

Rajendra Singh Yadav

Vs

Chandra Sen and Others

Civil Appeal No. 1929 of 1975

(CJI Y. V. Chandrachud, Jaswant Singh, P. S. Kailasam JJ)

26.10.1978

JUDGMENT

KOSHAL, J. -

1. This is an appeal under Section 116-A of the Representation of the People Act, 1951 (hereinafter referred to as the Act) against the judgment of a single Judge of the Allahabad High Court declaring the election of the appellant named Rajendra Singh Yadav, who was the returned candidate from the Uttar Pradesh Assembly Constituency No. 314 (Mohammadabad, District Farrukhabad) held in the year 1974, to be void on the sole ground that he had been guilty of the commission of the corrupt practice specified in clause (5) of Section 123 of the Act, and further holding that he is disqualified for a period of six years.

2. Seven candidates took part in the election contest, the appellant's nearest rival being the Congress candidate Smt. Vidyawati Rather (respondent 3) who secured 25,736 votes as against 43,844 polled in favour of the appellant who fought the battle as an independent candidate.

3. The petition under Section 81 of the Act was instituted in the High Court by two electors other than the candidates on various grounds including the commission by the returned candidate of different types of corrupt practices. The only ground found by the High Court to have been established is as already stated, the commission of the corrupt practice detailed in clause (5) of Section 123 of the Act which states :

123. The following shall be deemed to be corrupt practices for the purposes of this Act :

(5) 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 under Section 25 or a place fixed under sub-section (1) of Section 29 for the poll.

4. The allegations made in the petition, insofar as they are relevant for the purpose of the present appeal, were stated in paragraph 12 thereof and are reproduced below :

(a) The respondent 1 himself his workers, agent and supporters with the consent of respondent 1 hired and procured vehicles, tractors with trollys, trucks, jeeps and cars for the conveyance of electors from their houses to the polling stations on the date of

poll, i.e. February 26, 1974.

(b) That the persons who were transporting the voters were the workers, agents and supporters of respondent 1 and were so doing with the consent of respondent 1 inasmuch as they had put badges depicting the name of respondent 1 with his election symbol (cycle). Some of them were carrying banners in which the symbol of cycle was depicted. The persons who used to carry the voters to the polling stations on the vehicles dropped the voters in the camps set up by respondent 1 nearing the polling stations. After these voters had cast their votes, they were brought back to their respective villages on the aforesaid vehicles. Respondent 1 himself, his workers, agents and supporters, with the consent of respondent 1 were carrying a large number of female voters also.

(c) That in most of the vehicles a poster cycle symbol was carried and the workers, agents and supporters of respondent 1 with his consent were wearing badges with cycle symbol and as such throughout the polling day, i.e. February 26, 1974, the voters were carried.

5. Clause (e) of the same paragraph stated that full particulars of various vehicles hired, procured and used along with the places and the polling stations at which and the person by whom they were used were given in Schedule III in the petition, to which was later on added by amendment Schedule III-A. Items 2 and 5 of Schedule III and the whole of Schedule III-A contain "Full particulars" of the corrupt practice found to have been proved and are extracted below for facility of reference.

SCHEDULE III Particulars of hiring and procuring of the vehicles by respondent 1, his agents, workers and supporters with the consent of respondent 1 for the free conveyance of the electors from their houses to polling stations.-----
-----Sl. Date Time Village Name of Kind of Name of
Name of No. from polling vehicle persons some where station to and No. who con-
electors electors which the of Vehi-veyed who were were electors cles the conveyed
taken were electors to conveyed from the their polling houses station to polling
stations-----2. Febr- 10 1. Bich-
Nauli Tractor 1. Lajja 1. Shankar uary a.m. hauli with Ram Lal 26, to 2. Siani trolley
of Chitra- 2. Sri 1974 4 Bhabhuti unji Krishan p.m. Prasad Singh 3. Gandhi r/o
Amroli All r/o 4. Basant Nauli Lal 5. Ram Sanshi 6. Umesh Chand some other
Persons and some ladies.5. Febr- 9 a.m. Adjoining Khin- Tractor 1. Radhey Men &
uary to hamlets mini with Shyam Women 26, 3.30 trolley 2. Hari 1974 p.m. No.
R.J.D. Shankar 2606 SCHEDULE III-A HIRING AND PROCURING USER OF
VEHICLES-----Date Place Who
procured Kind of Name of the owner and hired vehicle of vehicle vehicle-----
----- 1 2 3 4 5-----
-----February Mohammadabad Purshottam Tractor Ompal Singh
Chandel 21, 1974 Singh s/o and r/o Mohammadabad Respdt. 1 jeep Tractor Ranpal
Singh Pradhan Sikandarpur. Procured and hired in presence of Hukat Singh,
Harkanpur and Subedar Singh Taqipur. February Amroli Rajendra Tractor Bhabhuti
Od. village 22, 1974 Singh & P.O. Amroli (regis Yadav -tered in the name of Respdt.
1 his son Sobarn) Cha- ssis No. F. 2083 Procured and hired in presence of Devdutt
son of Khergai, village Rukhiya. 2 " " " " Antram s/o Gyan Singh resident of village &

P.O. Amroli No. 2015 UPT (due to typing mis- take it was shown as VPI 2016).February Sarai August Rajendra Mahesh Singh s/o24, 1974 Singh Harish Chandra Yadav Singh, village Respdt. 1 A k b a r p u r Keshoram P.O. Ali- pur No. RJD 2606-----##

Procured and hired in the presence of Narain Singh s/o Anganoo Singh, Village Naigaon Khasulia.

