

Bachan Singh

Vs

Prithvi Singh and Others

Civil Appeal No. 186 of 1973

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

JUDGMENT

SARKARIA, J. -

1. Prithvi Singh Azad (hereinafter referred to as the returned candidate), Bachan Singh, Naurang Singh and Lachchman Singh contested the election to Punjab Vidhan Sabha from the Khanna (Reserved) Assembly constituency. Azad was the nominee of the Congress Party and Bachan Singh of the Akali Dal.
2. The poll was held on March 11, 1972. On March 12, 1972, Azad was declared elected. He secured 25,984 votes whereas Bachan Singh appellant No. 1 polled 24,865 votes. The other two forfeited their securities.
3. On April 26, 1972, Bachan Singh, the unsuccessful candidate and one elector, Harcharan Singh, jointly filed an election petition under the Representation of the People Act, 1951 challenging the election of the returned candidate on several grounds. In the event of Azad's election being set aside, Bachan Singh claimed a further declaration under Section 101 of the Act of his own election.
4. The petition was dismissed by the High Court. Hence his appeal by the petitioners.
5. Before us, only two grounds have been pressed into argument by Mr. Kapil Sibal, learned Counsel for the appellants.
6. Firstly, it is contended that the returned candidate had obtained the assistance of one Lance Naik Gurdev Singh, a member of the armed forces of the Union, in his election and was thus guilty of committing the corrupt practice defined in Section 123(7).
7. In this connection, the petitioner tried to establish two facts : (a) that Lance Naik Gurdev Singh was appointed as his polling agent by the returned candidate and the former acted as such at the polling station, Rahon Majra; (b) that the Lance Naik actually canvassed for votes in the company of the returned candidate. In regard to the first fact, the petitioners relied upon the Statement of L/N Gurdev Singh, who was examined as CW 1 and the certified copy Ex. PW 30/4, of the Polling Agents' Form. Regarding the second fact, they examined PW 6 Subedar Bachan Singh, PW 7 Bant Singh, PW 8 Bhagat Singh, PW 9 Rulda Singh, Pw 10 Sadhu Singh, PW 11 Bachan Singh, PW 12 Arjan Singh, PW 13 Harcharan Singh. They also sought support from the statement of CW 1.
8. On both these points, the learned Judge of the High Court found against the petitioners. In his opinion, the person who had been appointed as his polling agent by the returned candidate was another Gurdev Singh (RW 2) and not L/N Gurdev Singh (CW 1). He further held that the oral

evidence adduced by the petitioners to substantiate the allegation of canvassing by the Lance Naik in association with the returned candidate, was of a partisan character, and in the absence of corroboration from any independent source, could not be accepted.

9. Mr. Sibal contends that the High Court grievously erred in holding that it was RW 2 and not CW 1 who had been appointed as his polling agent by the respondent. According to the Counsel, there are clinching circumstances in this case which show that it was Lance Naik Gurdev Singh who had been appointed and acted as the polling agent of the respondent; that the certified copy, Ex. PW 30/1 obtained by the petitioner was a true copy of the original Form. RW 2, it is submitted, is an impostor and the Polling Agents' Form PW 30/4, was a false and fabricated document. Once it is held, proceeds the argument, that L/N Gurdev Singh (CW 1) had acted as the polling agent of the respondent, that would lend assurance to and probabalise the account given by PWs 9 to 14.

10. The contention cannot be accepted.

11. Firstly, we do not think that the finding of the High Court that RW 2 - and not CW 1 - was the polling agent of the respondent, can be said to be palpably wrong necessitating a reappraisal of the evidence by this Court. Secondly, even on the assumption that L/N Gurdev Singh CW 1, was the person who had been appointed as the polling agent, the evidence on the record was not sufficiently clinching to bring home the charge to the respondent.

