

Lakshmi Raman Acharya

Vs

Chandan Singh and Others

Civil Appeal No. 128 of 1976

(Y.V. Chandrachud, P.K. Goswami, A.C. Gupta JJ)

13.12.1976

JUDGMENT

GUPTA, J. –

1. The appellant was one of the eight contestants from Mat constituency no. 365 in district Mathura in the Uttar Pradesh Legislative Assembly elections held in 1974. February 24 and 26, 1974 were the dates when poll was taken and the result was declared on February 28, 1974. The first respondent who was sponsored by Bhartiya Kranti Dal, it will be referred to as B. K. D., hereinafter, was elected securing 33,565 votes. The appellant who came next was a nominee of the Congress party; he polled 20,731 votes, 12,834 votes less than the successful candidate. On April 14, 1974 the appellant presented an election petition in the Allahabad High Court calling in question the election of the first respondent alleging that he was guilty of adopting corrupt practice within the meaning of sub-sections (2), (3) and (3A) of Section 123 of the Representation of the People Act, 1951. The first respondent in his written statement denied all the allegation. The High Court held that the election petitioner had failed to prove the charge of corrupt practice alleged against the successful candidate and dismissed the election petition. The petitioner challenges the correctness of the decision in this appeal under Section 116A of the Representation of the People Act, 1951.

2. Certain principles governing election disputes are now well settled. One such principle is that proceedings arising out of election petitions are quasi-criminal in character and the allegations made in the petition must be proved beyond reasonable doubt. Another is that in an appeal under Section 116A of the Representation of the People Act, 1951 this Court will not interfere with the findings of fact recorded by the trial Court except for very strong and cogent reasons. A third is that it is unsafe in an election case to accept oral evidence at its face value without looking for assurance from some surer circumstances or unimpeachable documents. (See *Rahim Khan v. Khurshid Ahmed* [(1975) 1 SCR 643, 656 : (1974) 2 SCC 660].)

3. Of the issues framed upon the pleadings of the parties, issues 1, 2, 3 and 4 only are relevant for the purposes of the present appeal. These issues are as follows :

(1) Whether the respondent 1, his agents, workers and supporters, with his consent, promoted feeling of hatred between different classes of the citizens of India, particularly between Jats and Thakurs of the constituency on the one side and other castes and communities on the other, for furtherance of the prospects of his election and thereby committed corrupt practice as defined in Section 123(3-A) of the Act ?

(2) Whether the respondent 1, his agents workers and supporters, with his consent,

promoted caste feeling and appealed to the voters to vote or refrain from voting on the basis of caste and community for furtherance of the prospects of his election and thereby committed corrupt practice as defined in Section 123(3) of the Act ?

(3) Whether the respondent 1, his agents and workers, with his consent, directly or indirectly interfered with free exercise of electoral rights of the voters and committed corrupt practice of undue influence as defined in Section 123(2) of the Act ?

(4) Whether the respondent 1, his agents and workers, with his consent, committed corrupt practice of bribery for inducing Muslim voters to vote for the respondent 1, by paying several thousands of rupees for construction of a school building and a mosque, as alleged in para 13(i), (ii) and (iv) of the petition ?

The first two issues are interconnected. The allegations relating to these issues are based on three pamphlets, Exhibits P 20, P 21 and P 22, and oral evidence of meetings where speeches were delivered appealing to voters on the ground of caste and attempting to promote hatred between different castes. There is no reference, however, to these pamphlets in the election petition. Of the pamphlets, Exhibits P20 and P22 contain an appeal to all the residents of the constituency to vote for the first respondent, and the High Court rightly held that these two pamphlets cannot be called objectionable. Exhibit P 21 appeals to the voters not to vote for outsiders such as the appellant but to one who belonged to the constituency like the first respondent. It is difficult to say that this is an appeal on the ground of caste or community. But it is not necessary to pursue this matter further because there is no evidence to connect the first respondent with this pamphlet and, as the High Court has found, it is not "proved as to at whose instance this pamphlet was printed or distributed".

4. The oral evidence on these two issues seeks to prove that meetings were held at three village, Bajna, Neemgaon and Surir Kalan where speeches were made asking the voters to vote on the basis of casts and community and attempting to promote feelings of enmity between different castes and communities in the constituency. At Bajna two meetings are said to have been held on February 5, 1974, one at 12.30 p.m. at the canal inspection house and the other at 8 p.m. at the local B.K.D. office. PW 6 Ganga Sahai, PW 8 Gandalal, and PW 22 Jaipal Singh are the witnesses who were examined by the election petitioner to prove this allegation. From the evidence of PW 8 it does not appear that any appeal was made to the voters on the ground of caste or community in either of the two meetings. PW 6 and PW 22 wanted the court to believe that though they had heard offending speeches being delivered at the meetings, they did not report the matter to anyone earlier but disclosed what they heard for the first time in court. If the High Court found their testimony unbelievable, we do not think any exception can be taken to it. The High Court also found that neither PW 8 nor PW 22 was a disinterested witness, PW 8 being an active member of the Congress and PW 22 was a polling agent of the appellant.

