

Prof. Balraj Madhok

Vs

Shri Shashi Bhushan and Others

Civil Appeal No. 995 of 1972

(K. S. Hegde, A. N. Grover, D. G. Palekar JJ)

21.08.1972

JUDGMENT

HEDGE, J. -

1. This is an appeal under Section 116-A of the Representation of the People Act, 1951 (to be hereinafter referred to as the Act). The appellant was the election petitioner. The respondent is the returned candidate. The constituency with which we are concerned in this appeal is the South Delhi Parliamentary constituency. In the last General Election to the Lok Sabha from the South Delhi Parliamentary constituency, the appellant was the Jan Sangh nominee and the respondent was the Congress nominee. After counting of votes, the respondent was declared elected. The appellant challenged the validity of the election of the respondent on various grounds. At the time of the trial of the case, the pressed only one ground viz. that the election was rigged by the ruling party. The appellant explained the process adopted in rigging the election thus : Millions of ballot paper were chemically treated and the symbol of the Congress candidates in those ballot papers was mechanically stamped by using invisible ink. As a result of the chemical treatment of those ballot papers, the mark put at the time of the polling disappeared after a few days and the stamp mechanically placed earlier emerged. The suggestion was that this was done as a result of a conspiracy between the ruling party and the Election Commission. According to the appellant, to carry out the design in question quite contrary to the earlier practice the Election Commission instructed the Returning Officers to forward to Delhi substantial number of ballot papers of each constituency ostensibly for the purpose of scrutiny but really for the purpose of carrying out the design mentioned earlier. He further alleged that in place of the ballot papers received the Returning Officers were supplied with ballot papers chemically treated and mechanically stamped. Those ballot papers formed part of the ballot papers used at the election. He also averred that in furtherance of the above design, the Election Commission made two alterations in the practice followed earlier; firstly it provided larger interval between the date of polling and the date of counting and secondly by precipitate alteration of a rule, it provided for mixing up of ballot papers of various booths and rotating them in drums. According to him these innovations were introduced so that the chemical treatment of the ballot papers may have the desired effect.

2. When the case was taken up for trial, the appellant sought for an inspection of the ballot papers. The trial Judge after hearing the parties granted the inspection asked for. Aggrieved by that order, the respondent came up in appeal to this Court. Before this Court it was contended on behalf of the respondent that the appellant has not made out a case for inspection of the ballot papers. Rejecting that contention this Court observed thus :

"The election petitioners do not claim to have any direct evidence to support their

version. They seek to prove their version primarily on the basis of the examination of the ballot papers. But to probabilities their version, they have put forward various circumstances. They have filed affidavits of two persons who claim to have been present at the time of counting. They supported the allegations in the petitions seeking inspection, regarding the facts said to have been observed at the time of counting. In those petitions it was alleged that at the time of the counting, it was noticed that the colour of a large number of ballot papers was different from the colour of the other ballot papers, stamping of the symbol in ballot papers was uniform, at an identical spot in each of those ballot papers, the stamps were uniform in density and they looked bright and fresh. Those features were quite dissimilar to those found in the other papers including those containing votes in favour of the defeated candidates. The election petitioners in this connection referred to the rumours prevailing about the rigging of the election, the landslide victory of the ruling party which according to them was wholly unexpected and finding of huge quantity of unused ballot papers in a godown in Chandigarh. The material facts supporting the allegation of rigging are those said to have been observed at the time of the counting. In addition they also pointed out the changes made by the Election Commission in the counting procedure and tried to draw an adverse inference therefrom. Whether the observations said to have been made are true or whether they were merely the figment of imagination of some fertile brains has yet to be examined. The only effective way of checking the correctness of those allegations is by inspecting the ballot papers.

We are free to admit that we are unable to comprehend the theories propounded by the election petitioners. But we are conscious of our limitations. The march of science in recent years has shown that what was thought to be impossible just a few years back has become an easy possibility now. What we would have thought as wild imaginations some years back are now proved to be realities. Hence we are unable to reject the allegations of the election petitioners without scrutiny. We shall accept nothing and reject nothing except on satisfactory proof. We are approaching the allegations made in the election petitions in that spirit.

The learned trial Judge did not hold that the allegations made by the election petitioners were not bona fide allegations. We see no reason to come to a contrary conclusion. He took the view that those allegations were of serious character and the material facts stated in support of those allegations were such as to call for investigation into the truth of those allegations. We are of the same opinion. The allegation that our electoral process has been fouled is a very serious allegation. That allegation is a challenge to the integrity and impartiality of the Election Commission. Those allegations if believed are sure to undermine the confidence of our people in our democratic institution. Herein we are not merely concerned about the validity of elections in two constituencies. They are no doubt important but in the context of things their importance pales into insignificance. What is more important is the survival of the very democratic institutions on which our way of life depends.