6. In his written statement, the appellant controverted all the pleas made by the petitioners-electors and asserted that neither he nor any of his agents or workers had hired or procured any vehicle whatsoever for the purpose stated nor had used any such vehicle therefor.

7. On the pleadings of the parties the learned single Judge framed 12 issues but we are now concerned only with Issue No. 7 which runs thus :

7. Whether respondent 1 himself, his workers, agents and supporters with the consent of respondent 1 had procured and used vehicles for free conveyance of electors as mentioned in para 12(a) (b) (c) (d) and (e) and Schedule III of the petition, and thus committed the corrupt practice as provided in Section 123(5) of the Act ? If so, its effect ?

8. It is common ground between the parties that Nauli Polling Station had two polling booths, each having a separate Presiding Officer. These booths were designated by Serial numbers 121 and 122. G. S. Srivastava (PW 2) who otherwise held the office of the District Fisheries Inspector, Farrukhabad, was the Presiding Officer at polling booth no, 121 which was meant for voters residing in village Nauli alone. The other polling booth, having serial no. 122, had another Presiding Officer and voters from villages named Bichhauri and Sinai had to poll their votes thereat. Similarly, Khinmini Polling Station had two polling booths designated by serial numbers 88 and 89 having P. S. Gaharwar (PW 6) and Narendra Singh (PW 3) as Presiding Officers respectively.

9. Six witnesses were produced by the petitioners in support of the corrupt practice pertaining to polling station Nauli. G. S. Srivastava (PW 2) stated that during the poll complaint, Ex. P-1 was made to him by Lalmani Singh (PW 4) who was the polling agent for Smt. Vidyawati Rathore. The relevant portion of that complaint may be freely translated thus :

The agents and supporters of the independent candidate Shri Rajendra Singh Yadav ... are bringing their voters in vehicles and make them poll their votes after forming them into a queue. If you come outside you will find that Lajja Ram and Chiranji Lal are bringing women voters of my village, whom I fully recognise, in a trolley and a tractor and are leaving them near the school building, on the tractor flies a flag having the symbol 'bicycle' and the trolley has posters pasted on it. These people are also shouting slogans in support of the independent candidate.

10. According to the Presiding Officer, the complaint. Ex. P-1 was handed over to him at 12.00 noon and was found, on enquiry by him, to be correct. This fact finds a mention in diary, Ex. P-2 prepared by him in accordance with the rules. Item 14 in the diary reads :

A serious complaint was made by Sri Lalmani Singh, Congress agent, regarding transportation of voters and other irregularities by the other party, i.e. the independent candidate, Shri Rajendra Singh Yadav.

11. Lalmani Singh (PW 4) testified to the correctness of the contents of complaint Ex. P-1 and

averred that he made the complaint after he found voters from villages Nauli, Bichhauri and Siani being brought in a tractor and a trolley by Lajja Ram and Chiranji Lal who were the supporters and workers of the appellant. The details of what he was are given by him thus :

Ram Kishan, Ram Sanshi, Balak Ram., Sri Kishan and Ladies whose names I do not know were seen sitting in the tractor and trolley for the first time at about 10 o'clock. These ladies were not of my village and hence I did not recognise them. The said men voters were of village Bichhauri were seen sitting by me on the second occasion. Bhoomraj Singh of Nauli and ladies were seen by me on the fourth occasion. Out of the ladies, whom I recognised, were the wives of Bhoomraj, Surendra Singh and Tika Ram, but I have no connection with them.

12. Data Ram (PW 5) was the polling agent of Smt. Vidyawati Rathore at polling booth no. 122. He also claimed to have seen voters being brought in a trolley attached to a tractor by Lajja Ram and Chiranji Lal. When questioned about the identity of the voters he stated :

The agents-voters were Gandhi, Ram Sanahi. Lajja Ram and Kishan. There were some lady voters also, but I do not know their names. Thereafter the tractor went to Bichhauri, Ram Bharose, Shri Ram. Mullu, Agya Ram, Bir Sahai, Ajuddhi, the voters of Bichhauri, came on the tractor and hence I concluded that the tractor had gone to Bichhauri, Wives of Mullu, Shri Ram, Bir Sahai and Raghu were also amongst the lady voters, whom I could recognise.

He was asked as to whether he had made a written complaint to the Presiding Officer and his answer was in the negative, because, according to him, he was 'sufficiently illiterate'. However he admitted that he had asked Ram Sarup, the other polling agent for the Congress candidate, to make a complaint in writing but that the latter did not comply with demand.

13. Bhajan Lal (PW 7) is a voter from Nauli village who claims to have been transported in the said tractor and trolley. To the same effect is the testimony of Gandhi (PW 10), a voter hailing from Siani.