5. At Neemgaon a meeting is alleged to have been held on February 19, 1974 at 12 noon in the primary school premises. Of the two witnesses who speak about this meeting, PW 16 Lotan appears to have admitted on cross-examination that he had not attended the meeting and PW 15 Raghubir says, like PWs 6 and 22, that what he heard in the meeting he was disclosing for the first time in court. The High Court further finds that PW 15 was a man in the confidence of the appellant and PW 16 was admittedly a "man of Congress". If in these circumstances the High Court refused to rely on the evidence of these two witnesses, no interference is called for.

6. The meeting at Surir Kalan is said to have been held at 2 p.m. on the Ramlila platform in the

village. PW 4 Harpal Singh and PW 5 Badan Singh are the two witnesses for the petitioner as to what happened at this meeting. From the testimony of PW 4 Harpal Singh it seems extremely unlikely that he was present at the meeting. PW 4 is the Head Master of a junior high school. The school was open on that day. The school hours were from 10 a.m. to 4 p.m. The witness says that he was able to attend the meeting as it was held during the "interval period". He admits that there are eight periods of forty minutes duration each and the interval is after the fourth period for about forty-five minutes. It is clear therefore that he could not possibly attend the meeting at 2 p.m. The witness however attempts to prove his presence at the meeting by saying that the meeting started at about 1 p.m., thus contradicting his earlier statement. The attempt to shift the time makes his evidence more suspect. He also states that he does not know who ultimately won the election. This apparent unconcern suggesting that he was an impartial witness which is hardly believable marks him out as thoroughly unreliable. The other witness PW 5 Badan Singh says that the meeting was held at 2 p.m. According to him a pamphlet (Exhibit A) was distributed at the meeting. This pamphlet which contains the description "Decision of Kshatriya Mahasabha" contains an appeal to all the members of the Kshatriya caste to attend the meeting to be held on February 8, at 2 p.m. at Surir Kalan. The pamphlet does not disclose the name of the place where it was printed. There is no evidence to connect it with the first respondent. There is also no mention of this pamphlet in the election petition. PW 5 does not make any secret that he was opposed to Chandan Singh being elected a member of the Assembly. Further, he admits that he did not complain of what happened at the meeting to the authorities or to the petitioner. If the High Court did not find it possible to rely on PW 4 and PW 5, we do not think any legitimate grievance can be made. We therefore find no reason to interfere with the findings recorded by the High Court on issues 1 and 2 that no corrupt practice within the meaning of Section 123(3A) or Section 123(3) has been proved against the first respondent.

7. Issue 3 relates to the alleged undue influence exercised by the successful candidate or with his consent by his agents and workers within the meaning of Section 123(2) of the Act. The allegations relating to this issue are contained in paragraph 12 of the election petition and the particulars are in Schedules III to IX thereto. The evidence adduced on this issue falls into three categories, (1) evidence of witnesses who speak about the threats at the meetings held in support of the first respondent, (2) witnesses who speak about the actual interference, and (3) circumstantial evidence of a corroborative nature. As regards the first category, these witnesses have been found unreliable by the High Court while dealing with issues 1 and 2. No further reference therefore need be made to their evidence. As regards the second category of witnesses who speak of actual interference by the agents and workers of the first respondent, the High Court after a detailed examination of the evidence adduced found that many of these witnesses were interested witnesses and that their testimony did not inspire confidence. No presiding officer of the polling stations where such undue influence is alleged to have been used has been examined. One of the witnesses examined by the election petitioner, PW 37 Rajendra Kumar Pathak, who was Sector Magistrate in Neemgaon which includes five polling stations says that he was making a continuous round of the polling stations staying for about 15 minutes at each and that whenever any complaint was made to him about any difficulty felt by the voters in the matter of free exercise of their right to vote, he saw that the cause for complaint was removed. His evidence is that he did not receive any complaint about anyone being prevented from casting his vote. He adds that instructions were given to the Sector Magistrates by Government that voters should be allowed to cast their votes freely, no Sector Magistrate was examined by the election petitioner to prove that this was not done. The High Court therefore did not place any reliance, and in our view rightly, on these witnesses. The circumstantial evidence which is claimed as corroborative of the oral evidence on this issue consist of certain

