

Hem Raj

Vs

Ramji Lal and Another

Civil Appeal No. 736 of 1973

(A. Iyengar, R. S. Sarkaria, V. R. Krishna Iyer JJ)

11.12.1974

JUDGMENT

ALAGIRISWAMI, J. -

1. The appellant, an unsuccessful candidate in the election to the Legislative Assembly of Haryana from Hathin constituency held on March 11, 1972, has filed this appeal against the dismissal of his election petition, challenging the election of the first respondent, by the Punjab & Haryana High Court.

2. There were four allegations of corrupt practice against the returned candidate that he was guilty of (1) the corrupt practice of bribery, (2) the corrupt practice of publication of a false statement relating to the personal character of the appellant falling under Section 123(4), (3) the corrupt practice of hiring and procuring vehicles falling under Section 123(5), and (4) the corrupt practice of incurring and authorising expenditure in contravention of Section 77 of the Representation of the People Act. Charges Nos. 3 and 4 were given up even before the High Court and charge No. 1 was given up before this Court. The only charge that survives for consideration by this Court is the charge of publication of a pamphlet containing false allegations against the appellant which fall under Section 123(4) of the Act. We may, however, have to refer to the evidence in respect of charge No. 1 while considering the allegations under charge No. 2

3. As we agree with the High Court in its conclusions we are referring only to the broad features of the evidence. The allegations regarding the charge under Section 123(4) are found in paragraph 6(b) and 8 of the election petition. In paragraph 8 it was stated that the returned candidate finding that he was bound to lose, he came desperate and he in league with his election agent and Shri Hukam Chand of Palwal and Dharam Chand or V. Hathin decided to indulge in character assassination of the petitioner This was said to have been in the form of a pamphlet which reads as follows :

IMMORAL CANDIDATE FROM HATHIN CONSTITUENCY Shameful black deeds of Shri Hem Raj Brothers and Sisters We feel ashamed in telling you that this time again that person has been given Congress ticket because of whose atrocities the public is already upset. By the black deeds of Shri Hem Raj even today the sisters and daughters of the area are exiled from their houses in the same manner as the young women of Bangladesh. So many teacheresses and nurses have become victims of his sexual lust. The chastity of so many victims belonging to small castes has been taken away. The Sunari and Kumhari scandal of his own village is hidden from whom? If Shri Hem Raj is successful against then the honour of sister and daughters will not be safe. It is strongly to you that you should secure honour of your sisters and

daughters by defeating this lustful wolf. Brothers we pray to you that you should make Ch. Ramji Lal Dagar, independent candidate who is young man of character, successful. His election symbol is elephant. Symbol of Elephant. Appellants Residents of Hathin Constituency##

It should be stated even at this stage that in the election petition as originally filed the names of Hukam Chand and Dharam Chand were not found and also that though their names were mentioned in the amended election petition they were not examined. On the other hand the appellant's case as developed during the trial was that Kishan Singh, the fifth respondent election agent of the successful candidates and one Debi Singh, the man who wrote the manuscript, went to the Samta Press at Palwal on March 8, 1972 and gave the manuscript to the proprietor of the press, Mukhi Bhim Sen and placed an order for 5,000 copies. Debi Singh himself was not examined. But Kishan Singh gave a story as to how he came to write on the back of the manuscript asking Bhim Sen to print 5,000 copies, a story which the learned Judge characterised as one from the Arabian Nights.

4. Bhim Sen was summoned to produce his accounts books. He did not produce the account books. He produced a note book purporting to be an order book. A mere look at it would show that it is a got-up one. It contains entries only or about six or seven pages and the account relating to the first respondent though of an earlier date is found after entries relating to other persons which are of later dates. Names of two persons for whom he did printing work are not found in it.

