

Beliram Bhalaik

Vs

Jai Beharilal Khachi and Another

Civil Appeal No. 1117 of 1973

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

03.12.1974

JUDGMENT

SARKARIA, J. -

1. Election to the Himachal Pradesh Legislative Assembly from 6-Kumarsain Assembly Constituency was held according to the under-mentioned calendar :

#1. Notification calling the election ... .. February 1, 1972.2. Last date for filing nomination papers ... .. February 8, 1972.3. Date of poll ... .. March 5, 1972.4. Counting of votes and declaration of result ... .. March 12, 1972.##

2. Jai Beharilal Khachi, Beliram Bhalaik and Kishori Lal as rival candidates contested the election from the aforesaid Constituency. The result of the poll was as below :

#Total votes polled ... .. 15050Invalid votes ... .. 372Jai Behari Lal Khachi ... .. 7336Beli Ram Bhalaik ... .. 7218Kishori Lal ... .. 124##

3. Khachi was declared elected defeating Bhalaik by a margin of 118 votes.

4. Bhalaik filed a petition under the Representation of the People Act, 1951 (hereinafter called the Act) calling in question the election of Khachi on the ground that the latter had committed several corrupt practices pleaded in the petition. The petitioner also alleged the commission of some irregularities in the counting of votes and on that basis prayed that a recount be ordered. In the event of election of Khachi being set aside, the petitioner prayed for a further declaration that he had been duly elected.

5. The learned Judge of the High Court found all the issues against the petitioner and dismissed the petition. Hence this appeal.

6. Allegations more or less of a general character, of a multitude of corrupt practices were made in the petition. We will notice only those which were canvassed before us by Mrs. Shyamla Pappu, learned Counsel for the appellant. Since we agree with the reasoning and the conclusions arrived at by the High Court, we will not reappraise the evidence in detail. We will discuss only the broad salient features of the evidence adduced in the case.

7. The first act of corrupt practices, in the chronological order, alleged in the petition is that on February 7, 1972. A. C. Gupta S.D.O., a Gazetted Officer in the Public Works Department of the State, at the instance of the returned candidate, brought Kishori Lal in his jeep from Kingal to Simla

to enable him to file his nomination papers for contesting the election from this constituency.

8. To substantiate this allegation, the petitioner examined PW 18 Tara Chand Sirkek, who stated that on February 7, 1972, he and the petitioner were both coming in a jeep between Oddi and Kumarsain. They saw Kishori Lal along with Gupta in the latter's jeep proceeding to Simla. Bhalaik also deposed to the same effect.

9. Both Gupta and Kishori Lal were examined in rebuttal as petitioner. Gupta's statement was supported by the entries in his official diary according to which on February 7, 1972, he was travelling between Kumarsain and Jarol in a truck. On that day he never went anywhere in a jeep. Kishori Lal stated that he did not even know who Gupta was and never travelled with him. Sirkek was, admittedly, related to Bhalaik and was his principal worker in the election campaign. Both were highly interested witnesses and there was absolutely no corroboration of their statements from an independent source. As against them, there was no ground to disbelieve the version DW 16 which had been confirmed by the official records and the authenticity of which had not been challenged. It was thus rightly held that the appellant had utterly failed to substantiate these allegations.

10. It was further alleged that on February 8, 1972 and February 9, 1972, Sirkek and Bhalaik met Kishori Lal at the Coffee House, Simla and had a talk with him. During that talk Kishori Lal confessed that all his election expenses were being borne by Khachi.

11. Again, on this point, the only evidence adduced consisted of the oral statements of Sirkek and Bhalaik. Admittedly, Kishori Lal was a nominee of the Communist Party of India. This circumstance itself goes a long way to falsify the assertion of the appellant that Kishori Lal had been set up by Khachi. Moreover, there was no good reason to disbelieve the sworn word of Kishori Lal that his election was being financed by the C.P.I. Thus this allegation also remained unsubstantiated.