It was said, on behalf of the appellants that those allegations were nothing but propaganda stunts and they were wholly devoid of truth. If that is so, it is in public interest that the falsity of that propaganda should be exposed. The confidence in our electoral machinery should not be allowed to be corroded by false propaganda. It is

of utmost importance that our electorate should have full confidence in the importance of the Election Commission. Even the very best institutions can be maligned. In all countries, at all times, there are gullible persons. The effectiveness of an institution like the Election Commission depends on public confidence. For building up public confidence, public must be given the opportunity to know the truth. Any attempt to obstruct an enquiry into the allegations made may give an impression that there might be some truth in the allegations made.

From the records we gather that the allegations with which we are concerned are being made in several places in this country with some persistency. It is not unlikely that a section of our people, rightly or wrongly, have persuaded themselves to believe in those allegations. Such a situation should not be allowed to remain. The strength of a democratic society depends on the knowledge of its ordinary citizens about the affairs of the institutions created to safeguard their rights. It is dangerous to allow them to feed themselves with rumours."

3. Modifying the order of the High Court in certain respects, this Court observed :

"The next question is whether it is necessary to inspect all the ballot papers as has been ordered by the trial Judge. We think that a general inspection should not be permitted, until there is satisfactory proof in support of these allegations. For finding out whether there is any basis for those allegations, it would be sufficient if some ballot papers say about 600 out of those polled by each of the returned candidates are selected from different bundles or tins in such a way as to get true picture. He may also select about 200 ballot papers caste in favour of the election petitioner for comparison. All the selected ballot papers at the first instance be examined by the learned Judge with the assistance of the counsel for the parties as well as the parties. If the learned Judge comes to the conclusion that the matter should be further probed into, he may take evidence on the points in issue including evidence of expert witnesses. Thereafter it is open to him to direct or not to direct a general inspection of the ballot papers. But in doing so he will take care to maintain the secrecy of the ballot.

Subject to the directions given above, these appeals are dismissed but in the circumstances of the case we make no order as to costs in these appeals."

4. After the case was sent back, the learned trial Judge inspected the ballot papers in accordance with the directions given by this Court in the presence of the parties and their counsel. This is what the learned Judge states in his judgment about the observations made by him :

"It was pointed out that there was a difference in shade and shadow of the colour of the ballot papers. One type of ballot papers was called white while the other was called brown. I have myself seen these ballot papers. So far as their colour is concerned, I would place them in two categories namely (a) white and (b) off-white. Counsel for the petitioner in E. P. No. 2 of 1971 contended that the majority of the ballot papers polled by respondent No. 1 were brown and that all these brown ballot papers had been chemically treated. Mr. Madhok, petitioner in this petition did not go to this extent and argued that all the brown ballot papers may not have been chemically treated.

If this argument were correct, one should not have found any brown ballot papers amongst the ballot papers polled by the petitioner. This factually is not so because ballot papers polled by the petitioner are also found in the aforesaid two shades which I have called 'white' and 'off-white.'

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Even while taking out the rolls of ballot papers from the bundles contained in the gunny bags and again during their segregation into smaller rolls, I had looked at them from this point of view. One necessary result which would follow if a mechanical process had been employed would be that a sufficiently large number of marks would be placed at the identical spot in the relevant column of the ballot papers. I have not been able to find, in spite of as careful a comparison as I could make, even two ballot papers which can be said to have been placed at the identical spot. The entire theory of the employment of mechanical process must, to my mind, fail."

5. From the observations made by the learned trial Judge, it is clear that the theory that the ballot papers were mechanically marked is absolutely without any foundation. Once the theory that thousands of ballot papers were mechanically marked is rejected, the remaining part of the appellant's case cannot have much basis. The appellant has produced no basis for saying that the ballot papers were chemically treated. The fact that there were ballot papers having two colours white and off-white does not lend any support to the contention that any of the ballot papers were chemically treated for the reasons mentioned by the trial Judge. The appellant who argued the appeal before us in person tried to evolve a theory that some ballot papers cast in his favour might have changed their colour because of their coming into contact with the other chemically treated papers. We see no basis to accept this contention.

6. We agree with the trial Judge that the appellant has not made out his case that the election in question was rigged.

7. In the result this appeal fails and the same is dismissed with costs.

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