5. The first respondent was particular about the production of the account books and he applied for the appointment of a Commissioner to go to Palwal and get them. But the Commissioner was unsuccessful and Bhim Sen Mukhi could not be got at. If the appellant wanted to establish the fact of printing it was he that should have taken steps to get the account books, but he did not interest himself in that. The only other documentary evidence was the carbon copy of the cash memo. This contains a telltale entry referring to the pamphlet in question. It contains the words 'kali kartoot' meaning black misdeeds. No such descriptive entry is found with regard to any other pamphlet printed in this press. It is obvious that this phrase is put in for evidentiary purpose. The printing is said to have been done at the instance of the fifth respondent, Kishan Singh, who was the first respondent's election agent. After withdrawing from the contest on February 14, 1972 he was appointed the first respondent's election agent on March 7, 1972. This Kishan Singh seems to be a shady character. It was on the basis of a letter written by him to another candidate that the charge of bribery was sought to be substantiated. That charge, as already mentioned, was not even pressed before this Court. The High Court has characterised his evidence with regard to that charge as a fairy tale and that though he claims to be a supporter of Ramjilal he is not and Ramjilal has been taken in by his pretensions. That characterisation applies aptly in regard to his evidence on this charge also. Ramjilal really does seem to be a simpleton to have appointed him as his election agent. It was his endorsement on the back of the manuscript which was printed in the form of a pamphlet that the appellant sought to build up his case that the pamphlet was printed by the successful candidate's election agent. We cannot help observing that whether his version as to how he came to write on the back of the manuscript is acceptable or not no weight could be attached to the entry in the cash memo in Kishan Singh's name. It is quite easy to put in those two words to give a twist to the whole case. That Bhim Sen Mukhi was not to help the appellant is obvious from the fact that he did not bring the account book which he was summoned to produce but produced the cash memo which he was not summoned to produce and made himself scarce when attempts were made to get at the accounts books. We have already mentioned that he also produced a notebook purporting to be the order book which was a got-up one. Furthermore, Bhim Sen did not send this poster to the

District Magistrate nor to any other officer as required under Section 127A of the Representation of the People Act nor did he take a declaration as required under that section. He did not inform the appellant about the printing of this poster though he was doing printing work for him. He did so only much later. It is curious, furthermore, that the appellant sent a notice to Bhim Sen about the printing of his pamphlet but neither sent a notice to the first respondent nor took any other steps. The pamphlet contained matter which was so defamatory of him that it is doubtful whether if it had been published the appellant would have kept quiet.

6. According to the appellant Dharam Chand, Hukam Chand, Ramji Lal and Kishan Singh and some others decided to print the poster. He does not remember the names of the persons who told him. He says Hukam Chand and Dharam Chand did not tell him about it. But all the same he has mentioned their names in the petition. He did not mention to his lawyer about the printing of the poster and who gave the information. It is therefore, obvious that he was really looking out for some obliging witness but could not get any.

7. On behalf of the first respondent two documents (1) a bill given to the co-operative society and (2) another bill given to the Dayanand Gurukul Gadpuri were produced to show that the carbon copy of the cash memo alleged to be of the bill given to Kishan Singh in respect of the printing of the poster in question could not be relied upon. Though much of the criticism of the learned Judge based on these two documents may not be quite apt, one is able to infer from them that Bhim Sen Mukhi apparently has got a number of bill books which he can use as occasion demands. We are, therefore, in agreement with the learned Judge that the pamphlet in question was not printed on March 8 but should have been brought into existence later for the purpose of the election petition.

8. The printing of the poster in question was sought to be also proved by a complaint which the appellant preferred before the Deputy Commissioner. PW 1 gave evidence that the pamphlet was with the application. But the endorsement merely reads "Send a copy to S.S.P." It is not clear from this as to a copy of what was sent. Apparently it was a copy of the appellant's petition that was sent. The application itself does not show that the pamphlet was enclosed along with the application. Therefore, it is not possible to infer from this endorsement that the pamphlet was sent along with the application to the Senior Superintendent of Police to whom the application was endorsed. The first respondent summoned the Senior Superintendent of Police to produce the relevant papers but he claimed privilege and did not produce it. One would have thought that it was the appellant who should have taken steps to get the documents produced by the Senior Superintendent of Police if he wanted to establish that he had given the poster to the Deputy Commissioner along with his application. On the other hand first respondent's effort to get it was frustrated by the attitude of the Senior Superintendent of Police. We find it difficult to believe that PW 1, the Assistant from the Deputy Commissioner's office could remember that the pamphlet was with the application. It is also interesting to note that according to the appellant he received only one copy of the poster on March 9 from Loka Ram, PW 33. But in his evidence the appellant mentioned that he got 2-3 pamphlets. Then there is the book from the election office which shows the receipt of the application from PW 1. That again contains the words "with poster". While we do not agree with the learned Judge about the very detailed and minute criticism regarding the reliability of this book and the conclusion that it is a manufactured one we are of opinion that it not difficult for an obliging clerk to add the words "with poster" which would just serve the purpose. Therefore, much reliance could not be placed on this document either. There is the further fact that the first respondent asked the Deputy Commissioner for a copy of the poster and a reply was sent to him that no such pamphlet had been received in his office. We are, therefore, of opinion that it has not been satisfactorily established that the first respondent and his election agent were responsible for printing the pamphlet.

