

Prabhu Narayan

Vs

A. K. Srivastava

Civil Appeal No. 1174 of 1973

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

14.02.1975

JUDGMENT

ALAGIRISWAMI, J. -

1. In the election held on March 11, 1972 to the Legislative Assembly of Madhya Pradesh from Damoh constituency the respondent, an independent candidate, was declared elected. The appellant, the Congress candidate filed an election petition for declaring the election of the respondent void on various grounds all of which were found not proved by the learned Judge of the High Court of Madhya Pradesh who tired the petitions. The petitions was consequently dismissed and this appeal is against that dismissal.

2. We are concerned only with the charge of corrupt practices under Section 123(4) of the Representation of the People Act in respect of five pamphlets marked Exs. P-3, P-4, P-5, P-6 and P-8 and two public meetings held on March 4, 1972 and March 8, 1972.

3. At the beginning of the arguments an objection was raised on behalf of the respondent that the election petition should have been dismissed on the ground that it did not comply with the requirements of Section 83 of the Representation of the People Act. This was on the basis that the affidavit filed in support of the election petition did not give details as to the materials particulars in respect of the various corrupt practices with which the respondent was charged. It was argued in the alternative that in any case no evidence should have been admitted. As far as this appeal is concerned both amount to the same thing because charges with which we are concerned are charges under Section 123(4). We do not think that there is any substance in this contention on behalf of the respondent.

4. On behalf of the appellant it was made clear that the only charge made in the petition was the charge of publication of the pamphlets and not their printing and evidence regarding the printing was relied upon only to corroborate the evidence regarding distribution of the pamphlets. It is obvious that when Section 123(4) speaks of publication it means distribution. Mere printing of the pamphlets would not fall under Section 123(4). Therefore the failure to give particulars of the printing cannot lead to the dismissal of the petition. Nor could evidence regarding it be shut out. The proviso to Section 83(1) lays down that where the petitioner alleges any corrupt practice, the petition shall also be accompanied by an affidavit in the prescribed form in support of the allegation of such corrupt practice and the particulars thereof. It does not say that the allegation of corrupt practice and particulars thereof should be given in the affidavit. The election petition contains the allegation of corrupt practices and particulars thereof. That this is the intention of the Legislature is also clear from a perusal of Form 25, which is the one prescribed under Rule 94A of the Conduct of

Elections Rules. The affidavit filed in support of the election petition is in accordance with that form.

5. Reliance was placed on behalf of the respondent on the decision of this Court in *Virendra Kumar Saklecha v. Jagjivan* ((1972) 1 SCC 826). In that case Rule 9 of the Madhya Pradesh High Court Rules in respect of election petitions, which states that the rules of the High Court shall apply in so far as they are not inconsistent with the Representation of the People Act, 1951 or other rules, if any made thereunder or the Code of Civil Procedure in respect of all matters including inter alia affidavits, was referred to. On the basis of that rule Rule 7 of the Madhya Pradesh High Court Rules which states that every affidavit should clearly express how much is a statement made on information or belief and must also state the source of or grounds of the information or belief with sufficient particularity, was stated to mean that grounds or sources of information are to be set out in the affidavit. This would really mean that the allegations found in the body of the election petition would have to be repeated in the affidavit. However, in that case the failure to conform to Rule 9 and Rule 7 of the Madhya Pradesh High Court Rules was not held to be fatal to the election petition. What was said was that it would be helpful in assessing the value of the evidence. Moreover, it appears to us that the provisions of Rule 9 of the Madhya Pradesh High Court Rules regarding the election petitions framed by the Madhya Pradesh High Court by reference to Rule 7 of the Madhya Pradesh High Court Rules found in Chapter III regarding affidavits cannot be made use of for this purpose. The former set of rules are made under Article 225 of the Constitution and cannot make any substantive law and the rules themselves on a perusal of them would show that they relate merely to procedural matters unlike rules made under Section 122 of the Code of Civil Procedure.

