

Chaitanya Kumar Adatiya

Vs

Smt. Sushila Dixit and others

Civil Appeal No. 1654 of 1973

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

17.07.1975

JUDGMENT

GUPTA, J. -

1. On March 13, 1972 the first respondent was declared elected to Madhya Pradesh Legislative Assembly from Hoshangabad constituency defeating three other contestants who are respectively respondents Nos. 2, 3 and 4. The first respondent secured 13,822 votes and respondents Nos. 2, 3 and 4 got 5,688,970 and 12,554 votes respectively. The appellant who is an elector in the Hoshangabad constituency filed an election petition before the High Court of Madhya Pradesh at Jabalpur seeking to have the election of the first respondent declared void alleging that the first respondent had committed various corrupt practices and also on the grounds of irregularity in the counting of votes and non-compliance with certain other provisions of the Conduct of Elections Rules, 1961 which according to the petitioner materially affected the result of the election. According to the petitioner, on a proper counting of valid votes respondent No. 4 would have been found to have obtained the largest numbers of votes and he prayed that the election of the first respondent be declared void and respondent No. 4 be declared duly elected from the Hoshangabad constituency. The High Court having dismissed the election petition, the petitioner has preferred this appeal questioning the correctness of the High Court's decision.

2. The allegations as to irregularity in the counting of votes which were pressed before us are as follows :

(a) In any cases ballot papers were issued to electors without their signatures or thumb impressions being obtained on the counterfoils of the ballot papers as required by Rule 38(2) of the Conduct of Elections Rules, 1961. These votes should have been rejected as spurious under Rule 56(2)(a).

(b) Rule 40 of the Conduct of Elections Rules, 1961 which permits a blind or infirm elector to take the help of a companion for recording his vote also provides that no person shall be permitted to act as the companion of more than one such elector at any polling station on the same day. The presiding officers are required to keep a record of all cases under this rule in Form 14A appended to these Rules. In violation of this rule the same person was allowed to act as companion for more than one such infirm voters at several polling stations. Paragraph 5 of the election petition which contained the allegation on this point was however struck off by the High Court on the ground that it was vague and lacking in material facts. The appellant questions the propriety of the order striking out the paragraph.

3. On these allegations the petitioner prayed for calling up all papers used at the polls including counterfoils of the ballot papers and statements in Form 14A to enable the petitioner to inspect the same.

4. Of the various corrupt practices alleged in the petition only two were pressed before us. One of them is that first respondent gave a sum of Rs. 100 to Ramayan Mandal of village Phepartal, a cultural organisation, a few days before the polling was held on March 11, 1972. It is alleged that the sum was paid by the first respondent to secure the support of the voters of that village constituting the corrupt practice of bribery mentioned in Section 123(1) of the Representation of the People Act, 1951. The other allegation is that on February 26, 1972 at a public meeting held at Hoshangabad in support of the candidature of the first respondent, the Chief Minister of Madhya Pradesh stated that the father of respondent No. 4 had induced respondent No. 3, a harijan, with money to stand as a candidate at the election to deprive the first respondent of harijan votes in the constituency numbering about 12,000. This statement was false to the knowledge of both the Chief Minister and the first respondent and was made deliberately with the latter's consent to prejudice the prospects of both respondents No. 3 and 4. This, it is alleged, amounts to corrupt practice under Section 123(4) of the Act. It is further alleged that in that meeting the Chief Minister with the consent of the first respondent held out a threat that he would stop government grant to the educational institutions with which the father of respondent No. 4 was associated. This according to the petitioner amounts to the corrupt practice of undue influence as defined in Section 123(2) of the Act.

5. The allegation of irregularity in counting is based on the provisions of Rule 38(2) of the Conduct of Elections Rules, 1961. Rule 38 is in these terms :

38. Issue of ballot papers to electors. - (1) Every ballot paper before it is issued to an elector, and the counterfoil attached thereto shall be stamped on the back with such distinguishing mark as the Election Commission may direct, and every ballot paper, before it is issued, shall be signed in full on its back by the presiding officer.

