

Dadasaheb Dattatraya Pawar and Others

Vs

Pandurang Raoji Jagtap and Others

Civil Appeal Nos. 41 and 42 of 1977

(Y. V. Chandrachud, V. R. Krishna Iyer, Jaswant Singh JJ)

13.01.1978

JUDGMENT

JASWANT SINGH J. -

1. These appeals 41 and 42 of 1977 by special leave are directed against a common judgment and order dated December 16, 1975 made by the Commissioner, Pune, Division Poona, in Election Petitions COP/81(43) and COP/81(42) presented under Section 144I of the Maharashtra Co-operative Societies Act, 1960 (hereinafter referred to as 'the Act') read with Rule 74 of the Maharashtra Specified Co-operative Societies Elections to Committees Rules, 1971, setting aside the election of the appellants to the Board of Directors of the Shetkari Sahakari Sangh Ltd., Kolhapur (hereinafter referred to as 'the Sangh') on the ground that they were guilty of corrupt practise as envisaged by Section 144I(3) of the Act in that special buses were procured on payment from the Kolhapur Municipal Transport with the appellants' knowledge and consent and used for the whole day on November 20, 1973 i.e. the day of poll for the free transport of the voters from the Sangh's head office in Bhawani Mandap to the polling station in Market Yard and back.

2. The facts and circumstances giving rise to these appeals which lie in a short compass are : The Sangh which is specified Co-operative Society as defined in Section 144A read with Section 73G of the Act and was registered in or about the year 1939 and as such is now deemed to be a registered society under the Act with the entire Kolhapur District as its area of operation has voting members of two types viz. (1) individual members and (2) co-operative societies. Being a society belonging to one of the categories specified in Section 73G of the Act, election of the members of its Board of Directors was held in the manner laid down in Chapter XIA of the Act and the rules made thereunder in the second half of the year, 1973. In the said election two groups-one headed by Jagtap Guruji as representing the respondents 1 and 2 who were the petitioners in the aforesaid election petitions and the other headed by Baba Nesarikar, who was the Managing Director of the Sangh prior to the election, entered the fray. In the said election, all the three appellants in Appeal 41 and all the six appellants in the sister Appeal 42 were declared elected from the constituency of individual members numbering 25,000 and the constituency of the co-operative societies affiliated to the Sangh numbering 650 respectively. Babu Nesarikar was himself returned unopposed from the combined constituency of individual members and co-operative societies. Thus the Nesarikar group captured all the seats contested by it. Aggrieved by the result of the election in so far as it related to the aforesaid two constituencies of individual members and the co-operative societies, respondents 1 and 2 filed two separate election petitions COP/81(43) and COP/81(42) under Section 144I of the Act read with Rule 74 of the Maharashtra Specified Co-operative Societies Elections to Committees Rules, 1971, challenging the validity of the aforesaid elections to the Board of Directors of the Sangh. The said election petitions though challenged on a number of grounds were allowed by the

Commissioner by his aforesaid judgment and order on the sole ground that the appellants were guilty of corrupt practice as envisaged by Section 144I(3) of the Act in that special vehicles were hired with the knowledge and consent of the appellants for the free conveyance of voters from Bhawani Mandap to the polling station and back and used as such on the day of the poll. Section 144I(3) of the Act under which the election of the appellants has been declared void runs as follows :

144I. (3) The hiring or procuring, whether on payment or otherwise, of any vehicle or vessel by a candidate or his agent or by any other person with the consent of a candidate or his election agent, or the use of such vehicle or vessel for the free conveyance of any elector (other than the candidate himself, the members of his family or his agent) to or from any polling station :

Provided that, the hiring of a vehicle or vessel by an elector or by several electors at their joint costs for the purpose of conveying him or them to and from any polling station shall not be deemed to be a corrupt practice under this clause :

Provided further that, the use of any public transport vehicle or vessel or railway carriage by any elector at his own cost for the purpose of going to or coming from any polling station shall not be deemed to be a corrupt practice.