6. In *Krishan Chander v. Ram Lal* ((1973) 2 SCC 759) it was pointed out that : (p. 764-765, paras 6-7)

When there are specific rules made under the Act which govern the election petitions, no other rules are applicable. Nor is disclosure of the source of information a requisite under Order 6, Rule 15(2), C.P.C. Decision rendered under Order 6, Rule 15 and Order 19, Rule 2 of the Code of Civil Procedure have no relevance and do not support the submission that if the affidavit in support of the petitions does not state the source of information on which the several allegations in the petition are based, those allegations cannot be deemed to have been made.

The provision for setting out the sources of information where the allegations have been verified as having been made on information and knowledge of the petitioner is not a requisite prescribed under Rule 94-A of the Conduct of Election Rules, 1961, which are applicable to the filing of an election petition.

The affidavit in support of an election petition need not itself disclose the sources of information. The election petition under Section 83(1)(b) itself must contain all the particulars that are necessary and in the affidavit in support of the petition the petitioner is required to say which of the allegations made in various paragraphs of the petition are true to his knowledge and which of them are true to his information. If any source of information had not been set out and the respondent cannot answer them without particulars, he can always apply for better particulars. If the petition and the affidavit conform to the provisions of the Act and the Rules made thereunder, it cannot be said that because the sources of the information have not been given, the allegations made in the petition have to be ignored.

This accords with the view which we have taken. Furthermore, according to Section 86 of the

Representation of the People Act only petitions which do not comply with the provisions of Section 81 or Section 82 or Section 117 are liable to be dismissed. We, therefore, overrule the preliminary objection.

7. With respect to these five documents there is no dispute that they fall within the mischief of Section 123(4) and it is therefore unnecessary to set out the contents of these pamphlets, nor was it seriously contended except in the case of Ex. P-8 that they were not circulated. The only question is whether the circulation was made by the respondent or with his consent. In considering this question it is important to bear in mind that all the persons who admit that they printed these pamphlets are workers of the respondent. We will deal with the evidence in due course. It is necessary to go into the question of the printing of these pamphlets because evidence regarding it will have a bearing on their distribution either by the respondent or by his supporters with his consent. Though as many as 67 witnesses were examined and 28 of them with regard to publication, the learned trial Judge had rejected all of them. Where the question of publication and distribution is a matter to be decided on the basis of oral evidence, it is easy to dispose of them by saying that is of persons interested in the appellant. That is why a discussion of the question regarding the printing should provide a satisfactory method of assuring oneself as to whether the distribution was made as alleged by the appellant.

8. We shall now take up the question regarding Ex. P-3 first. It has admittedly been printed by M. S. Suman. It was printed at Chhabi Printing Press. This M. S. Suman was polling agent of the respondent. Chhabi Printing Press was next to the residence of the respondent. PW 66, the son of the owner of the printing press gave evidence that the manuscript for the pamphlet was given to Suman for correction and the respondent himself made the correction. PW 67 gave evidence that Suman placed the order for Ex. P-3 and produced the Order Book, Ex. P-19. He also gave evidence that the manuscript was given to him by the respondent who was accompanied by Suman and one Vinod Kumar Rai. Exs. R-9 and R-10 are the declarations in respect of the pamphlets given by Suman. Admittedly also the respondent had placed other orders with Chhabi Printing Press. Ex. P-23 and Ex. P-52 show that one of the payments out of the total sum of Rs. 130 mentioned in these receipts corresponds to a sum of Rs. 50 said to have been paid for this printing. Ex. P-52 was filed by the respondent along with the account of his election expenses. PW 1 gave evidence that Suman worked for the respondent in the election and he and Vijay Kumar Agarwal, who is responsible for the printing of Ex. P-4, accompanied the respondent on his election propaganda. Respondent's witness, Vijay Kumar Malaiya, RW 3, also admits that Suman worked for the respondent. Therefore, even if that part of the evidence of PWs. 66 and 67, where they speak to the respondent's part in the printing of this pamphlet is not accepted, it is obvious that Suman is a person very much interested in the respondent and there is no particular reason why he should print a defamatory pamphlet against the appellant. We are led to believe that inspiration for printing that pamphlet must have come from the respondent. We are not impressed with the evidence of Suman that the pamphlets were not handed over to him before March 11, 1972 and so it was not distributed. It was merely an attempt indirectly to deny distribution. He even went to the extent of saying that he did not work for the respondent.

