

Bir Chandra Barman

Vs

Shri Anil Sarkar and Others

Civil Appeal No. 1436 (NCE) of 1973

(Y. V. Chandrachud, V. R. Krishna Iyer, A. C. Gupta JJ)

16.12.1975

JUDGMENT

GUPTA, J. -

1. In the general election held in 1972 the appellant contested unsuccessfully the assembly seat in 39 Teliamura scheduled caste constituency, Khowai sub-division, in Tripura. Poll was taken on March 11, 1972, the counting took place on March 14 and the result was announced the same day. The first respondent who secured 5,458 votes was declared elected; the appellant polled 3,847 votes. There were two other contestants, but it is not necessary to refer to them for the purpose of this appeal. On April 28, 1972 the appellant filed a writ petition in the High Court of Assam, Nagaland, Meghalaya, Manipur and Tripura, Agartala Bench, calling in question the election of the first respondent on these grounds, two of which relate to corrupt practices referred to in sub-sections (1) and (4) of Section 123 of the Representation of the People Act, 1951 (hereinafter referred to as the Act), and the other alleges contravention of Section 58 of the Act. It was stated that the first respondent and his agents with his consent offered bribes to the voters to induce them to vote for him at the election which is a corrupt practice under Section 123(1). It was also alleged that to prejudice the prospects of the appellant's election, the first respondent, or some other persons with his consent, published certain posters containing statements about the appellant's personal character which were false and which the first respondent did not believe to be true. This is a corrupt practice under Section 123(4). It was further alleged in the election petition that the ballot boxes in polling stations Nos. 3 and 14 had been tampered with after the closing of the voting and before the commencement of the counting of the votes, but the returning officer failed to report the matter to the Election Commission which he was required to do under Section 58 of the Act.

2. The allegation that the first respondent himself had offered bribe to the voters was not pressed before the High Court, and the High Court disbelieved PW 9 Mani Ram Biswas and PW 11 Brajabashi Sarkar who sought to prove that Kulak Haldar, who worked at the election for the party of which the first respondent was a candidate, had paid Rs. 30 each to three voters including these witnesses. Having gone through the evidence of PW 9 and PW 11 we share the view with the High Court that they are entirely unreliable. Kulak Haldar deposing as RW 6 denied the allegation against him and the High Court from the "manner of his deposition" found him a truthful witness.

3. Two letters, Exhibit 3 and Exhibit 4, stated to have been written by one Arabinda Lahiri, were produced in support of the allegation that some voters were bribed. Admittedly Arabinda Lahiri was one of the counting agents of the first respondent. Kulak Haldar also stated in his evidence that Arabinda Lahiri had occasionally worked for the party to which both Kulak Haldar and the first respondent belonged. The first letter, Exhibit 3 written on March 7, 1972 was addressed to one

Dinabandhu Sarkar (PW 2). The letter is as follows :

On account of some urgent work I could not come; I have sent one of my own persons to you with some money. You must purchase the votes of Krishnapur area in whatsoever manner you can. I have sent this money, according to the direction of Anilda (first respondent). The votes of Krishnapur must be cast in the symbol of Anilda by any means.

The writer of the letter signed his name as "Shri Arbinda Lahiri" and his address is given as "C.P.M. Office". C.P.I. (M) is the party to which the first respondent belonged. The other letter, Exhibit 4, was written on March 8 to Debendra Chandra Biswas (PW 3). This letter says :

Please accept this special message that the messenger of this letter Rabindra Sutradhar is sent to you. In accordance with the direction of Anilda I have also sent some money with him to you with the request that in whatsoever manner possible you must see that the votes of you village are cast in favour of hammer, sickle and star. Do not ignore this.

This letter is also signed as "Shri Arbinda Lahiri". It was argued on behalf of the appellant that these letters proved that they were written with the consent of the first respondent. Arabinda Lahiri has not been examined. PW 8, Saraj Bhattacharjee, who claimed to be a classmate of Lahiri was examined to prove that the letters were in his handwriting. A cousin of Arbinda Lahiri, Sudhir Lahiri (RW 5), was examined on behalf of the first respondent. His evidence is that Arabinda used to stay in his house till he (Arabinda) passed the Higher Secondary examination in 1972. The witness stated that he was well acquainted with Arabinda's handwriting and denied that the two letters were written by Arabinda. The witness added that Arabinda after he had passed the Higher Secondary examination was looking for a job and was "moving in ministerial circle" for that purpose. From the evidence of PW 8, Saraj Bhattacharjee, it appears that he was not on intimate terms with Arbinda and there was no special reason why he should be able to recognise Arabinda's handwriting when he confessed his inability to recognise the handwriting of the other 70 students in his class. Further, this witness was apparently not correct when he said that Arabinda passed the Higher Secondary examination in 1971; Arabinda's cousin Sudhir Lahiri in whose house Arabinda was staying when she appeared at the examination stated that Arabinda passed the examination in 1972. In these circumstances the High Court accepted the evidence of RW 5 Sudhir Lahiri and found that the letters, Exhibits 3 and 4, were not written by Arabinda Lahiri. The very clear and express words saying that money was being sent for the purpose of purchasing votes, leaving nothing to guess or to be inferred, also appear to us as unnatural and therefore suspicious, and we are inclined to agree with the High Court that these letters are not safe to rely on.