12. Next is the charge that on February 24, 1972, Khachi went to the temple of Devta Kalu Nag at Jadun. He offered eleven rupees to the deity. Gur is the medium through whom the deity conveys His commands. Khachi utilized the services of Chet Ram Gur (PW 12) for conveying the commands of the deity that the devotees should vote for Khachi. According to the averments in the petition Chet Ram Gur distributed the chavals (rice) in villages Barru, Kathla, Roni and Kelvi among the worshippers of Devta Kalu Nag in token of conveying a message of the Devta that the recipients should vote for Khachi. In the case of those voters who refused to receive the token, the Gur threw the rice in their houses indicating that if they did not vote for Khachi, they would be visited by the deity's displeasure.

13. To prove this allegation, the petitioner examined Atma Ram (PW 11), Chet Ram Gur (PW 12), Jwala Parshad (PW 16) and Sadh Ram (PW 25). Bhalaik also repeated this allegation in the witness-stand.

14. In our opinion, the very story of distribution of chavals by the Gur from house to house in the manner alleged, was improbable. The High Court has held, and quite rightly, that such distribution was not in keeping with the practice of Devta Kalu Nag.

15. Khachi testified that distribution of chavals to the devotees is a ritual of blessing performed by the Gur in the temple itself and that such tokens of benediction on behalf of the deity are never given away from the temple to persons in furtherance of a private purpose. On DWs 16 and 17.

They categorically discounted the story of the this point, Khachi's statement receives confirmation from no less a person that Jwala Parshad, a retired Additional District Magistrate, examined as PW 16 by the petitioner. Jwala Parshad stated that chavals are distributed only in the presence of the deity within the temple itself.

16. PW 12 Chet Ram claimed to be the Gur of Devta Kalu Nag. He stated that he had distributed chavals among he worshippers of the Devta in villages Kelvi, Barhu, Kathla and Rihmi, at the instance of Khachi as the latter had promised to "please" the former. If any of those persons refused to accept the chavals the witness placed them in his house. In this quaint fashion, the witness claims to have influenced in the name of the deity about 200 or 300 electors to vote for Khachi.

17. In cross-examination, he named nine persons to whom, the chavals were offered. Out of them, only one, namely PW Atma Ram has been examined. This Atma Ram is none other than the paternal uncle of Chet Ram. In an unguarded moment Chet Ram unwittingly admitted that PW 11 Atma Ram was a Congress man, although he tried to recant it subsequently. It was further elicited from Chet Ram, in cross-examination, that PW Sadh Ram ex. M.L.A. was a Congress worker and belonged to his brotherhood. Chet Ram further conceded that he did not know Khachi previously. He was then asked what was the reward in consideration of which he had allegedly gone from house to house to distribute chavals to canvass votes for Khachi in the name of the Devta. He could not give a satisfactory answer. He prevaricated. He ultimately said that he was not seeking any reward from Khachi for himself. It is difficult to believe that version. In this highly commercial age, even a Gur or priest of a temple is not expected to do as Chet Ram claims to have done, without any reward or consideration of a temporal nature or promise of material gain. On the other hand, there was reason to suspect that he was coming forward to support the charge levelled by the petitioner, under the influence of PW Sadh Ram.

18. PW 11 Atma Ram of Kelvi, stated not only with regard to the officer of chavals to him, but also about their distribution by Chet Ram in other houses in the villages, occupied by 300 or 400 persons. He betrayed an anxiety to make his statement co-existence and congruent with that of his nephew, Chet Ram. He was - as revealed by Chet Ram - a Congress man and as such was an interested witness. His version was full of prevarications and contradictions. At one stage, under the stress of cross-examination, he admitted that the Gur of the Devta does not go to the house or shops of Harijans for giving the chavals. His aforesaid admission therefore, was destructive of his version in examination-in-chief that the Gur had come to the shop of Nayarku cobbler and offered chavals to one Manohar Lal there.

19. PW 25 Sadh Ram did not give any direct evidence with regard to the distribution of chavals by Chet Ram. He however, stated that he had come to know about this fact one day after the distribution. The witness made enquiries about it. He has admittedly been collecting evidence to support the charges in the petition. He is the Chairman of the District Congress Committee for the last seven years. He is a close associate of Bhalaik and has been ardently supporting him during and after the election. It was therefore, no without reason that the High Court found that PWs Atma Ram and Chet Ram were coming forward to propound the story of the distribution of the chavals at the behest of PW Sadh Ram.

