

Bansidhar Prashar

Vs

Shaligram Srivastava and Another

Civil Appeal No. 1325 of 1973

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

15.01.1976

JUDGMENT

CHANDRACHUD, J. -

1. In the elections held to the Madhya Pradesh Legislative Assembly in 1972, respondent No. 1 who contested as an independent candidate defeated the appellant, a Congress (R) candidate, by a margin of 2,600 votes. The appellant filed an election petition challenging the election of respondent No. 1 but that petition was dismissed by the Madhya Pradesh High Court by a judgment dated July 3, 1973. This appeal is directed against that judgment.

2. The High Court framed 19 effective issues out of which issues Nos. 1 to 7 and 10 to 14 are present before us. In so far as relevant, the appellant challenged respondent No. 1's election on the following grounds :

(1) That in a meeting held on March 2, 1972, which was largely attended by voters belonging to the Harijan and Muslim communities, respondent No. 1 made a speech assailing the personal character of the appellant in regard, particularly, to his attitude to the Harijans.

(2) That immediately after respondent No. 1 finished his speech in the aforesaid meeting, his agents and supporters distributed a booklet called 'Atma Ki Pukar' which contained aspersions against the personal character of the appellant.

(3) That on March 3 and 6, 1972 respondent No. 1 delivered similar speeches and on March 3 he published a pamphlet under the title 'Panch Khas Baten' attacking the appellant's personal character and conduct.

3. Apart from himself the appellant examined Habib Khan (PW 7), Mankhan (PW 8), Devlal (PW 9) and Ramnath Gandhi Sewak (PW 14) in support of his case that respondent No. 1 made a derogatory speech on March 2, 1972 at the Purana Motor Stand, Nasrullaganj, and that the pamphlet 'Atma Ki Pukar' was distributed at the meeting. Respondent No. 1 is alleged to have stated in the meeting that the appellant did not believe in the principles for which his party stood, that he looked down upon the Harijans, treated them as untouchables, that his brother was involved in a communal riot in Sukerwas for which he was prosecuted and that the appellant's coworker, Ramnath Gandhi Sewak, was also communal minded. Respondent No. 1 admitted that he had addressed an election meeting on the particular day at Nasrullaganj but denied that he had made the statements attributed to him or that any pamphlet was distributed at the meeting. It is significant that the version of respondent No. 1 is corroborated by Motilal Patel (RW 2) who is a member of the Congress (R) and

who held various offices in the organisation from time to time. He was President of the Block Tehsil Congress Committee of Nasrullaganj from 1967 to 1972. He has stated in his evidence that respondent No. 1 did not make any of the statements attributed to him and that no pamphlet was distributed during or at the end of the meeting. In fact, Bonder (PW 10), who is a Harijan, did not fully support the case of the appellant in regard to the statements said to have been made by respondent No. 1 in the meeting.

4. Apart from the question whether respondent No. 1 did make the particular statements and assuming that he did so, it would appear that in view of the antecedents of the appellant, respondent No. 1 had reason to believe that the statements were true. The appellant admitted in his evidence that a criminal case under Sections 353 and 332 of the Penal Code was pending against him in connection with an assault on a police constable, that a shopkeeper had filed a criminal complaint against him under Section 427 of the Penal Code and that an inquiry was being held against him by a tehsildar on the charge that he embezzled public funds while he was the President of the Salkanpur Trust from 1966 to 1969. At Ex. R-9 is a certified copy of the proceedings of the Vidhan Sabha dated July 31, 1972 which shows that in answer to a question, the Chief Minister of Madhya Pradesh stated that by an audit report the appellant was charged with having committed numerous irregularities and misappropriation of public funds, that an inquiry was held into those charges and that necessary action was being taken on the inquiry report. Considering these facts and circumstances, the case cannot fall under Section 123(4) of the Representation of the People Act, 1951 under which the corrupt practice consists of the publication of a statement which is reasonably calculated to prejudice the prospects of a candidate's election and which the maker of the statement "either believes to be false or does not believe to be true".

5. The High Court has recorded a finding that the booklet 'Atma Ki Pukar' was distributed by respondent No. 1 and his agents but it is clear from the evidence that the offending portion of that publication was a mere reproduction of what was stated in a memorandum submitted by Motilal Patel to the Congress High Command. The Block Congress Committee of Nasrullaganj had recommended three names for Congress candidature from the Budni constituency. Respondent No. 1 was amongst those three but the Provincial Congress Committee added the name of the petitioner to the list. Motilal Patel has stated in his evidence that he drafted a petition complaining against the appellant and distributed the copies thereof to the members of the All India Congress Committee. Motilal Patel says that the imputations which he made against the appellant were true to his personal knowledge and that everyone concerned knew the whole truth. Banvirasingh Chatak who was examined as a court witness admitted that he composed the booklet partly on the basis of his personal knowledge and partly on the basis of what was stated in the memorandum submitted by Motilal Patel to the Congress High Command. In these circumstances, the High Court was justified in coming to the conclusion that, at any rate, respondent No. 1 had good reason to believe the imputations to be true.

6. The statements attributed to respondent No. 1, said to have been made by him in the meetings of March 3 and 6, 1972 and in the pamphlet 'Panch Khas Baten' are more or less on the same pattern. In regard to those statements also the petitioner must be held to have had good reason to believe them to be true.

7. In these circumstances, the High Court was right in dismissing the election petition. The appeal, therefore, fails. The High Court deprived respondent No. 1 of the costs of the election petition on the ground that he falsely disowned all connection with the pamphlet 'Atma Ki Pukar'. We must deny to respondent No. 1 the costs of this appeal for the same reason. The appeal shall therefore

stand dismissed without any order as to costs.

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