9. In considering matters like this we must keep in mind the fact that the choice of the voters freely expressed should not be lightly interfered with. An allegation of corrupt practice is of a quasi-criminal nature exposing the returned candidate not merely to the risk of his election being set aside but also of his being disqualified to stand for election for a considerable number of years. He also runs the risk of being prosecuted. The charge of a corrupt practice should, therefore, be proved beyond reasonable doubt and that has not been done in this case.

10. We must also point out that this petition has been in the nature of a roving and fishing enquiry. Four charges were made against the first respondent and only one of them ultimately came to be pressed before this Court. At the earliest stage the persons who informed the appellant about the printing were not mentioned. It was only later, as we have already mentioned, that the names of Hukam Chand and Dharam Chand were mentioned. But they were not examined. Debi Singh the alleged author of the manuscript was not examined either. In the list of reliance filed along with the election petition the account books of the Samta Press including cash memoes and bills were mentioned but the account book itself was not produced.

11. During the course of the trial of this petition the appellant seems to have cast his net far and wide in order to be sure of obliging the convenient witnesses. In his list of witnesses he gave the names of two Radheys but examined a different Radhey as PW 14. He gave the names of two Sohan Lals, one to prove the distribution of the poster and another to prove the corrupt practice of hiring of vehicles. But only the latter was examined. Instead of speaking of the corrupt practice of hiring vehicles he spoke to the distribution of posters. The names of two Harchandis were given in the list but a third Harchandi was examined as PW 18. It was really difficult to get at the truth through the various twists and turns which the petitioner's case as well as the evidence adduced on his behalf took in the course of his attempt to somehow make some charge stick and have the election set aside.

12. We have also carefully gone through the evidence regarding the distribution of the posters and find them worthless and unreliable.

13. The petitioner's case as well as the evidence of his witnesses is thoroughly unreliable. The appeal dismissed with costs.

Dr. Ram Singh Saini

Vs

Dr. H. N. Bhargava

Civil Appeal No. 1588 of 1974

(Alagiriswami, J.)

28.06.1975

JUDGMENT

ALAGIRISWAMI, J. -

1. This appeal raises the question of the validity of the appointment of the appellant as a

Professor of Zoology in the University of Saugar.

2. In pursuance of an advertisement dated May 31, 1971 by the University calling for applications for the post of Professor of Zoology five persons including the appellant and the respondent applied. A committee of selection was constituted in accordance with Section 47-A of the Saugar University Act, 1946 to consider these applications. On December 4, 1971 the Selection Committee recommended the name of the appellant to the Executive Council, which was competent to make the appointment. Under the provisions of Section 47-A the Executive Council has to make the final selection from among persons recommended by the Selection Committee. But where the Executive Council proposes to make appointment otherwise in accordance with the order of merit arranged by the committee the Executive Council should record its reasons in writing and submit its proposal for the sanction of the Chancellor. In the present case the appellant being the only person whose name had been recommended had ordinarily to be appointed. The Executive Council however, refused to accept the recommendation of the Selection Committee on the ground that it would lead to administrative and disciplinary complications. Thereupon the appellant filed a writ petition for quashing the resolution of the Executive Council and it was quashed by the High Court of Madhya Pradesh. Thereafter on February 18, 1973 the Executive Council appointed the appellant as Professor of Zoology. On July 9, 1973 the respondent filed a writ petition for quashing the appellant's appointment. The High Court of Madhya Pradesh quashed the resolution dated February 18, 1973 appointing the appellant as Professor of Zoology and indicated that the University may advertise the post afresh if they desire to fill in the vacancy. The ground on which the resolution was quashed was that appointment was made more than a year after the recommendation of the Selection Committee was made and this was not permissible. The High Court relied upon the Statute 21-AA of the Statutes of the University made under Section 31(aa) of the Act for this conclusion. This section enables statutes to be made among other things for the mode of appointment of teachers of the University paid by University paid by University. The statute in question reads as follows :