Explanation. - In this clause and in the next succeeding clause, the expression "vehicle" means any vehicle used or capable of being used for the purpose of road transport, whether propelled by mechanical power or otherwise and whether used for drawing other vehicles or otherwise.

3. Appearing on behalf of the appellants, Mr. Tarkunde has vehemently urged that on the evidence on the record, it could not be justifiably held that the appellants committed the corrupt practice imputed to them; that the Commissioner misdirected himself in setting aside the election of the appellants ignoring the basic principles that in the trial of an election petition, the burden lies heavily upon the person who challenges the result of the election to establish the commission by the returned candidate or his agent of acts which he regards as corrupt and the responsibility therefor of the successful candidate directly or through his agents or with his consent for its practice not by mere preponderance of probability but by cogent and reliable evidence beyond any reasonable doubt.

4. We have given our thoughtful consideration to the aforesaid submission of Mr. Tarkunde and are of the opinion that there is considerable force in them. As section 144I of the Act corresponds to Section 123 of the Representation of the People Act, 1951, the same principles must govern the adjudication of disputes relating to the election under the Act as it governs the adjudication of disputes in relation to elections under the Representation of the People Act, 1951. In regard to Section 123(5) of the Representation of the People Act, 1951 which before its amendment by Act 47 of 1966 was identical in terms with Section 144I(3) of the Act, it was held by this Court in *Shri Balwan Singh v. Shri Lakshmi Narain* ((1960) 3 SCR 91 : AIR 1960 SC 770 : 22 ELR 273) that in considering whether a corrupt practice described in Section 123(5) is committed, conveying of electors cannot be dissociated from the hiring of a vehicle.

5. It has also been held by this Court in *Ch. Razik Ram v. Ch. J. S. Chouhan* ((1975) 4 SCC 769 : AIR 1975 SC 667) that to establish the corrupt practice under Section 123(5) of the Representation

of the People Act, 1951, it is necessary for an election petitioner to prove (i) that any vehicle or vessel was hired or was procured whether on payment or otherwise by the returned candidate or by his election agent or by any other person with the consent of the candidate or of his election agent; (ii) that it was used for the conveyance of the electors to or from any polling station and (iii) that such conveyance was free of cost to the electors. Failure to substantiate any one of these ingredients leads to the collapse of the whole charge. Let us now examine and scrutinize the evidence adduced in the case and find out whether the aforesaid ingredients stand proved in the instant case or not. Before doing so, it would be well to recall the principles regarding the standard of proof required to establish a corrupt practice which have been consistently laid down in the decision of this Court in *Rahim Khan v. Khurshid Ahmed* ((1975) 1 SCR 643 (1974) 2 SCC 660 : AIR 1975 SC 290); *Ch. Razik Ram v. Ch. J. S. Chouhan*; *Hem Raj v. Ramji Lal* ((1975) 4 SCC 671 : AIR 1975 SC 382); *Om Prabha Jain v. Charan Das* ((1975) Supp SCR 107 : (1975) 4 SCC 849); *Amolakchand Chhazed v. Bhagwandas Arya* ((1977) 3 SCC 566 : AIR 1977 SC 813); *Lakshmi Raman Acharya v. Chandan Singh* ((1977) 1 SCC 423 : AIR 1977 SC 587); *Narendra Madivalapa Kheni v. Manikrao Patil* ((1977) 4 SCC 16 : AIR 1977 SC 2771) and *Ramji Prasad Singh v. Ram Bilas Jha* ((1977) 1 SCC 260) to which one or the other of us has been a party. In *Rahim Khan v. Khurshid Ahmed*, it was observed by this Court as under : (SCC p. 666, paras 8 and 9)

We have therefore to insist that corrupt practices, such as are alleged in this case, are examined in the light of the evidence with scrupulous care and merciless severity.