9. The next pamphlet is Ex. P-4. It was got printed by one Vijay Kumar Agarwal, a mere boy of 14 or 15 years. It was printed at the Jawahar Press where his father's paper was printed. According to Vijay Kumar Agarwal, who was examined as RW 18, he got this Ex. P-4 printed because Ex. R-24 contained the merits of the appellant and the demerits of the respondent. But Ex. R-24 does not say anything about the merits of the appellant. He says that he gave the order for printing it at 8.30 p.m. and he got it at 11.30 p.m. and he distributed it to any person who met him in the bazar and went

home thereafter. We are unable to accept this part of the evidence. This is merely an attempt to belittle the distribution. Though he also gives as a reason for his printing Ex. P-4 that his father was called to the police station, that was nearly four years earlier and that is hardly likely to be a reason for his printing it. He went to the extent of saying that he did not work for the respondent in the election and he did not support the respondent in the election. A reading of the pamphlet clearly shows that it could not be his handiwork, that the brain behind it is somebody else's, whether it is Santosh Bharti's to whom he took it or not. He is one of the persons whose name prominently appears among those who worked for the respondent in the election. He is also a young boy of 14 or 15. Here again we are led to believe that Ex. P-4 was not printed by Vijay Kumar Agarwal on his own but that it should have been done at somebody else's instance and that being incompatible with any other author, could only be the respondent.

10. Exhibit P-5 was printed by one Om Prakash Rai. It was printed at the Chhabi Printing Press on February 18, 1972. This Om Prakash Rai was a very prominent worker of the respondent. The respondent did not even dare to put Om Prakash Rai on the witness stand to deny the fact that the printed Ex. P-5 with the consent of the respondent. He was so deeply committed to the respondent that it would have been very difficult for him to explain why he printed it. In the circumstances we do not think that the learned Judge was correct in rejecting the evidence of PWs. 66 and 67 who speak to the respondent's part in it and the payment made by him. We see no improbability in the receipt for the payment being dated February 27, 1972 and the payment being made on February 18, 1972. This expenditure also is shown in respondent's account of the election expenses.

11. Then we are to Ex. P-6. This purports to have been published by a certain Jagruk Matdata Parishad. Whether there was such a Parishad or not, there was a Samyukta Morcha and the Morcha was supporting the respondent. It consisted of almost all non-Congress parties. The declaration in respect of this document was given by one Ajit Modi who also is an active worker of the respondent. His brother and father also were respondent's partisans. Our conclusion about his document is the same as in respect of the other documents.

12. The last document for consideration is Ex. P-8. It was printed in the Kailash Printing Press and the son of the proprietor was examined as PW 64. He spoke to the respondent's part in the printing of this document. One of the reasons for disbelieving him was that his father also gave evidence. But his father did not give any evidence prejudicial to the respondent. The printing of this pamphlet was admitted by RW 2. Ramesh Chand Jain, an advocate, who got it printed along with Atul Kumar Shrivastava, a cousin of the respondent. But their case was that it was printed in order to present it to the Chief Minister, Mr. P. C. Sethi when he was expected to visit Damoh on February 28, 1972 and as he did not do so the pamphlets were destroyed. It is an impossible story and we refuse to believe it. If they wanted to make any representation it was not necessary to print 2,000 copies. We do not believe those would be destroyed. This again is an attempt to meet the case of distribution. Both Atul Kumar Shrivastava and Ramesh Chand Jain are very strong partisans and workers of the respondent and here again we are satisfied that they should be printed with the consent of the respondent.

13. The learned Judge has, as we have already observed, disbelieved all the evidence on behalf of the appellant. If the witness was a Congressman he was not to be believed as he was a Congressman. The respondent would not have been foolish enough to hand over the pamphlets to the witness. If he was a non-Congressman, he was a tenant of a Congressman or a tenant of a relative of a Congressman and therefore could not be believed. In certain cases he has disbelieved the evidence of witnesses on the ground that they were not on visiting terms with the respondent. But elections

being what they are no candidate could afford to ignore a voter on the ground that the voter had not visited him nor he could be disbelieved on the ground that he had not gone to the voter earlier. Elections take the candidates to all sorts of places. If a witness said that he did not tell the appellant about his having received the pamphlet a doubt is raised as to how the appellant knew about the distribution of the pamphlet. Many of the criticisms are very unsubstantial. However, we would discuss this questions solely on the evidence of non-Congress witnesses and show how the evidence regarding distribution is quite acceptable.

