

Jagdish Prasad Tiwari

Vs

Ramdhani Mishra

Civil Appeal No. 236 of 1974

(A. lagiriswmi, R. S. Sarkaria JJ)

18.11.1974

JUDGMENT

ALAGIRISWAMI, J. -

1. The respondent was the successful candidate in the election held on March 8, 1972, to the Legislative Assembly of Madhya Pradesh from Mauganj constituency. The appellant is one of the unsuccessful candidates in the election. His petition questioning the respondent's election having been dismissed by the High Court of Madhya Pradesh he has filed this appeal. The appellant was the candidate set up by the Indian National Congress Party while the respondent contested as an independent candidate. In the election the respondent secured 13,599 votes against 10,683 obtained by the appellant. It appears that in the earlier general election held in 1967 from the same constituency the respondent had contested as a Congress candidate while the petitioner was an Independent candidate. In that election the appellant succeeded in defeating the respondent.

2. In the election petition there were allegations of many corrupt practices of which we are concerned with only one in this appeal. That relates to two leaflets under the title 'Antar Atma Ki Pukar' marked respectively as Exts. P-1 and P-2. The respondent accepted his authorship of Ext. P-2. We may, therefore, set it out verbatim :

"CALL OF CONSCIENCES"

(Antaratma Ki Pukar)

Kindly consider and decided :

Appeal of Ram Dhani Mishra, Independent candidate of Mauganj constituency to the voters.

Brethren,

You know that in the 1967 General Election, I was nominated Congress Candidate. Then the present Congress candidate, Shri Jagdish Prasad Tewari was contesting against me as an Independent candidate. The Tewariji who now proclaims himself, a Congressman, and has as well been accepted, had no satiety from reviling - using abusive and debased terms - Prime Minister Indira Gandhi and the Congress. His supporters were raising obscene and abusive slogans against Prime Minister Indira Gandhi.

Shri Tewari had contested election in 1957 as an Independent and in 1962 from Ram Rajya Parishad. Then too he used to pour out venom against the Congress of this nature.

This time, when the Congress allotted ticket to Shri Jagdish Prasad, then a deep religious crisis arose before me. The man who throughout his life remained an opponent of the Congress - how is he a Congressite ? It was a religious crisis of the same nature, as had arisen before our Prime Minister Indira Gandhi, two years ago, when in the Presidential Election, against the Congress sponsored candidate, Shri Sanjiva Reddy, she supported an Independent candidate Shri V. V. Giri and made him victorious. Then the Prime Minister had said "From the Mandate of the party weightier Mandate is the mandate of conscience. Act according to the dictates of the conscience". For this the Congress Party expelled Shrimati Gandhi from the party, and the Prime Minister had to form a New Congress. I too today at the bid of the same conscience stand in the election as an Independent candidate so that truth triumphs and the hypocrites are exposed.

In the last election Shri Jagdish Prasad had got published and distributed pamphlets with his photograph and that contained his declaration that within 15 days of his winning the election, he will flow stream of mills in the constituency, but for full five years pass he wandered in the whole country on the free pass and could not look to the sufferings of the public of Mauganj constituency. Because of the long absence of the Legislator, I had to look into every affair of the constituency and for this always keeping contact with the leaders of the State and the government, I used to get the plans implemented. During the last 24 years I remained servant in your service, as a servant. During these 24 years, you all are very well acquainted with my nature, way of working and my virtues and vices.

Of all the candidates of Mauganj constituency I am the only candidate, who could neither build a house of my own nor become a man of riches. I am Socialist at heart and have full faith in socialistic principles. I am not a Socialist of the pattern of Shri Achutanand of the Socialist Party, who while establishing socialism, became a man of lacs. My religion, my politics and my principle, is only that I may make my constituency so full of means and splendid as to remove poverty, illiteracy, and unemployment from here, so that the people of the constituency may not wander about place to place for employment and bread.

In this election my two opponents Shri Achutanand and Shri Jagdish Prasad had been legislator, you are very well familiar with them. Who are the remaining candidates ? And of what quality ? You shall find out this for yourself. Personally none is my enemy, so do I believe.

On the call of conscience, perhaps I am contesting the election for the last time in my life. You have to decided, public is God (Janardan), whether be your decision, I shall bow down and accept the same.

Your humble servant,

RAM DHANI MISRA.

The only difference between Ext. P-2 and Ext. P-1 is that instead of the sentence "His supporters were raising obscene and abusive slogans against Prime Minister Indira Gandhi" the slogan itself was mentioned in Ext P-1. The learned Judge who tried the election petition held on the evidence that Ext. P-1 and Ext. P-2 were both issued and published at the instance of the respondent. We have gone through the evidence and we have no reason to differ from his conclusion. Nor was the conclusion seriously questioned by the learned Advocate appearing for the respondent. The learned Judge further held that the matter contained in Ext. P-1 and Ext. P-2 is undoubtedly false as there is hardly any evidence to indicate that the appellant in any manner had made any such propaganda by

abusing the Prime Minister.

3. Under Section 123(4) of the Representation of the People Act the false statement must be in relation to the personal character or conduct of the candidate. We should here set out the offending portion in Ext. P-1 :

Then Tewariji who now proclaims himself a Congressman, and has as well been accepted, had no satiety from reviling using abusive and debased terms, Prime Minister Indira Gandhi, and the Congress. His supporters were raising slogans of very mean standard,

Gali Gali mein Jhandi hai Indira Gandhi Randi hai.

The translation which is found in the judgment is as follows :

At that time Mr. Tiwari who now claims himself to be Congressman and he has also been recognised as such never felt contended in telling legitimate and illegitimate about the Prime Minister Mrs. Indira Gandhi and the Congress. His supporters used to raise low standard slogans such as 'flag is in every street, Indira Gandhi is prostitute'.

The Hindi words used are "Khari Khoti" which mean true and false rather than legitimate and illegitimate. However, as pointed out by the learned Judge the first sentence relates to what the appellant himself did. The second sentence relates to what his supporters did. It is the second sentence that is obscene and abusive of the Prime Minister. Therefore, it cannot be said that the character or conduct of the appellant was attacked and therefore the matter does not fall within sub-section (4) of Section 123. We are, therefore, of opinion that the appellant has failed to prove the corrupt practice that he alleged against the respondent even as the learned Judge did.

4. The only ground urged in support of the appeal having failed this appeal is dismissed with costs.

</html