12. L/N Gurdev Singh (CW 1) himself had knocked the bottom out of the petitioner's case. The Lance Naik while admitting that he had canvassed for votes for the returned candidate, categorically asserted that he did such canvassing on his own and not in the company of the respondent. The Lance Naik was examined as a court witness. The appellants had a right to cross-examine him. But they did not avail of this right. They did not put any question to the witness to challenge his account. L/N Gurdev Singh's statement therefore, that he had never canvassed with or at the instance of the returned candidate, would be deemed to have been accepted by them. CW 1 was the keystone of the arch which the petitioners tried to build to sustain this charge. Failure of CW 1 therefore, to support the partisan PWs on all the material facts constituting the charge, must lead to the collapse of whole arch.

13. Moreover, since the deletion of the words "or a polling agent or a counting agent" from explanation (2) of Section 123 (7) by the amending Act 47 of 1966, a member of the armed forces merely by acting as a polling agent, is not deemed to assist in the furtherance of the prospects of a candidate's election within the contemplation of Section 123(7).

14. We would therefore reject the first contention and affirm the finding of the Court below on this issue.

15. The next charge which has been agitated before us relates to the poster, Ex. PW 15/1 which was published by the Pradesh Congress Committee. It bore the photographs of the Prime Minister, Smt. Indira Gandhi, Shri Jagjiwan Ram, Defence Minister, and Shri Swaran Singh, Foreign Minister, in the first row. Beneath the first row were the photographs of three Chiefs and four Generals of the Armed Forces. It bore the caption "Pillars of Victory". It is alleged that below these photographs was printed the Congress symbol of Cow and Calf. On a complaint being made, the Election Commission of India moved in the matter and directions were issued to the Punjab Pradesh Congress Committee to withdraw the poster, which, in consequence, was withdrawn.

16. In his written statement, the return candidate pleaded that he was unaware of any such poster. In cross-examination, however, he (as RW 6) admitted that the letter Ex. RW 6/1 had been issued by S. P. Mittal to all the Presidents of the District Congress Committees in Punjab directing them to withdraw this poster. RW 6 admitted that this poster bore the photographs of Service Chiefs along with those of the Prime Minister and two other Ministers - all of whom were described as Pillars of Victory. He, however, disclaimed that he had anything to do with the distribution of this poster.

17. Mr. Sibal contends that the publication of this poster not only amounted to the exercise of "undue influence" within the contemplation of Section 123(2) but also constituted an attempt to obtain or procure assistance from the members of the armed forces of the Union for furtherance of the prospects of the returned candidate's election within the purview of Section 123(7).

18. The contention is ingenuous but unsustainable.

19. Doubtless the definition of 'undue influence' in sub-section (2) of Section 123 is couched in very wide terms, and on first flush seems to cover every conceivable act which directly or indirectly interferes or attempts to interfere with the free exercise of electoral right. In one sense even election propaganda carried on vigorously, blaringly and systematically through charismal leaders or through various media in favour of a candidate by recounting the glories and achievements of that candidate or his political party in administrative or political field, does meddle with and could the independent volition of electors, having poor reason and little education, in the exercise of their franchise. That such a wide construction would not be in consonance with the intendment of the Legislature is discernible from the proviso to this clause. The proviso illustrates that ordinarily interference with the free exercise of electoral right involves either violence or threat of injury of any kind to any candidate or an elector or inducement or attempt to induce a candidate or elector to believe that he will become an object of divine displeasure or spiritual censure. The prefix 'undue' indicates that there must be some abuse of influence. 'Undue influence' is used in contra-distinction to 'proper influence'. Construed in the light of the proviso, clause (2) of Section 123 does not bar or penalise legitimate canvassing or appeals to reason and judgment of the voters or other lawful means of persuading voters to vote or not to vote for a candidate. Indeed, such proper and peaceful persuasion is the motive force of our democratic process.

20. We are unable to appreciate how the publication of this poster interfered or was calculated to interfere with the free exercise of the electoral right of any person. There was nothing in it which amounted to a threat of injury or undue inducement of the kind inhibited by Section 123(2).

21. Nor could the publication of this poster fall within the ambit of Section 123(7). The 'members' of the armed forces spoken of in this clause mean persons in flesh and blood and not their inanimate photographs.

22. In short, the publication of the poster was an act of impropriety but not one of corrupt practice falling within the mischief of Section 123.

23. No other point has been argued before us.

24. The appeal fails and is dismissed with costs.

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