14. PW 1 is a member of the Bhartiya Jan Sangh. He is the Vice-President of the Mandal Jan Sangh of Damoh. The respondent had the support of the Bhartiya Jan Sangh, Bharitya Kranti Dal and Congress (O). He had gone along with Om Parkash Rai for canvassing for the respondent. Vijay Kumar Agarwal and Suman also accompanied him. According to this witness Raghubar Prasad Modi, father of Ajit Modi, who printed Ex. P-6, Umanath Agarwal father of Vijay Kumar Agarwal, and Vinod Rai were workers of the respondent. Om Prakash Rai was an active canvasser in the election campaign of the respondent. The only criticism against him was that he is tenant of Shri Prabhudayal Mukhariya, a good Congress worker, Om Prakash Rai is an active member of the Jan Sangh. We see no reason why his evidence as far as it goes cannot be accepted. It helps to fix the role of many of the person who played an important part in the publication of the pamphlets.

15. PW 2 is a doctor holding an M.B.B.S. degree, who has been practising in Damoh since 1963. He is a member of the Hindu Mahasabha. He was also the President of the Hindu Mahasabha at Damoh and a Secretary of the Provincial Hindu Mahasabha. He speaks to having attended the meeting dated March 4, 1972 and of Vijay Kumar Malaiya, Om Prakash Rai, and Raghubar Prasad Modi father of Ajit Modi, being present on the dais and to the respondent proposing Vijay Kumar Malaiya to the Chair. Om Prakash Rai also spoke at that meeting. He also speaks to the respondent having given him Exs. P-3, P-4, and P-5 on March 10, 1972. It was elicited from him that he was a tenant of a cousin of the appellant. To a question by the Court he said that he had no visiting terms with the respondent but he added that the respondent must have come to his house as he was distributing the leaflets. We see no reason why this witness should not be believed. The learned Judge's criticism regarding this witness and the rejection of his evidence cannot be supported.

16. PW 4 is a Kirana shopkeeper. He had taken no interest in the election of any candidate. He speaks about the meeting presided over by Vijay Kumar Malaiya who was proposed by the respondent as the president. He speaks to Raghubar Prasad Modi speaking at that meeting as also to Om Prakash Rai's speech. He speaks to the presence of PW 2 at that meeting.

17. PW 5 is a retired Sub-Inspector of Police. He speaks to his having attended the meeting on March 4, 1972 and refers to the speech made by Raghubar Prasad Modi, Om Prakash Rai and the respondent. He also speaks to the respondent having given him Exs. P-3, P-4, P-5 on March 10. He was not working for any candidate in the election. A suggestion made to him was that his brother was sentenced to death in a murder case and the murdered man was a relative of the respondent.

18. PW 6 does not belong to any political party nor did the work for any of the candidates in the election. He speaks to the meeting held on March 4, 1972 to support the respondents addressed by Om Prakash Rai, Vijay Kumar Malaiya and also to the respondent giving him pamphlets Exs. P-3 and P-4.

19. PW 7 is a retired Assistant Conservator of Forest and belongs to no political party and he did not work for anybody in the election. He speaks to the respondent giving him Exs. P-3 and P-4.

20. PW 11 speaks to respondent having given him Ex. P-3. He is not shown to belong to any party.

21. PW 19 is a member of the Jan Sangh and he publishes a newspaper 'Bundeli Garjanis'. He speaks to PW 1 and Om Prakash Rai working for respondent, as also Raghubar Prasad Modi and his sons Ajit Modi and Kamal Modi, Uma Agarwal and his son V. K. Agarwal as well as Atul Kumar Shrivastava, respondent's cousin.

22. PW 24 is a member of the Jan Sangh party who worked for the respondent in his election. He speaks to respondent giving him Exs. P-3 and P-4. He speaks to Om Prakash Rai being present along with the respondent at that time. He speaks to respondent giving him 10 or 11 leaflets for distribution.