20. Moreover, from the evidence produced in rebuttal, it had been shown that PW Chet Ram was not the sole Gur of Devta Kalu Nag. DW 14 Natu deposed that he was the senior Gur of this deity. Notice, dated January 21, 1973, (Ex. DW 14/1) issued to Natu and his reply (Ex. DW 14/2) dated February 16, 1973, confirmed the fact of Natu being the senior Gur. There was some complaint

against Natu and an enquiry was held against him. But the fact remains that at the material time, Natu was the senior Gur of Nag Devta.

21. It is significant to note that after the elections of 1969, also, Bhalaik had filed an election petition challenging the election of the successful candidate from this constituency. In that election petition, a similar corrupt practice was alleged and Natu was described as the Gur of Devta Kalu Nag of Jadun. Ex. DW 12/1 is a copy of that petition. Bhalaik was confronted with that allegation. Instead of giving any explanation, he feigned ignorance about it.

22. In the witness-stand Khachi categorically discounted the story set up by PWs Chet Ram and Atma Ram.

23. The learned trial Judge who had the opportunity of observing the demeanour of the aforesaid PWs has found the evidence rendered by them as unworthy of credit. There is no good reason for us to take a different view of this evidence.

24. Another cognate charge of distribution of chavals on behalf of Devta Doom of Gumtha/ Kadrol by Balak Ram Gur, among the worshippers of that Devta in villages, Kadrol, Mehn, Mahussu and Dhar was also made in the petition. PW 13, Masna Ram and his brother and PW 14 Charaon were examined in respect of that charge. PW 13 was admittedly a Congress worker. These PWs stated that Khachi had represented that the jungle of Devta Doom could be saved from confiscation if they voted for Khachi. Bhalaik stated that Khachi had taken those persons to the Deputy Commissioner Alok on March 1, 1972 and obtained permission for the auction of trees.

25. Balak Ram Gur of the Devta and the Deputy Commissioner, Alok, were examined in rebuttal as DW 10 and DW 13 respectively. Balak Ram, contradicted the statements of the petitioner and his PWs regarding this charge. No question was put to Alok about the facts alleged by Bhalaik. This charge was too flimsy and vague to carry conviction.

26. The next charge was that in a meeting held on February 27, 1972 at Kungal, Khachi proclaimed that water supply scheme for the village had been sanctioned and that the supply would start from March 1, 1972. On the following day (February 28, 1972), the appellant and PW 16 Jwala Parshad were present at Kungal. A. C. Gupta, S. D. O. perchance came there. They inquired about the water supply from Gupta who repeated what Khachi had earlier said. It is alleged that in this manner Khachi had availed of the services of Gupta who was a Gazetted Government Officer, and, had thus committed the corrupt practice defined in Section 123(7) of the Act.

27. Khachi denied having said any such thing in his speech. After consulting his tour diary, DW 16 Gupta stated that from February 27, 1972 to February 29, 1972, he was on tour from Kumarsain to Kandru. He returned to his headquarter at Kumarsain on March 1, 1972. On Noeli and came back to Kungal. The witness admitted that Jwala Parshad had met him at Kungal and asked him about the water course. He denied that he met the appellant at Kungal or had any talk with him regarding the water supply.

28. Narain Datt DW 15, President of the Kungal Panchayat stated that he was present in the election meeting presided over by Jwala Parshad, according to the witness, all that Khachi had said, was, that he would make efforts to see that water supply was made available to the village. Narain Datt was an independent witness of status. The trial Judge therefore rightly preferred his statement to the vague and interested evidence given by PW 16 and the petitioner.

29. The next charge was that on May 29, 1972, A. C. Gupta, S. D. O. went to the house of PW1 Mast Ram at village Khemali and there asked the Mates and Beldars of his Department to vote for Khachi.

30. PW 1 Mast Ram, PW 2 Dila Ram, PW 3 Jai Nand and PW 4 Sia Ram were examined to establish this charge. PW 1 Mast Ram is of village Khemli. He stated that he did not know Gupta previously. On February 29, 1972, Gupta came on the site of the work on the road, near the house of the witness. Somebody pointed out that he was Gupta, S.D.O. Gupta then addressed the gathering which consisted of four or five Mates and 100 Beldars, that they should vote for Khachi. PWs however said that Gupta did not represent that he knew Khachi. In cross-examination, it was revealed that the witness was totally ignorant about the names of the Beldars, the location of their houses or like particulars. Witness had to talk with the Beldars after that day. He however, informed about that Gupta had said, to Bhalaik after the declaration of the election result.