(2) At the time of issuing a ballot paper to an elector, the polling officer shall -

(a) record on its counterfoil the electoral roll number of the elector as entered in the marked copy of the electoral roll;

(b) obtain the signature or thumb impression of that elector on the said counterfoil; and

(c) mark the name of the elector in the marked copy of the electoral roll to indicate that a ballot paper has been issued to him, without however recording therein the serial number of the ballot paper issued to that elector :

Provided that no ballot paper shall be delivered to an elector unless he has put his signature or thumb impression on the counterfoil of that ballot paper.

(3) Notwithstanding anything contained in sub-rule (2) of Rule 2, it shall not be necessary for any presiding officer or polling officer or any other officer to attest the thumb impression of the elector on the counterfoil.

(4) No person in the polling station shall note down the serial number of the ballot

papers issued to particular electors.

The nature of the allegations has already been stated. The petitioner examined a number of witnesses to substantiate the allegations. These witnesses PWs 1, 3, 4, 8, 9, 10, 11, 14, 18, 21, 22, and 26. The testimonies of these witnesses follow the same pattern. All of them admit that their signatures or thumb impressions were taken on the counterfoils of the ballot papers but they saw some voters in the queue whose signatures or thumb impressions were not taken on the counterfoils. None of these witnesses was able to name a single voters whose signature or thumb impression was not taken on the counterfoil though some of the witnesses claimed that the voters whose signatures or thumb impressions were not taken came from the same village where these witnesses lived. Some of these witnesses claimed to have made oral objections to this deviation from the prescribed procedure, but no written complaint was made either to the polling officer or to the returning officer. No objection was also taken on this ground at the time of counting by the counting agent of any of the candidates. It would be material here to mention that an application for recounting made by respondent No. 4 also did not contain any allegation that signatures or thumb impressions of some of the voters had not been taken on the counterfoils of the ballot papers as required by Rule 38(2). The High Court found that the evidence was not convincing enough to justify acceptance of the prayer for inspection of the counterfoils and other election papers.

6. This Court in a series of decisions has held that an order for inspection of election papers cannot be made as a matter of course and that it is only when on the basis of evidence adduced allegations of irregularity are prima facie established and the Court is prima facie satisfied that the making of such an order is necessary to do complete justice between the parties that an order for inspection would be justified. The purpose of inspection is not to enable the election petitioner to fish for evidence. We do not think that the High Court was wrong in refusing the prayer for inspection in this case; the substance of the evidence and the other circumstances referred to above clearly show that the petitioner had failed to make out a prima facie case for inspection.

7. The petitioner's case is that the returning officer should have rejected as spurious the ballot papers which were issued to voters whose signatures or thumb impressions were not taken on the counterfoils. Rule 56(2) of the Conduct of Elections Rules, 1961 requires the returning officer to reject a ballot paper in certain cases. This rule so far as it is relevant to the point now under consideration runs as follows :

#56. Counting of votes. - (1) \* \* \*##

(2) The returning officer shall reject a ballot paper -

(a) if it is a spurious ballot paper, or

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(h) if it does not bear (both the mark and the signature) which it should have borne under the provisions of sub-rule (1) of Rule 38 :

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It will be seen that clause (h) makes non-compliance with the requirements of Rule 38(1) a ground for rejecting a ballot paper but there is no clause which requires a ballot paper to be rejected on the ground that the provisions of Rule 38(2) have not been complied with. Counsel for the appellant

submitted that in cases of non-compliance with Rule 38(2) the ballot papers in question should be held to be spurious so that clause (e) might cover such cases; otherwise, Counsel Contended, there would be an obvious lacuna in the Act. The learned Counsel relied on the meaning of the word "spurious" as given in Webster's New Twentieth Century Dictionary as "(1) not genuine, not proceeding from true source, (2) not legitimate." Stress was laid on the words "not proceeding from true source". We do not see how the dictionary meaning helps him. 'Not proceeding from true source' only means that the thing is not what it pretends to be, which only means that it is not genuine or legitimate. There is no allegation here that these ballot papers are not genuine. We were also not shown any provision suggesting that a ballot paper issued without complying with the requirements of Rule 38(2) was meant to be rejected so that non-inclusion of such a case in Rule 56(2) would be a lacuna in the Conduct of Elections Rules; and, if it is a lacuna it is there, and the defect cannot be cured by trying to give a meaning to the word 'spurious' which it cannot bear.