23. PW 26 worked for the respondent in his election. He speaks to respondent accompanied by Vinod Kumar Rai having come to his mohalla and his being given leaflets for distribution. He also speaks of having gone to the respondent's house and having seen Vinod Kumar Rai there.

24. PW 65 is another witness who was engaged by the respondent to distribute the pamphlets.

25. It is unnecessary to go on multiplying the evidence. We have deliberately excluded the evidence of Congressman. Congress sympathisers or people who had worked for the Congress candidate. It is interesting to see the way that the learned Judge has dealt with his question of distribution. He says that the respondent is a practising lawyer and had contested three elections and it does not look probable that he would have gone with Suman and Vinod Kumar Rai to the printing press for getting Ex. P-3 printed. PW 2's evidence is not believed on the sole ground that if the respondent had been careful enough to have Ex. P-3 printed through a worker he would not himself go on distributing the pamphlet. There is also a factual mistake in that the learned Judge seems to proceed on the basis that PW 2 is Congressman which he is not. PW 5's evidence is not accepted because he had not told anybody about the distribution of the pamphlet. PW 6 is taken to be an interested witness because he had shown the pamphlet to the appellant. But immediately thereafter the learned Judge goes on to say that it is worthy of note that no one amongst the witness, although they were local and some of them were very much interested in the appellant, either gave the pamphlets said to be received by them to the appellant himself or to his brothers. We do not see the interest for them to give the pamphlets to the appellant as the distribution seems to have been well-known. PW 7 is said to be an interested witness because he said he only received two pamphlets and that he was not aware whether any pamphlets on behalf of the Congress candidate was distributed or not. PW 11 is disbelieved on the basis that the respondent would not have had time to distribute it at Damoh having been present at village Bhuri some time earlier and in Bilai some time later. It appears one has to pass through Damoh on way from Bhuri to Bilai. Nor could we agree that because this witness's brother, who is an advocate, was not given a pamphlet it is surprising that the respondent would himself distribute the newspaper and the pamphlet to the witness in the presence of his brother lawyer and involve himself in a corrupt practice. The substance of the learned Judge's criticism about most of the evidence regarding distribution is that the respondent, an advocate, a person well seasoned in the election matters would not himself distribute the pamphlets. The evidence of PWs 38 and 39 is not believed, one of the reasons for that being that respondent had engaged PWs 26 and 65 for distribution, he himself would not do so. We consider that the evidence of PWs 26 and 65 has been rejected on unsubstantial grounds.

26. We should mention, however that we do not place any reliance upon the evidence of Raghvendra Singh Hazari, RW 5 about the distribution of the pamphlets. We are thus satisfied that

the distribution has been made by the respondent himself in some cases as also through PWs 26 and 65. The part played by his strong supporters and relatives in bringing into existence the various pamphlets goes on to probabalise the distribution of the pamphlets either by the respondent or at his instance.