31. It is manifest from a scrutiny of the statements of PWs 2, 3 and 4 that they had all been collected and brought to court by PW1 Mast Ram. It is further noteworthy that PW1 did not say that Gupta was canvassing votes for Khachi at the request of the latter. PW1 could not name any month of the English calendar. The very fact that he mentioned the date February 29, 1972, as the date of Gupta's visit, showed that this fact had been put into his mouth by someone else.

32. Gupta as DW 16 categorically denied his visit to the house of Mast Ram on February 29, 1972 or his having asked Mast Ram or the Mates and Beldars to vote for Khachi. He explained that on February 29, 1972, he was supervising the construction work on Baragaon-Matiana Road and in that connection he might have visited and inspected the site of the work at Khemli for a couple of minutes. He stated that DW 6 Narsukh and DW 7 Manna were the Mates working on that road on February 29, 1972. Gupta had inspected the work done by these persons. Gupta further stated that PWs Jai Nand and Sia Ram had a grudge against him. Jai Nand wanted the witness to post his son at a particular station. The witness could not oblige him. Similarly, Sia Ram was unhappy in connection with a dispute relating to the marriage of Sia Ram's sister.

33. Mates Narsukh and Manna, were examined in rebuttal by Khachi. Both of them refuted the version of PWs Mast Ram, Jai Nand and Sia Ram.

34. In the circumstance of the case, it was not prudent to accept the mere ipse dixit of these PWs. Their statements had not been corroborated by any reliable documentary evidence. In any case, it could not be preferred to that of DWs Gupta, Narsukh and Manna. In the ultimate analysis, the High Court was right in holding that this charge also had not been established beyond reasonable doubt.

35. The last contention of Mrs. Shyamla Pappu, which has been seriously pressed, is that grave irregularities and illegalities had been committed in the counting of votes.

36. Some instances of such irregularities are alleged in paragraph 7 of the petition. Most of those allegations are general and vague. Those on which Mrs. Pappu had laid stress are these :

(a) At the counting, Rattan Chand counting agent of the petitioner at table No. 5, noticed "that in one bundle about 49 votes of the petitioner had been put and on the top of it one ballot paper cast in favour of Khachi was placed". This gave the false impression that the whole bundle of 50 ballot papers was in the name of Khachi, and accordingly they were counted in Khachi's favour, causing a loss of about 49 votes to the petitioner. The petitioner

was informed by his other counting agents also that such wrong things had been done at the other tables as well. In this way the petitioner believes that he had been deprived of at least 500 votes.

(b) Quite a large number of votes cast in favour of the petitioner were declared invalid whereas a large number of invalid votes which deserved to be rejected were counted in favour of the respondent No. 1.

(c) During the count on the second round no invalid vote was declared in respect of the counting conducted at Table No. 8. In the result-sheet, however, the petitioner now finds 15 votes as having been declared invalid at the table in the second round counting.

(d) Even though the result was yet to be announced officially, the counting agents of Khachi raised shouts that he had won and caused great confusion and chaos. The petitioner and his counting agents were keen to file an application to the Returning Officer requesting for a recounting of the votes, Shri Tara Chand Sirkek, one of the counting agents of the petitioner, was therefore, sent out to get an application typed for the purpose, but when he came back with the typed application, on account of the confusion and chaos already going on in the counting room, he was not permitted to enter the counting room by the security staff, though he was having on his chest the proper identity chit. It was therefore, after considerable difficulty and delay that the application could at last made an order that the demand for recounting could not be accepted by him as the certificate of election had already been issued.

37. Mrs. Pappu contends that the Returning Officer in view of these irregularities and circumstances which were all in this notice acted arbitrarily and illegally in rejecting the application for recount which had been duly made under Rule 63 of the Conduct of Elections Rules.