However, we have to remember another factor, An election once held is not to be treated a light-hearted manner and defeated candidates or disgruntled electors should not get away with it by filing election petition on unsubstantial grounds and irresponsible evidence, thereby introducing a serious element of uncertainty in the verdict already rendered by the electorate. An election is a politically sacred public act, not of one person or of one official, but of the collective will of the whole constituency. Courts naturally must respect this public expression secretly written and show extreme reluctance to set aside or declare void an election which has already been held unless clear and cogent testimony compelling the Court to uphold the corrupt practice alleged against the returned candidate is adduced. Indeed election petitions where corrupt practices are imputed must be regarded as proceedings of a quasi-criminal nature wherein strict proof is necessary. The burden is therefore heavy on him who assails an election which has been concluded.

6. In *Ch. Razik Ram v. Ch. J. S. Chouhan* (supra) it was laid down by this Court as follows (SCC p. 776 paras 15 & 16) :

A charge of corrupt practise is substantially akin to a criminal charge. The commission of corrupt practice entails serious penal consequences. It not only vitiates the election of the candidate concerned but also disqualifies him from taking part in elections for a considerably long time. Thus, the trial of an election petition being in the nature of an accusation, bearing the indelible stamp of quasi-criminal action, the standard of proof is the same as a criminal case. Just as in a criminal case, so in an election petition, the respondent against whom the charge of corrupt practice is levelled, is presumed to be innocent unless proved guilty. A grave and heavy onus therefore rests on the accuser to establish each and every ingredient of the charge by clear, unequivocal and unimpeachable evidence beyond reasonable doubt.

A charge of corrupt practice cannot be established by a mere balance of probabilities, and, if, after giving due consideration and effect to the totality of the evidence and circumstances of the case, the

mind of the Court is left rocking with reasonable doubt - not being the doubt of a timid, fickle or vacillating mind - as to the veracity of the charge, it must hold the same as not proved.

A Court embarking upon an appreciation of evidence, without this rudder and compass, is apt to find itself at sea, mistaking every flotsam for shore, suspicion for proof and illusion for reality.

7. Another principle which is also well-established is that it is unsafe in an election dispute to accept oral evidence at its face value unless it is backed by unimpeachable and incontrovertible documentary evidence. It would be profitable in this context to refer to the two decisions of this Court in *Rahim Khan v. Khurshid Ahmed* (supra) and *M. Narayana Rao v. G. Venkata Reddy* ((1977) 1 SCR 490 : (1977) 1 SCC 771). In *Rahim Khan v. Khurshid Ahmed* (supra), it was held as follows : (SCC pp. 671-2, para 21)

We must emphasize the danger of believing at its face value oral evidence in an election case without the backing of sure circumstances or indubitable documents. It must be remembered that corrupt practises may perhaps be proved hiring hold a-dozen witnesses apparently respectable and dis-interested, to speak to short and simple episodes such as that a small village meeting took place where the candidates accused his rival of personal vices. There is no X-ray whereby the dishonesty of the story can be established and, if the Court were gullible enough to gulp such oral versions and invalidate elections, a new menace to our electoral system would have been invented through the judicial apparatus. We regard it as extremely unsafe, in the present climate of Kilkenny-cat election competitions and partisan witnesses wearing robes of veracity, to upturn a hard won electoral victory merely because lip service to a corrupt practice has been rendered by some sanctimonious witnesses. The Court must look for serious assurance, unlying circumstances or unimpeachable documents to uphold grave charges of corrupt practices which might not merely cancel the election result, but extinguish many a man's public life.

8. In *M. Narayana Rao v. G. Venkata Reddy*(supra), it was observed as follows : [SCC p. 780, para 19(3)]

A charge of corrupt practise is easy to level but difficult to prove. If it is sought to proved only or mainly by oral evidence without there being contemporaneous documents to support it, Court should be very careful in scrutinizing the oral evidence and should not lightly accept it unless the evidence is credible, trustworthy, natural and showing beyond doubt the commission of carpet practice, as alleged.

