

Moti Lal

Vs

Chandra Pratap Tiwari and Others

Civil Appeal No. 1305 (NCE) of 1973

(A. Alagiriswami, N. L. Untawalia JJ)

19.03.1975

JUDGMENT

UNTWALIA, J. -

1. This is an appeal under Section 116A of the Representation of the People Act, 1951 - hereinafter called the Act, from the judgment and order of the High Court of Madhya Pradesh dismissing the appellant's election petition filed to challenge the election of respondent No. 1. The said respondent was elected to the legislative assembly of Madhya Pradesh from the Churhat assembly constituency defeating many other candidates including one Shri Shyamlal his nearest rival candidate by a majority of 5,890 votes. The poll was held on March 11, 1972. The election of respondent No. 1 was challenged in the High Court on many grounds which were controverted by the said respondent. Several issues were framed at the trial of the election petition and decided against the appellant. At the time of the hearing of this appeal only some of the issues were pressed and not all. We shall, therefore, very briefly state the relevant facts in relation to those issues only. Since we find that this appeal is without any substance, we shall mention the relevant issues pressed for our consideration in this appeal, the decision of the High Court on them and briefly discuss the points urged on behalf of the appellant to assail the decision.

2. Many charges of corrupt practices such as bribery, undue influence, threats etc. were levelled against respondent No. 1, his agents or workers within the meaning of sub-section (1) (A) and sub-section (2) of Section 123 of the Act. The case of the appellant in the election petition is this. Respondent No. 1 paid on March 5, 1972 a sum of Rs. 500 to one Manbodhi Kurmi who was said to be his worker at village Barigama and a polling agent. Manbodhi distributed Rs. 500 with the consent of respondent No. 1 on the same date to many voters with the object of inducing them to vote for respondent No. 1. Manbodhi wrote a letter on March 6, 1972 asking respondent No. 1 to send him Rs. 600 more for payment to certain other electors. It is further said that one Indramani Prasad of Dhanaha who was the agent and worker of respondent No. 1 distributed money to the electors on March 9, 1972 with the object of inducing them to vote for respondent No. 1. Similarly one Kedarnath resident of Dhumma who also was an agent and worker of respondent No. 1 with his consent distributed Rs. 1,000 to the electors of village Dhumma. He also demanded a sum of Rs. 1,000 by writing a letter dated March 8, 1972. Fourteen persons were named in the election petition to whom money was paid by Kedarnath between March 5, 1972 and March 8, 1972.

3. The appellant further averred that respondent No. 1 was guilty of having indulged in corrupt practice under Section 123(2) of the Act inasmuch as he, his agents and workers with his consent threatened the electors and interfered with the free exercise of their electoral rights to cast votes in favour of the candidates of their choice. The threat specially to them was to refrain from voting in

favour of Shri Shyamlal. Particularly in this regard the allegation was that one Rao Saheb of Rampur Nalkin who was an agent and worker of respondent No. 1 with his consent published a pamphlet with the caption "Churhat Kshetra Ke Matadataon se appeal". The pamphlet was widely circulated by Shankereshwar Pratap Singh son of Rao Saheb of Rampur in many villages of his influence.

4. Respondent No. 1 denied the various allegations of corrupt practices made against him, his agents or workers.

5. The decision of the High Court was assailed in this appeal in respect of four sets of issues only. We shall proceed to state and discuss each set of issues seriatim in this judgment.

6. The first set of issues in relation to the commission of corrupt practice through Manbodhi Kurmi is as follows :

1. (a) Whether on March 5, 1972 the respondent No. 1 paid Rs. 500 to Manbodhi Kurmi for being distributed to the electors of village Barigama to induce them to vote for No. 1 ?

(b) Whether on the same date the said sum of Rs. 500 was actually distributed by Manbodhi Kurmi with the consent of respondent No. 1 to Jokhai Kol, Ramana Kol and others mentioned in paragraph 5(A)(i) of the petition with the object of inducing the electors to vote for the respondent ?

(c) Whether Manbodhi Kurmi was agent and worker of respondent No. 1 on March 5, 1972 ?