38. Evidence with regard to this issue consisted of the statements of Bhalaik (PW 27), Rattan Chand (PW 22) and Sirkek (PW 19). In rebuttal, Khachi examined S. K. Alok DW 13, the Returning Officer, V. P. Singh DW 9 and DW 17, apart from himself appearing in the witness-box.

39. At the trial the petitioner (PW 27) tried to improve upon his version in the petition and stated :

Shri Rattan Chand was my counting agent at table No. 5. When Rattan Chand became free from his table he went to Shri Tara Chand Sirkek who was my counting agent at table no. 1. Shri Rattan Chand whispered in the ear of Shri Tara Chand Sirkek that so many irregularities were committed on his table. Shri Tara Chand Sirkek came and told me about those irregularities. He told that according to the information given to him by Shri Rattan Chand, several bundles containing my votes were passed on to the tray of Sri Khachi and were counted as votes for Shri Khachi. Shri Sirkek told me that Shri Rattan Chand protested to the counting staff regarding that but he was threatened. At that time I did not verify that complaint from Shri Rattan Chand. Later on when the counting was over I did talk with Rattan Chand about it. Shri Rattan Chand confirmed all that what he had stated to Shri Sirkek. When Sirkek whispered the complaint of Shri Rattan Chand in my ear, I told him to rush up to the Congress office and bring an application for recounting. Shri Sirkek rushed outside. The counting was going on other tables at that time. The counting was going on and prematurely the counting agents of Shri Khachi raised slogans inside the hall that Shri Khachi had won the election. Random check was made on the table of the Returning Officer for table No. 2. Two votes belonging to me were found in the tray of Shri Khachi. The Returning Officer then stood

up and warned the counting staff that they should not commit such mistakes. Later on my counting agents told me that the counting of the ballot papers was being done by the counting staff so swiftly that it was hardly known to them as to which of the ballots is being counted and for whom.

Shri Tara Chand Sirkek told me that when he went outside the counting hall he met Harnam Chand Bhalaik. He sent Shri Bhalaik to get the application typed quickly. Shri Bhalaik returned soon after with the application and when Shri Tara Chand Sirkek wanted to go inside the hall he found the counting agents of Shri Khachi raising slogans inside the hall and the Returning Officer was pacifying them. The security staff naturally became alter because of those slogans and turmoil and they stopped Shri Sirkek and the result was that Shri Sirkek could not enter the counting hall and the application could not be given for recounting before the result was declared. When all of us came outside the counting hall I found Tara Chand Sirkek standing there very much disappointed. I inquired of him about recount application. He told me that he was not permitted to enter the counting hall. I then wanted to enter the hall with that application but was stopped by the security staff because the counting of Rampur Constituency had started at the time. I then sat down in the adjoining room. Thereafter I was permitted to enter the counting hall. Then I gave the application to the Returning Officer. The Returning Officer asked me to sit in the adjoining hall and told me that he would look into the application. A copy of the order was communicated to me. It is marked as EX. PW 27/A.

40. PWs Sirkek and Rattan Chand deposed, more or less, to the same story which was narrated by Bhalaik.

41. The version of the appellant and his aforesaid witnesses stood in sharp contradiction to that of Alok, the Returning Officer. The latter stated that no complaint of any irregularity in counting or of the use of any unfair means in counting was made to him. Explaining the procedure followed by him, he stated that after the counting, he prepared the counting sheet, and informally announced the result. He then paused for five to seven minutes to ascertain if any application or request for a recount was forthcoming. But no such request was made to him. Consequently, after the expiry of those five or seven minutes, the witness completed the result-sheet and declared the result finally. He further swore that there was no pandemonium in the counting hall during this interval. Alok clearly stated that no request for recount or for grant of time to make an application for recount, was made to him by Shri Beli Ram Bhalaik. He however admitted that one or two persons had raised slogans for about half a minute. They stopped when the witness asked them to do so. The witness added that the result of the election was finally declared at 1.30 p.m. and thereafter at 2.05 p.m. when counting of votes of Mahasu Constituency was going on, Bhalaik made the application Ex. DW 13/2. The witness then made an order rejecting it. In cross-examination, Alok stated that while presenting the application DW 13/2, Bhalaik had represented that "he could not present the application at the appropriate time because he was not permitted to enter as the counting for another constituency was going on". The witness reiterated that even at that time Bhalaik did not complain that a lot of mistakes had been committed in the counting of votes.