"Statute No. 21-AA"

(1) All vacancies in teaching posts of the University [except those to be filled by the promotion as provided for under sub-section (aaa) of Section 31] shall be duly advertised and all applications will be placed before the Committee of Selection as provided for under sub-section (2) of Section 47-A of the University of Saugar Amendment Act, 1965.

(2) If no appointment is made to a post within one year from the date of the nomination by the Selection Committee then the post shall be readvertised before making an appointment as provided for under (1) above.

3. Quite clearly the appointment made more than a year after the dated of nomination by the Selection Committee is not in accordance with the Statute 21-AA. The requirement of the statute is that the post should be advertised before making an appointment if the appointment is not made within a year of the Selection Committee's recommendation.

4. On behalf of the appellant it was argued that the statute is directory and not mandatory that in any case the statute is beyond the rule-making power conferred by Section 31(aa). A number of decisions were relied upon in support of the submission that where a provision of law lays down a period within which a public body should perform any function that provision is merely directory and not mandatory. The question whether a particular provision of a statute is directory or mandatory might well arise in a case where merely a period is specified for performing a duty but

the consequences of not performing the duty within that period are not mentioned. In this case clearly the statute provides for the contingency of the duty not being performed within the period fixed by the statute and the consequence thereof. This proceeds on the basis that if the post is not filled within a year from the date of the nomination by the Selection Committee the post should be readvertised. So unless the post is readvertised and an appointment is made from among those persons who apply in response to the readvertisement cannot be said to be valid. Though the reason for the delay in making the appointment was the wrongful refusal of the Executive Council to act in pursuance of the recommendation of the Selection Committee and the pendency of the writ petition filed by the appellant in the High Court that does not in any way minimise the effect of sub-rule (2) of Statute No. 21-AA. The position may well have been otherwise if there had been a stay or direction prohibiting the Executive Council from making the appointment. Such is not the case here. We do not therefore think it necessary to discuss the various decisions relied upon by the appellant. Nor can we agree that the statute in question is beyond the rule-making power. Under Section 31(aa) statutes can be made with regard to the mode of appointment of teachers of the University. The statute provides that the appointment should be made after the post is advertised and the applications received considered by a committee of selection. It also provides that if no appointment is made to the post within one year from the date of nomination by the Selection Committee the post shall be readvertised. The rule therefore certainly relates to the mode of appointment. It cannot be said to be unrelated to the mode of appointment. It apparently proceeds on the basis that after the lapse of a year there may be more men to choose from. Unless it could be said that the rule has no relation to the power conferred by the rule-making power it cannot be said to be beyond the rule-making power. Such is not the position here. We are also unable to agree that the statute is in conflict with or in derogation of the provisions of the statute.

5. It was then argued on behalf of the appellant that the post of the Professor or Zoology is not a public office and therefore a writ of quo warranto cannot be issued. The decisions in *Dr. P. S. Venkataswamy v. University of Mysore* (AIR 1964 Mys 159) and *S. B. Ray v. P. N. Banerjee* (72 CWN 50) were relied upon to contend that the post in question is not a public office and therefore no writ of quo warranto can issue. But it should be noticed that no writ of quo warranto was issued in this case. What was issued was a writ of certiorari as the order of the High Court only quashed the resolution of the Executive Council dated February 18, 1973. In his petition the respondent had asked for (1) a writ of certiorari, (2) a writ of mandamus and (3) a writ of quo warranto. What was issued was a writ of certiorari. The question whether the office was a public office in the circumstances of this case and whether the office was a public office was not raised or argued before the High Court. Indeed it was not even raised in the special leave petition filed by the appellant. We cannot therefore decide the present appeal on the basis that what was issued was a writ of quo warranto.

6. It should also be noticed that the post has since been readvertised and it is open to the appellant to apply again.

7. We see no merits in this appeal and it is accordingly dismissed. But in the circumstances of the case there will be no order as to costs.

</html