9. Bearing in mind the principles quoted above, we would now proceed to scan the evidence to find out whether it established beyond reasonable doubt the ingredients of the corrupt practice vaguely and nebulously relied upon by the election petitioners. Out of the seven witness produced by the election petitions, four have deposed in favour of the appellants. Shankar Bajirao Gaikwad and Anantrao Yashwant Suryawanshi (PWs 1 and 2) who are the drivers of the Kolhapur Municipal Transport have stated that on November 20, 1973 - the day of the poll - buses of Kolhapur Municipal Transport which were taken on hire on contract basis made several trips from the bus stand of Bhawani Mandap (where the head office of the Sangh is situate) to Market Yard - a distance of 3 to 3 1/2 miles - and back 'carrying people who were saying that there was an election in Market Yard'. These witness who are independent and disinterested have categorically affirmed in the course of their statements that Sawant and Shinde who were present at the time of all the trips and were seating the passengers in the buses "were taking money from every passenger".

10. Appasaheb Balwantrao Sawant (PW 3) and Ashok Mahadeo Chinde (PW 4) who are transporters by profession have unequivocally stated that hiring of buses by them from the Kolhapur Municipal Transport on casual contract basis vide applications Exhibits A1 and A5 dated November 19, 1973 were their own individual and persons transactions and neither Nesarikar nor any other candidate sponsored by the Sangh had anything to do with them; that they themselves were present at the time of all the trips made by the said buses from Bhawani Mandap to Market Yard and back on November 20, 1973 and that every passenger was charged 50 paise per trip and no one was taken free of charge while going to or returning from Market Yard.

11. The statement of Namdeo Govind Pawar (PW 5) who was serving as a clerk in the Sangh from November 4, 1964 to November 30, 1973 and who according to his own admission is on friendly terms with Vishnu Bhau Patil who was set up as a candidate for the election by Jagtap group is inter alia to the effect that twice on the eve of the election held in 1973, he and other employees of the Sangh went about in batches at behest of Baba Nesarikar and Capt. Ghatge, who were Managing Director and Secretary respectively of the Sangh, ostensibly for the purpose of inspecting and auditing the societies affiliated to the Sangh but in reality for canvassing votes for Nesarikar group; that Nesarikar group transported the voters on November 20, 1973 from Bhawani Mandap to Market Yard in Kolhapur Transport buses arranged by it and urged them to cast their votes in favour of the candidates put up by it. The witness has further stated that "it was told that the money for bus should not be taken". The evidence of this witness about the free conveyance of the voters from Bhawani Mandap to Market Yard and back is merely of a hearsay character as he has clearly admitted that he remained all along in Bhawani Mandap and did not go to the polling station by any of the buses procured from the Kolhapur Municipal Transport for transporting the voters.

12. Madhavrao Shripatrao Bhonsale (PW 6) has stated that being an individual member of the Sangh, he was a voter for the election which took place in the year, 1973; that the said election was contested by two groups viz. Jagtap group and Baba Nesarikar group; that supporters of both the groups were canvassing for their respective candidates; that he and other voters went from Bhawani Mandap to Market Yard and back in the city buses arranged by Nesarikar group; that 25 to 30 servants of the Sangh were seating the voters in the buses and asking them to vote for the candidates of Nesarikar group and that of the aforesaid bus travel; "money was not taken from the voters". He has admitted that he is in the service of the Market Committee of which Vijayrao Yadav, who entered the election fray as a nominee of Jagtap groups, is a Member and his i.e. Vijayrao Yadav's father is the President. The testimony of this witness being manifestly of an interested and partisan character is not free from suspicion. That apart, the evidence of this witness cannot be accepted at its face value for other reason as well. Although he has admitted that there were 30 to 40 people in the vehicle by the which he was carried to Market Yard, he has not been able to state if any person present before the Commissioner at the time of his statement was in that vehicle or not. It is also highly unlikely that he should have come to Bhawani Mandap a day prior to the day of the poll when according to his own admission, he could have cast his vote by coming to Market Yard on the day of poll itself and while coming from Vadgoan by any of the routes, Market Yard comes first.