8. Paragraph 5 of the election petition which contained the allegation as to non-compliance with Rule 40 of the Conduct of Elections Rules was struck off on the application of the first respondent by the Court on September 26, 1972 on the ground that the allegation was vague and did not contain material facts. That the paragraph was vague seems to have been admitted by the petitioner as would be evident from the fact that he made an application for amendment of the election petition seeking inter alia to incorporate certain additional facts in paragraph 5. But this application for amendment was not even verified, apart from the question whether the new facts sought to be included were sufficient to remove the defect. The High Court rejected the application for amendment and struck off paragraph 5, as stated already, by its order dated September 26, 1972. In our opinion the order was a valid one and we do not find any reason to disturb the same.

9. Turning now to the allegations of corrupt practice, the petitioner seeks to make out a case of bribery under Section 123(1) of the Representation of the People Act, 1951. It is alleged that the first respondent gave a sum of Rs. 100 to Ramayan Mandal, a cultural organisation of village Phepartal. According to the petitioner the money was given to secure the support of the voters of that village. The case is that the first respondent paid this sum to Ramayan Mandal through Kamal Singh, PW 24 and Rameshwar Prasad, PW 25. Kamal Singh's evidence is that one Rewa Ram gave him the amount which he made over to Gopal Sahu, secretary of the organisation. Gopal Sahu had not been examined. Rameshwar Prasad heard about the gift from Kamal Singh. Rewa Ram who was examined by the first respondent stated that he had received the sum by money order from the State Government. It appears from the evidence that the amount in question was a discretionary grant made by the first respondent when she was a Minister of State in charge of Education. The name mentioned in the grant was Dewa Ram which obviously was a mistake for Rewa Ram; it is not the petitioner's case that there were two gifts of Rs. 100 each to Ramayan Mandal. The grant appears to have been sanctioned in December 1971, not a few days, as alleged but long before the poll. In *Ghasi Ram v. Dal Singh* ((1968) 3 SCR 102 : AIR 1968 SC 1191 : 36 ELR 60) this Court observed :

... The law requires that a corrupt practice involving bribery must be fully established. The evidence must show clearly that the promise or gift directly or indirectly was made to an elector to vote or refrain from voting at an election.

The High Court found that the evidence on the point was neither reliable nor sufficient to prove that the grant was made with the motive of inducing the villagers to vote for the first respondent. We do not find that on the evidence this finding can be said to be unjustified.

10. The other corrupt practice alleged concerns the speech of the Chief Minister. We have already

referred to the substance of the allegations on this point. Chief Minister Shri Sethi in his evidence denied having made any such statements in his speech as alleged by the petitioner. The witnesses examined by the petitioner to prove that Shri Sethi made the statements alleged against him are PWs 6, 11, 13, 15, 30, 31 and 32. Scrutinising the evidence of these witnesses, the High Court did not find it possible to rely on them. These witnesses struck the High Court as obviously tutored to support the allegations made by the petitioner. The petitioner also relied on a report of the speech appearing in the newspaper 'Nai Duniya, but did not examine the reporter of the newspaper to prove the contents of the speech as reported by him. On such evidence the High Court was not inclined to accept the account of the speech as given by the witnesses for the petitioner. This is a finding which we do not find any reason to disturb. It has been held in a number of decisions of this Court, and recently in the case of Chanda Singh v. Ch. Shiv Ram Verma ((1975) 4 SCC 393), that findings of fact in election cases will not be interfered with in appeal unless palpable errors are present.

11. We find no merit in this appeal which is dismissed with costs.

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