letters, namely Exhibits P 7, P 8, P 9, P 10, and P 14. Exhibits P 7 and P 8 are two letters sent to the appellant by PW 14 Habura and PW 29 Brij Mohan Bhardwaj respectively complaining about the various irregularities at the polling stations. On a scrutiny of their testimony the High Court found both of them unreliable witnesses and was of the view that these two letters were brought into existence for the purpose of this case after the result of the election had been declared. Exhibit P 9 is a copy of a letter dated February 23, 1974 addressed to the Superintendent of Police, Mathura, by the District Magistrate, Mathura. The copy was proved by PW 30 Was-ud-din Quareshi who was a stenographer to the District Magistrate at the relevant time. The High Court doubted the authenticity of this copy as the date, February 23 appearing on the letter was admittedly not in the handwriting of the District Magistrate nor of the witness. Exhibit 14 is another letter dated February 23, 1974 addressed to the District Magistrate, Mathura, by the appellant. In this letter the petitioner expressed his general apprehension about the irregularities likely to be committed at some polling stations on the day of poll and requested the District Magistrate to make necessary arrangements to prevent the same. Exhibit P 10 dated February 25, 1974 was also addressed to the District Magistrate, Mathura, by the petitioner. This letter of course contains reference to a number of specific cases of irregularities in certain polling stations. The oral evidence adduced to prove these irregularities, we have found already, is not creditworthy. That the election petitioner did not examine any of the Sector Magistrates within whose jurisdiction such irregularities had taken place has already been mentioned. The only Sector Magistrate examined on behalf of the election petitioner, PW 37 Rajendra Kumar Pathak, does not support the petitioner's case. Having considered the two letters Exhibits P 14 and P 10 the High Court observed :

If the two letters are read and considered together an inference may well be drawn that the former was sent as a precautionary measure in advance to give support to the latter one with a view to create some sort of an evidence in case an election petition was necessitated to be filed.

These letters put in evidence to corroborate the oral testimony on the issue of undue influence have themselves no intrinsic merit and are far from reliable and therefore do not advance the petitioner's case any further than what the oral testimony does. We therefore affirm the finding of the High Court on issue 3 that the petitioner has failed to prove the allegation of undue influence.

8. This leaves only issue 4 concerning the allegation of bribery. This is the issue which was pressed before us as the main ground in support of the appeal. The allegations relating to the corrupt practice of bribery are contained in paragraph 13(ii) and (iv) of the election petition and the particulars are set out in Schedule X thereto. Paragraph 13(ii) and (iv) state :

13. That the material facts relating to corrupt practice of bribery committed by respondent 1, his workers and agents with his consent are given hereinafter.

#(i) * * *##

(ii) That Sri Chandan Singh in order to get the support of the muslim voters of village Naujhil offered a bribe of Rs. 1200 ostensibly for the erection of the building for Islamia school to Sri Aijaz Husain, Ida and Idris. The offer was made to induce the muslim voters to vote for respondent 1.

#(iii) * * *##

(iv) That village Bishambara is also a muslim dominated village in which there are about 2000 muslim voters belonging to Meo community. Respondent 1 paid a sum of Rs. 3000 to the pradhan of the said village Sri Niamat Khan, for inducing the voters of Meo community to vote in his favour. The said amount was paid for constructing a mosque for use of this community of this village. Full particulars of this corrupt practice are given in Schedule X of this petition.

The allegations are denied in paragraph 13 of the written statement. Before turning to the evidence on this issue it is necessary to dispose of a contention raised in the High Court and also before us that the allegations must be taken to have been admitted by the first respondent in view of the vague evasive denial given by him in his written statement. This is how the allegations have been denied in the written statement.

13. That the averments made in paragraph 13 of the petition. . . are vague, absurd, wrong and baseless. No person can be stopped in donating certain amount in public institution or the charitable one. Donation to an institution does not amount to bribery. The construction of the part 6 indicate ignorance of the petitioner who is not aware in spite the legal advice. The alleged allegation of bribery is denied in toto and is liable to be dismissed.

13. (ii) That the averments made in para 13(ii) are wrong, baseless, hence denied. The same being repetition of foregoing sub-clause (i), no need of saying much whatever is said in the previous paragraph (1).

#13. (iii) * * *##

13. (iv) That the contents made in paragraph 13(iv) are wrong, false and baseless at if the same is denied. The schedule enclosed marked Annexure X is general in nature and wrong, hence denied and the petition is liable to be dismissed.