4. The next ground on which the election has been challenged relates to the corrupt practice under Section 123(4) of the Act. In support of the allegation, the appellant produced 12 posters, Exhibit 5 series, which contain statements concerning the personal character or conduct of the appellant. The posters proclaimed the appellant to be stupid, illiterate and a drunkard. PW 5, Jitendra Chandra Sarkar, saw some of these posters on March 10 on the walls of certain shops. On the same day PW 6, Lakshmi Kanta Deb and PW 7, Mahendra Debnath, also noticed some posters on the walls of a school where the first respondent was addressing a meeting. There is however no evidence to show that any agent of the first respondent, or anyone else with the consent of the first respondent or his election agent was responsible for displaying these posters. PW 5 and PW 7 are said to have removed some of these posters and handed them over to the appellant though neither of them was at all familiar with him. The High Court found it difficult to believe that persons not associated with any political party like these witnesses would feel so annoyed on reading these posters that they

would remove them, carry them home, preserve them and subsequently hand them over to the candidate whose character was impugned therein. The High Court felt that this was "not the normal behavior of an average elector".

5. It is well established that a charge of corrupt practice is quasicriminal in nature and must be proved beyond reasonable doubt. On a consideration of the evidence the High Court found that the allegation of corrupt practice, either under sub-section (1) or under sub-section (4) of Section 123, has not been substantiated. On the material on record we do not think that the view taken by the High Court was arbitrary or unreasonable.

6. The last ground of challenge is based on the provisions of Section 58(1) of the Act. Section 58(1) reads :

58. Fresh poll in the case of destruction, etc., of ballot boxes - (1) If at any election :-

(a) any ballot box used at a polling station or at a place fixed for the poll is unlawfully taken out of the custody of the presiding officer or the returning officer, or is accidentally or intentionally destroyed or lost, or is damaged or tampered with, to such an extent, that the result of the poll at that polling station or place cannot be ascertained, or

(b) any such error or irregularity in procedure as is likely to vitiate the poll is committed at a polling station or at a place fixed for the poll, the returning officer shall forthwith report the matter to the Election Commission.

Section 58(2) provides inter alia that on the matter being reported to him, the Election Commission after taking all material circumstances into account shall declare the poll at that polling station or place to be void and direct a fresh poll to be taken there, unless he was satisfied that result of a fresh poll at that polling station or place would not affect the result of the election. It is alleged that ballot boxes of polling stations Nos. 3 and 14 had been tampered with after the closing of the poll on March 11 and before the commencement of the counting on March 14, but the Returning Officer did not report the matter to the Election Commission as required of him under Section 58(1). The circumstances referred to in support of this allegation are : (i) even according to the first respondent, the ballot boxes, after the polling was over, were wrapped up in marking cloth and then put in canvas bags, but the evidence of RW 8, the Returning Officer, RW 9 and RW 10, the Presiding Officers of polling stations Nos. 3 and 14, and the two counting supervisors, RW 11 and RW 12 is to the effect that the ballot boxes were not wrapped in marking cloth and were put inside the canvas bags without any cover; (ii) the ballot paper accounts, Exhibits A and B, relating to the two polling stations in question had some overwritings on them; and (iii) while the first respondent (RW 1) and his election agent (RW 7) claimed that the ballot paper accounts had been placed in separate envelopes, RW 8 RW 11 and RW 12 asserted that they were never put in envelopes. According to the appellant these circumstances proved that the ballot boxes had been tampered with. Having considered the evidence of RW 9 and RW 10 who were the Presiding Officers respectively of polling stations Nos. 3 and 14, and the two counting supervisors, RW 11 and RW 12, to whom the ballot boxes of these two polling stations were given for counting, the High Court found that from the time the ballot

boxes were closed and sealed by the Presiding Officers until they were opened for counting by the two counting supervisors, there could have been no tampering of the ballot boxes.

7. As regards the overwritings on the ballot paper accounts, the Presiding Officers of polling stations Nos. 3 and 14 both stated that through inadvertence they did not fill in the column against the entry as to the number and name of the polling station. Evidence of RW 8, the Returning Officer, is that he found that these two ballot paper accounts did not bear the names and numbers of the polling stations and he himself endorsed the particulars on the documents. From the evidence of RW 9, RW 10 and RW 8 the High Court was satisfied that the writings on Exhibits A and B, challenged as suspicious, were done by RW 8 for the reasons stated by him and that no conclusion that the ballot boxes had been tampered could be drawn from this circumstance.

8. On the question as to whether the ballot boxes were tied in marking cloth before they were put inside canvas bags, the High Court was of the view that there was no reason for not accepting the evidence of RW 8, RW 9, RW 10, RW 11 and RW 12 that the ballot boxes had no such cloth cover. About the first respondent and the other witnesses examined by him who had said that the ballot boxes were wrapped in marking cloth, the High Court commented that

their memory on this matter could not have been serving them faithfully, particularly after such a long lapse of time.

Having considered the evidence on the point ourselves we cannot say that this is not a reasonable view.

9. It is now well established that this Court in election appeals would not interfere with the findings of fact recorded by the High Court unless these findings suffered from any grave and palpable error. In this case we are unable to find any such error; on the contrary, in our opinion, the findings arrived at by the High Court on the disputed questions of fact are perfectly legitimate and reasonable. As the grounds mentioned in clauses (ii) and (iv) of Section 100(1)(d) on which only the election of the first respondent could be declared void have not been proved, the appeal is dismissed with costs.

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