioner and it was pending. In other words, filing of such a complaint against the petitioner was a notorious fact known to several persons in Dewas and subsequently the charge was framed against him on the same material thus, the impugned statement was not founded on mere suspicion pure or simple nor was it the result of pure conjecture or guess. It had positive basis and the basis subsequently proved to be prima facie correct, therefore, the impugned statement falls within the ambit of bona fide statement.

In conclusion, therefore, I hold that the petitioner failed to prove that the impugned statement was false and was wither believed to be false or not believed to be true. Accordingly, I decide these two issues as not proved. Hence it follows that the impugned statement does not fall within the mischief of Section 123 (4) of the Act."

We are in full agreement with the approach and the final conclusion of the High Court. The essential basic facts seems to us to be incontrovertible, and if that be so, then clearly there is a very heavy burden on the petitioner/appellant to prove the most vital ingredients prescribed in Section 123(4) of the Act, namely, that the impugned statement of fact is not only false, but in addition that the

respondent returned candidate and his agents publishing the impugned statements either believed the same to be false or did not believe them to be true, see *Dr. Jagjit Singh v. Giani Kartar Singh and Others* (AIR 1966 SC 773). On this point there is absolutely no material on the record. This challenge by the appellant also fails.

11. Dr. Singhvi, we may in fairness to him point out, took considerable pains to persuade us to hold that the order of the Criminal Court framing the charge is inadmissible in these proceedings. It was also submitted that the charge having been framed afterwards could not be taken into account for considering whether the impugned statements could be believed to be true at the time they were made. Dr. Singhvi submitted that if the order of the criminal Court is ignored and if the appellant's denial about embezzlement is taken into account then the statements made at the meeting and those published in 'Ranchandi' must be held to be false and believed to be so or not believed to be true. This argument is difficult to accept. To begin with, the appellant has himself admitted on oath as a witness that the complaint was filed against him for embezzlement and a charge was also framed in those proceedings. This admission cannot be ignored. We are also not inclined to agree with Dr. Singhvi that the order framing the charge or the complaint are inadmissible in evidence. Dr. Singhvi has not drawn our attention to any provision of law which would render them inadmissible in the present proceedings.

12. The counsel then submitted that Lal Singh's statement in the criminal Courts is clearly inadmissible as evidence and the High Court was wrong in taking that statement into consideration. Here again we think that the counsel is not quite correct. The statement of Lal Singh would seem to us to be relevant and admissible under several provisions of the Indian Evidence Act. We need only refer to Sections 7, 8 and 11(2) of that Act. In this connection it is interesting to point out that Lal Singh's statement in the criminal court was got proved in his cross-examination at the instance of the election petitioner/appellant. It would, therefore, be a question for consideration if the appellant can now be permitted to find fault with what he himself had elicited by cross-examining R.W. 13. However, even excluding this cross-examination there is, in our opinion, ample material in support of the conclusions of the High Court.

13. This takes us to the charge of corrupt practice under Section 123(6) election expenses being in excess of the limit prescribed by Section 77 of the Act, read with Rule 90 of the Election Rules. The only point in respect of this charge pressed before us is that petrol worth Rs. 2,000/- was purchased by the returned candidate from M/s. A. J. Khanuja & Sons, Bombay-Agra Road, Dewas. If this amount is added to the admitted expenditure of Rs. 6,576.78, then the expenses would exceed the prescribed limit and the election must according to the appellant be set aside on this ground. Dr. Singhvi addressed elaborate arguments on this point with the object of showing that the entire petrol purchased from the aforesaid firm must be held to have been purchased for the purpose of the election in question. We do not consider it necessary to deal with the arguments at length because the charge must fail for want of evidence connecting this item of expenditure with the election. The High Court has observed in this connection :

The petitioner has not adduced any evidence on this point except that of Daulatrao (P.W. 1) who has also filed extracts of account of petrol and oil, etc., purchased by the returned candidate from his master M/s. A. J. Khanuja and Sons, Dewas, during the relevant period. Neither these extracts nor the evidence of this witness establishes the additional expenditure of Rs. 2,000/- as pleaded by the petitioner. The returned candidate Shri Krishnaji Rao Pawar (R.W. 17) has deposed that at the relevant time he owned two jeeps, five cars, one tractor and one pick-up van and agricultural land of about 500 acres. He also deposed that during the period of this bye-election he used only for the

jeeps but for cars also which were used for house-hold purposes. He further deposed that diesel was used for agricultural purposes. His testimony further shows that he had instructed M/s. A. J. Khanuja and Sons, Dewas that petrol and oil purchased for to the election purpose should be marked distinctly and, therefore, he used to sent the counterfoil for purchase of petrol and oil which used to be marked with letter 'g' to indicate that the same were purchased for election purposes. About marking, the petitioner's witness, daulatrao (P.W. 1) says something. The total costs of the marked items so called out from the extracts (Exs. P. 1 and P. 2) have not been shown to be an additional expenditure and not covered by the election expenses return filed by Shri Krishnaji Rao Pawar (R.W. 17).

He is the ruler of Senior Dewas State, possessed several vehicles at the relevant time and, therefore, undoubtedly needed petrol and oil for them, as also oil for tractor and pick-up van during the said period for his domestic purposes and agricultural purposes ferries election purposes. The evidence of Daulatrao (P.W. 1) himself would show that in the month of April, 1968, when there was no hectic activity about the election, the cost of petrol and oil purchased by him during that month amounted to Rs. 2,604.12 paise. That would indicate that he requires large quantity of petrol and oil for his motor vehicles, oil engine, etc., used for domestic and agricultural purposes. It is true that the extracts of accounts (Exs. P-1 and P-2) show that most of petrol and oil purchased from May 31, 1968, was about Rs. 2,250/- but it is impossible to believe that the entire cost was incurred in connection with this election. I hold that the petitioner has failed to establish that the returned candidate had incurred or authorised additional expenditure of Rs. 2,000/- from May 31, 1968 to June 15, 1968, in connection with is election and I decide this issue as not proved.

The reasoning and approach of the High Court is unexceptionable and nothing urged by Dr. Singhvi has persuaded us to disagree with the High Court's conclusions.

14. These were the only points urged at the bar in support of the appeal. As we find all of them to be without substance, the appeal fails and is dismissed with costs.

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