In paragraph 13(iii) of the written statement the first respondent refers to the contents in Schedule X of the election petition as "too vague and incorrect, false and baseless". Counsel for the appellant contended that the denial amounted to this only that donation to a public or charitable institution could not constitute bribery. We think that on a correct and complete reading of paragraph 13 of the written statement the construction put on it on behalf of the appellant would not be justified. It cannot be overlooked that the allegation of bribery is also denied "in toto" and as false and baseless. The additional contention that donation to public or charitable institutions could not amount to bribery appears to be a legal plea asserting that even on the statements made in paragraph 13 of the election petition the allegation of bribery was not sustainable.

9. The case of bribery rests on two incidents, one relating to payment of Rs. 1200 to the muslim voters in village Naujhil for the reconstruction of a muslim school in that village and the other relating to the payment of Rs. 3000 to the pradhan of village Bishambara, which is a muslim dominated village, for the construction of a mosque in the village. The allegation regarding the payment of Rs. 1200 for Islamia School in Naujhil is sought to be proved by PW 1 Alla Noor, who has a motorcycle repairing shop, PW 2 Chandra Pal Sharma, PW 3 Ashraf Ali, PW 7 Fiaz Khan, PW 17 Kadhera and some correspondence that passed between some of these witness. What is alleged to have happened is like this. Near about midnight between February 23 and 24, 1974, the first respondent Chandan Singh along with Chatur Singh and several others drove in a jeep to

Naujhil at a place where about 200 muslims were sitting around a fire. Some from the crowd went upto the jeep, had a talk with Chandan Singh and told him that whoever would donate money for Islamia school, the muslim votes would be cast in his favour. Chandan Singh offered to pay and gave twelve currency notes of Rs. 100 each to Chatur Singh who made them over to one Ida who is said to be the president of the school. PW 1 Alla Noor, PW 3 Ashraf Ali and PW 7 Fiaz Khan are witnesses to this incident. About half an hour later, two persons named Nanhey and Habib informed PW 2 Chandra Pal Sharma, who was the pradhan of village Naujhil, of the incident. On being summoned the appellant arrived there within a few minutes and Nanhey and Habib repeated the story in his presence. At the instance of the appellant the Station Officer, Naujhil, was also summoned there, but he declined to take any step. The appellant then came to the place visited by the first respondent earlier and remonstrated with the muslim crowd still present there for having accepted the money from the first respondent. Certain letters were produced on behalf of the appellant to strengthen the oral evidence relating to the incident. Exhibit P 2 appears to be a notice given by Fiaz Khan, who is a member of the school committee, to Ida accusing him of not utilising for the school the money taken by him from the first respondent, asking him to take early steps in the matter, and warning him that in default action would be taken against him. Exhibit P 1 is a letter written by PW 3 Ashraf Ali, who was a teacher of the school, to PW 1 Alla Noor saying that he had taken the sum of Rs. 1200 from Ida in the presence of witnesses and purchased some building material for the school. This letter bears no date. Exhibit P5 is another letter sent by PW 1 Alla Noor to PW 7 Fiaz Khan assuring him that the sum of Rs. 1200 taken from the first respondent would be utilised for the benefit of the school. The High Court has disbelieved the entire story finding that neither the witnesses were believable nor the letters reliable. The story of the midnight visit of the first respondent doling out money to a crowd of muslim voters who happened to be present would strike anyone as ridiculous and we agree with the High Court that it cannot be true. Besides, neither Ida who is made to appear as a central figure in the dispute over the money, nor Nanhey or Habib who conveyed the information to PW 2 Chandra Pal Sharma, has been examined. About the letter the High Court's finding is that from their tenor it was clear that these were brought into existence for the purpose of the election petition. We find nothing to justify a different view.

10. The other allegation with regard to the issue of bribery is that a sum of Rs. 3000 was paid to Niamat Khan, pradhan of village Bishambara, for constructing a mosque to induce the muslim voters of that village to vote in favour of the first respondent. The only witness examined to prove this allegation is PW 24, Usman. According to him on the evening previous to the date of poll, grandfather of the first respondent came to Niamat Khan and paid Rs. 3000 to him in return for his promise that he would see that all the muslim votes were cast in favour of the first respondent. On cross-examination the witness admits that he does not know what happened to that money and that he was disclosing this fact for the first time in court. He is not named either in the election petition or on the schedule thereto. He came to depose without receiving any summons. Niamat Khan has been examined by the respondent as his witness and he denies the allegation as totally false. The High Court therefore did not rightly put any reliance on the evidence of this witness. The appellant had no personal knowledge of the facts alleged in support of the case of bribery. Exhibit P 10, the letter he addressed to the District Magistrate on February 25, 1974 of course contains a vague reference to these allegations, but this, as the High Court has said, seems to have been written "with a view to create some sort of an evidence in case election petition was necessitated to be filed".

11. We find no merit in this appeal which we dismiss with costs.

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