27. We shall now see how the learned Judge deals with the question of printing. The learned Judge considers that PW 66 had been brought in simply to connect the respondent with Ex. P-3. Vijay Kumar Malaiya says that Raghubar Prasad Modi of the B.K.D. as well as Ramesh Chand Jain used to attend sometimes the meetings of the Samyukta Morcha. Raghubar Prasad Modi is the proprietor of the Jawahar Printing Press. He gives the names of Vijay Kumar Agarwal, Om Prakash Rai, Vinod Kumar Rai, Ramesh Chand Jain and Ram Manoharlal Shrivastava, the election agent of the respondent as respondent's supporters. He also says that whatever election campaign was done for the respondent by Samyukta Morcha it was by occasional consultation with the respondent, that he is not able to say whether each worker and supporter of the respondent did everything in connection with the election in consultation with the respondent. He speaks of Om Prakash Rai working for the respondent. RW 2, Ramesh Chand Jain, gives the name of Raghubar Prasad Modi, Ajit Modi's father as one of the members of the Samyukta Morcha. In the face of this evidence it is difficult to accept the respondent's evidence that Atul Kumar Shrivastava, Suman, Om Prakash Rai and Ajit Modi were not his agents; so also the assertion that Om Prakash Rai had never accompanied him in his election campaign. Similarly his denial that he was not financed by the Samyukta Morcha and he himself did not finance it. He however had to accept that Ramesh Chand Jain, Atul Kumar Shrivastava and Om Prakash Rai worked for him. He went to the length of denying that the cash memo Ex. P-51, which bears the name of his own election agent, Ram Manoharlal Shrivastava, relates to his election expenses and he does not know who is that person. He has filed Exs. P-52 and P-53 along with his election expenses and admits that Ex. P-52 is the original of Ex. P-23 and Ex. P-53 is the original of Ex. P-51. Only thereafter was he compelled to admit that he had got some printing done from the Chhabi Printing Press. He even pretended that he did not know that R. K. Shrivastava's signature is found in Ex. P-53 and could not say whether he was the son of his election agent Ram Manoharlal Shrivastava or not. R. K. Shrivastava as well as Raghubar Prasad Modi son Suresh Chand were his polling agents. He had to admit that Ex. P-68 bears the signature of Om Prakash Rai, which is a declaration for Ex. P-5. He had also to admit that Ex. P-69 and Ex. R-21 bear Om Prakash Rai's signatures. He had to admit that Ex. P-71, the declaration form for Ex. P-70, which was printed by him, bears his signature and one of the identifying witness is Vinod Kumar Rai. His extensive prevarication during the course of his evidence clearly shows that he is not a person on whose evidence much reliance can be placed. See paras 38 to 40 and 43 of his evidence.

28. It is difficult to accept the assertion of Suman who says that he did not work for the election of the respondent. He was his polling agent and a person who gets a pamphlet like Ex. P-3 printed is certainly not a disinterested person.

29. After a thorough and anxious examination of the evidence in this case we have come to the conclusion that the people who got printed Exs. P-3, P-4, P-5, P-6 and P-8 are close supporters of the respondent. They have no special grievance against the appellant, certainly not enough to make them go to the extent of having them printed of their own. Two of them, Vijay Kumar Agarwal and Suman are mere boys of 14 and 15. They have merely been made use of by somebody and that somebody in the proved circumstances of this case could only be the respondent. We are not able to accept the evidence of Vijay Kumar Agarwal that he got the pamphlets at 11.30 p.m. on the night of March 10 and he distributed it to few people. Nor are we able to accept the evidence of Suman that though he gave the matter for printing on the tenth he got the pamphlets only on the eleventh and so

he did not distribute them. We find the evidence of PWs 66 and 67 that it was given for printing on the ninth more acceptable. We are unable to accept the assertion of Ramesh Chand Jain that he got Ex. P-8 printed in order to hand it over to the Chief Minister when he was due to arrive at Damoh on February 28 but that he destroyed them because the Chief Minister did not turn up. All these pamphlets have been printed with a definite purpose that is of harming the chances of the appellant in the election and thereby aiding the respondent. The plan and the direction could have come only from one source that is the respondent. He has made use of his supporters, two of them young boys of 14 and 15, to get the pamphlets printed in their names so that they could take the responsibility and he may disown the responsibility for them.

30. We have discussed the evidence of only non-Congress witnesses and we can see no reason to reject them. We do not agree with the learned Judge who rejected wholesale every bit of evidence adduced on behalf of the respondent. Whether the evidence of PWs 66 and 67 about the part played by the respondent with regard to the pamphlets printed in the Chhabi Printing Press and of Kailash Chand Nakra with regard to the pamphlets printed in the Kailash Press are correct or not, we are convinced beyond reasonable doubt that the respondent is the guiding brain and hand behind all of them. He and his supporters must have planned all these things together. He has made his witnesses admit just enough so that a red herring might be drawn across the trail and blame may attach to them and not him. The fact that he is an advocate or that it is the third election in which he is standing is no guarantee against his being responsible for this.

31. Then there is the question of two meetings dated March 4, 1972 and March 8, 1972. We do not think it necessary to examine this branch of the case in view of the earlier findings.

32. In the result therefore we hold that the respondent is guilty of a corrupt practice under Section 123(4) in respect of the pamphlets Exs. P-3, P-4, P-5, P-6, and P-8.

33. The appeal is allowed and the respondent's election is declared to be void. The respondent will pay the appellant's costs.

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