13. Kumbhar Ganpati Shankar who is the last witness produce by the election petitioners has stated that he was the representative of Atigre Vikas Seva Society and a voter in the constituency of the co-operative societies; that the election held in 1973 was contested by two groups viz. Nesarikar group and Jagtap group; that he also fought the election as an independent candidate; that on the day of the poll i.e. on November 20, 1973, he went to Bhawani Mandap where he found 15 to 20 employees of the Sangh seating the voters in buses, distributing the pamphlets issued by Baba Nesarikar group to them and familiaring them with the names of candidates sponsored by that group and that no money

was demanded from or paid by the voters who were carried in those buses to and fro the polling station. This witness has admitted that he belongs to Atigre, residents whereof enjoyed the facility of travel by bus to Kolhapur, and that while so travelling one reaches Market Yard first, then the city and then Bhawani Mandap. It is, therefore, highly unlikely and improbable that the witness would go to Bhawani Mandap and not direct to market yard which comes first.

14. The evidence of the last three witnesses who have attempted to support the election petitioners is clearly contradicted not only by Appasaheb Balwant Sawant (PW 3) and Ashok Mahadeo Chinde (PW 4) but also by Shankar Bajirao Gaikwad (PW 1) and Anantrao Yashwant Suryawanshi (PW 2) who have categorically stated that fare at the rate of 50 paise per trip was charged from every passenger carried by them from Bhawani Mandap to Market Yard and back on the day of poll and that no one was carried free.

15. The evidence led by the election petitioners as analysed above falls far short of the requisite proof. It does not at all establish that vehicles were procured by the appellants or their election agents or with the consent of any one of them by any other person or that the same were used for free conveyance of the voters to or fro the polling station. The Commissioner manifestly went wrong in law in his approach to and assessment of the evidence adduced in the case and arrived at unwarranted conclusions merely on the basis of probabilities completely disregarding the aforementioned well settled principles that election petitions alleging commission of corrupt practices are proceedings of a quasi-criminal nature and the burden lies heavily on those who assail the election of a returned candidate to prove the charge beyond reasonable doubt. It is also unfortunate that the Commissioner overlooked the glaring infirmity that the election petitions suffered from inasmuch as they omitted to set out the material facts constituting the corrupt practice alleged to have been committed by the appellants and made mention of the essential ingredient that the electors were conveyed free of charge in the buses procured by the appellants or their election agents or some other person with their consent. It appears to us that in the roving inquiry that was launched upon, the election petitioners tried to clutch at the aforesaid two applications made to the Kolhapur Municipal Transport by Appasaheb Balwantrao Sawant (PW 3) and Ashok Mahadeo Chinde (PW 4) and induced PWs 5 to 7 who appear to be their camp followers and sympathisers to weave a story which in view of the dictum laid down by this Court in *Rahim Khan v. Khurshid Ahmed* (supra) and followed in *Kanhaiyalal v. Mannalal* ((1976) 3 SCC 646); *Amolakchand Chhazed v. Bhagwandas Arya*(supra) and *Mohd. Yasin Shah v. Ali Akbar Khan* ((1977) 2 SCC 23) cannot be easily swallowed in the absence of incontrovertible evidence and contemporaneous written complaints to the concerned authorities. May be PWs 5 to 7 are not liars but, as already observed, their testimony falls far short of the compelling degree of proof. Thus we find it extremely difficult on the material on the record to hold that the charge of corrupt practice levelled against the appellants is made out. According we allow the appeals and set aside the impugned judgment and order but leave the parties to bear their own costs.

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