2. Whether on March 6, 1972 Manbodhi sent a letter to the respondent No. 1 calling for a sum of Rs. 600 for payment of a sum of Rs. 100 each to the electors mentioned in paragraph 5(A)(ii) of the petition in pursuance of an earlier promise to pay such an amount with the consent of the respondent No. 1 ?"

Manbodhi acted as a polling agent for respondent No. 1 on March 11, 1972 at some booth. He was so appointed by one of the trusted workers of respondent No. 1 to whom signed blank forms for appointing polling agents had been entrusted. It was not, however, proved the Manbodhi had worked for respondent No. 1 at the time of canvassing of the votes or had distributed any money to the electors for inducing them to vote for respondent No. 1. The letter dated March 6, 1972 said to have been written by Manbodhi has not been found to be a genuine document. It appears to us on behalf of the appellant with the help of Shyamlal and his associates. It was a fantastic story that such a letter was written by Manbodhi and was successfully intercepted so as to reach the hands of the election petitioner. This Court is loathe to interfere with the findings of fact recorded by the evidence. Having perused the judgment of the High Court and the relevant pieces of evidence of certain witnesses examined on behalf of the appellant and respondent No. 1 we could see no infirmity in the decision of the issues aforesaid.

7. Great stress was laid on behalf of the appellant for drawing adverse inference against respondent No. 1 for non-examination of Manbodhi to controvert the facts alleged by the appellant's witnesses in their evidence. It appears to us that the part played by Manbodhi in the drama of bringing into existence the letter purported to be dated March 6, 1972 was such that respondent No. 1 could not be expected to take the risk of examining him as his witness in court. No onus was cast upon him to

prove any such fact that would entitle the Court to draw an adverse inference against him for non-examination of Manbodhi. In the alternative it was submitted that Manbodhi ought to have been examined as a court witness. We do not think that on the facts and in the circumstances of this case the Court was obliged to do so.

8. The next set of issues is the following :

3. (a) Whether Indramani Prasad was the agent and worker of the respondent No. 1 on March 9, 1972 ?

(b) Whether on the said date Indramani Prasad with the consent of respondent No. 1 distributed money to the electors of village Dhanaha specified in paragraph 5(B) of the petition ?

9. The High Court has found that Indramani Prasad was a polling agent and a counting agent of respondent No. 1. But it has not been proved that he was a worker of respondent No. 1. Nor has the High Court found the charge of distribution of money to the electors by Indramani Prasad to be proved. A scene of the drama is found in this set of issues also. The story is that Indramani Prasad had come to Bankelal Singh, PW 8 and had given him a number of pamphlets for being distributed in the constituency. Among these was found one pamphlet Ext. P-4 over which there was a writing said to be in the hand of Indramani Prasad. The writing was an account of money distributed to 11 persons. It was not signed by Indramani Prasad but purported to contain the acknowledgements of the receipt of money by various electors. Many of them were examined as witnesses on behalf of respondent No. 1. Only one was examined on behalf of the appellant. He was Bhagwandin, PW 9. The High Court has held that it was very doubtful whether the writings on the pamphlet P-4 were in the pen of Indramani Prasad. It was not proved to be so. We see no justifiable reason to enable us to upset the findings of the High Court in regard to the alleged commission of the corrupt practice of bribery by respondent No. 1 through Indramani Prasad. No adverse inference was at all possible to be drawn against respondent No. 1 for non-examination of Indramani Prasad as a witness in the case.

10. The next set of issues are the following :

4. (a) Whether Kedarnath was an agent and worker of respondent No. 1 during the period from March 5, 1972 to March 8, 1972 ?

(b) Whether during the period from March 5, 1972 to March 8, 1972 Kedarnath with the consent of respondent No. 1 distributed a sum of Rs. 1,000 to the electors of the village Dhumma specified in paragraph 5(c) of the petition ?

(c) Whether Kedarnath further demanded a sum of Rs. 1,000 for being distributed among the electors in order to induce them to vote for the respondent No. 1 by letter dated March 8, 1972 ?