42. Alok was a responsible government officer. He was not interested in either side. He appears to have given evidence in a straight and forthright manner. His statement was therefore rightly accepted in preference to those of the petitioner and his counting agents.

43. Alok's version receives full assurance from the circumstance that even in the belated application EX. DW 13/2 no irregularity or illegality, whatever, in the counting was mentioned. All that was stated therein was that the appellant was not satisfied with the counting and therefore wanted a

recount. It did not contain any ground on which a recount was sought, and as such, did not comply with the mandatory requirement of Rule 63(2) of the Conduct of Elections Rules, 1961, which provides that after the announcement of the result of counting, a candidate or in his absence his election agent or any of his counting agents may apply in writing to the Returning Officer to recount the votes either wholly or in part stating the grounds on which he demands such recount. A whimsical and bald statement of the candidate that he is not satisfied with the counting, is not tantamount to a statement of the "grounds" within the contemplation of Rule 63(2). The application was thus not a proper application in the eye of law. It was not supplemented even by an antecedent or contemporaneous oral statement of the author or any of his agents with regard to any irregularities in the counting. It was liable to be rejected summarily under sub-rule (3) of Rule 63 also. That apart, it was presented about half an hour after the Returning Officer had completed and signed the result sheet in Form 20. Sub-rule (5) of the rule expressly debar the Returning Officer from entertaining an application for recount at such a later stage. The Returning Officer had therefore, rightly rejected the application as belated.

44. From all that has been said above it is clear that the allegations of irregularities and illegalities in the counting of votes have been subsequently invented as an after-thought. That apart, these allegations in the petition are more or less vague and general. They are lacking in material fact. The evidence adduced in regard to this issue also does not make out a prima facie case for a recount.

45. Since the pronouncement of this Court in *Ram Sewak Yadav v. Hussain Kamil Kidwai* ((1964) 6 SCR 238 : AIR 1964 SC 1249 : 26 ELR 14), it is settled law that Sections 100(1)(d)(iii), 101, 102 of the Act and Rule 93 of the Conduct of Elections Rules, 1961 implicitly give the court trying an election petition the power to order a recount or production of the ballot papers and permit their inspection by the parties. Since an order for a recount touches upon the secrecy of the ballot papers, it should not be made lightly or as a matter of course. Although no cast-iron rule of universal application can be or has been laid down, yet from a beadroll of the decisions of this Court, two broad guidelines are discernible : that the court would be justified in ordering a recount or permitting inspection of the ballot papers only where (i) all the material facts on which the allegations of irregularity or illegality in counting are founded, are pleaded adequately in the election petition, and (ii) the Court/Tribunal trying the petition is prima facie satisfied that the making of such an order is imperatively necessary to decide the dispute and to do complete and effectual justice between the parties - *Ram Sewak Yadav v. Hussain Kamil Kidwai* (supra); *Dr. Jagjit Singh v. Giani Kartar Singh* (AIR 1966 SC 773 : (1967) 1 SCJ 762); *Jitendra Bahadur Singh v. Krishna Behari* ((1970) 1 SCR 852 : (1969) 2 SCC 433); and *Sumitra Devi v. Sheo Shankar Prasad Yadav* ((1973) 2 SCR 920 : (1973) 3 SCC 330).

46. In the present case neither of the sets abovementioned has been satisfied. The allegations in the petition are not precise. They are mostly general and vague floating on suspicious and beliefs of the petitioner, rather than resting on terra firma of material facts. As was stressed in *Ram Sewak Yadav's* case (supra), mere allegations that the petitioner suspects or believes that there has been improper reception, refusal or rejection of votes or there have been irregularities in the counting of ballot papers will not be sufficient to support an order of recount and inspection. It is an irony of things that in elections, as in horse-racing, sure beliefs, hopes and expectations of the contestants often end up as also-rans. The allegations of irregularities in counting appearing in the petition stem from such a 'sure' belief turned 'unsure'. We therefore do not find any substance in the contention of the appellant that the High Court was in error in rejecting the appellants' request for a recount.

47. For the foregoing reasons the appeal fails and is dismissed with costs.

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