11. The High Court has rightly rejected the evidence adduced on behalf of the appellant with reference to these issues also. As in the case of Manbodhi so also in regard to Kedarnath in a dramatised fashion a letter is said to have been written by him on March 8, 1972 demanding a sum of Rs. 1,000 from respondent No. 1 for being distributed among the electors in order to induce them to vote for him. This letter is also said to have been intercepted and ultimately reached the hands of the appellant. It is Ext. P-5. Such a crude attempt to prove charges of bribery was bound to fail and

has rightly failed in the High Court.

12. The last and the fourth set of issues decided against the appellant and pressed for our consideration is the following :

8. (a) Whether Rao Saheb Rampur Naikin was an agent and worker of respondent No. 1 ?
- (b) Whether Rao Saheb Rampur Naikin with the consent of respondent No. 1 published a pamphlet under the caption "Churhat Kshetra Ke Matadataon Se Appeal" and thereby exercised undue influence on the electors?
- (c) Whether between March 3, 1972 to March 9, 1972 the aforesaid pamphlet was widely distributed in all the villages which originally comprised the Ilaka Rampur Naikin by Shankereshwar Pratap Singh son of Rao Saheb Rampur Naikin ?
9. Whether Shankereshwar Pratap Singh was agent and worker of the respondent No. 1 during the period and he distributed the pamphlets with the consent of respondent No. 1 ?
10. Whether respondent No. 1 in the company of Shankereshwar Pratap Singh distributed the aforesaid pamphlet in villages Rampur, Murtala, Baghwar, Sikarganj, Bagher, Amlai and Kandhwar on March 8, 1972 ?
11. Whether on March 8, 1972 Shankereshwar Pratap Singh threatened the voters of villages Kandhwar, Bagher and Dabaiya Tola belonging to Thakur community that they would be excommunicated if they voted for the independent candidate Shyamlal and did not vote for the respondent No. 1 ?
12. Whether the aforesaid threats were given by Shankereshwar Pratap Singh with the consent of respondent No. 1 in his presence and hearings ?
13. Whether Rao Saheb Rampur Naikin threatened the Thakur voters of village Rampur on March 7, 1972 that they will be excommunicated if they did not vote for the respondent No. 1 ?
14. Whether these threats were given by Rao Saheb Rampur Naikin with the consent of respondent No. 1 for furtherance of his election ?
15. Whether the aforesaid threats were given by Rao Saheb Rampur Naikin at a meeting convened on March 7, 1972 in which the persons mentioned in paragraph 7(F) of the petition were specially called ?
16. Whether the respondent No. 1 thus committed corrupt practice of undue influence under Section 123(3) of the Representation of the People Act for furtherance of his election, and as such his election is liable to be set aside ?

13. The High Court has held :

- (1) There is no doubt that a pamphlet (Ex. P-7) was published and the publisher was

shown to be Rao Saheb of Rampur.

(2) It is not true that the Rao Saheb, an old man, moved in the company of respondent No. 1 to help him in the election.

(3) That the pamphlet published by Rao Saheb of Rampur or purporting to have been published on his behalf was not meant to advance the case of respondent No. 1 at the election.

14. It is necessary to state all the findings of the High Court which were against the appellant. Suffice it to say that no fact in regard to the prove the charge of exercise of undue influence under Section 123(2) of the Act. We may rest content by merely observing that the High Court has rightly found that the contents of the pamphlet (Ext. P-7) were not such as to prove the case of undue influence under Section 123(2). The contents are quoted in the judgment of the High Court. We find no threat or words in the pamphlet to enable us to hold that undue influence that is to say any direct or indirect interference or attempt to interfere on the part of respondent No. 1 was exercised or made with a free exercise of any electoral right. The pamphlet did not plead the case of respondent No. 1 or his party on whose ticket he was contesting the election. We have, therefore, no difficulty in rejecting the argument put forward on behalf of the appellant in this regard too.

15. For the reasons stated above, the appeals fails and is dismissed. The appellant must pay costs in this appeal to respondent No. 1.

</html