14. Shobaran Singh (PW 17) claims to be the owner of a tractor bearing registration No. UPT 2249 and that is the tractor which is alleged to have transported voters to Nauli polling station on the day of the poll. According to the witness, the tractor was hired by the appellant himself at village Amroli four days prior to the date of the poll for a sum of Rs. 115, for the purpose aforesaid. The witness added that it was his father, Bhabhuti Prasad, who worked on the tractor as the driver on the date of the poll.

15. In relation to the transport of voters to the polling station at Khinmini, the petitioner produced four witnesses. Narendra Singh (PW 3) who was the Presiding Officer at polling booth no. 89, testified to complaint Ex. P-3 having been made to him by the Congress candidate herself at 2 p.m. on the date of the poll. The relevant portion of the complaint when freely translated would read thus :

Radhey Shyam, resident of Bharatnagar and Hari Shankar of Sarulapur who are the supporters of Rajendra Singh Yadav are bringing the voters in a trolley attached to tractor No. RJD 2606 having the flag and posters bearing the election symbol 'bicycle'.

16. The diary prepared by the witness is Ex. P-4 of which item 22 is extracted below :

22. Serious complaints, if A complaint regarding transportation any, made by the candidate of voters by Smt. Vidyawati Rathore. The same is attached with diary.

17. The witness further stated that on enquiry made by him, the complaint was found to be "true in all respects".

18. P. S. Gaharwar (PW 6), who presided at polling booth no. 88, stated that complaint Ex. P-5 was made to him by the Congress candidate herself after it had been taken down by another person at her dictation. According to the witness he received the complaint at 2.10 p.m. Column 19 of diary Ex. P-6 which he prepared mentions the receipt of the complaint. The main allegation made in the complaint was that Radhey Shyam of Bharatnagar and Hari Shankar of Sarulapur were bringing voters in a trolley attached to Tractor No. RJD 2606, and that the trolley bore a flag and posters carrying the election symbol 'bicycle'.

19. Pati Ram (PW 8) is a voter from Khinmini village. He deposed that Rajendra Singh had sent a tractor-cum-trolley for transporting the voters, that the machine bore flags and posters with the symbol 'bicycle' depicted thereon and that the witness was asked by Puttupal of his village "to cast my vote after going to sit on the tractor". The witness added that Narottam Singh and Ulfat and some ladies of his mohalla had also accompanied him in the trolley.

20. The testimony of Mahesh Singh (PW 12) is to the effect that he was the owner of tractor No. RJD 2606 and a trolley which were hired from him by the appellant two days prior to the date of the poll for a sum of Rs. 125 so that the same could be used for the transport of voters which operation the witness claims to have carried out in person on the day of the poll.

21. After a consideration of the evidence detailed above, the learned single Judge accepted it at its face value. He appears to have been specially impressed with the fact that complaints in writing were made to the Presiding Officers of three of the four polling booths comprised in the polling stations at Nauli and Khinmini. After hearing learned Counsel for the parties at length we feel, however, that the evidence is not only insufficient for holding the corrupt practice in question to have been made out but should either not have been allowed to be brought on record or is untrustworthy.

22. The first noteworthy factor in connection with the allegations found to have been established is that no voter of Nauli village was alleged either in Schedule III or Schedule III-A to have been transported to Nauli polling station so that any attempt on the part of the petitioners to prove that such voters were so transported should have been scotched at the threshold. It is well settled that allegations of corrupt practices have to be made and proved like a charge in a criminal case and that what is not pleaded cannot be allowed to be the subject-matter of evidence, as also that the allegations must be proved beyond reasonable doubt and not merely by way of preponderance of probabilities. Viewed in this context, the testimony of G. S. Srivastava (PW 2) and the contents of complaint Ex. P-I must be ruled out as irrelevant inasmuch as they refer to the transportation of voters from village Nauli alone which was not a matter in dispute between the parties and about which the petitioners-electors had no right to lead any evidence whatsoever.

23. And insofar as the allegations in regard to voters from Bichhauri and Siani are concerned, we find that no complaint in writing was made to the Presiding Officer of polling booth no. 122 even though the polling agent of the Congress candidate asserts unequivocally that he asked his co-polling agent named Ram Sarup to make such a complaint. Ram Sarup himself has not been

produced in the witness-box and no explanation has been offered as to why he did not make a complaint regarding the transportation of voters from Bichhauri and Siani in the tractor and trolley alleged to have been driven by Bhabhuti Prasad. This single factor is sufficient to condemn the entire evidence produced on the point as an afterthought. We need hardly say that it is not at all difficult for a defeated candidate to produce a few witnesses in support of such allegations after the event, even though the truth may be far different from what they state. In this connection we may specially make a reference to the testimony of Lalmani Singh (PW 4) who, in the witness-box, has glibly testified to voters from Bichhauri and Siani having been transported to the Nauli polling station which is an allegation conspicuous by its absence from complaint Ex. P-1. Had there been any truth in the allegation, there is no reason why the complaint should have been confined, as it was, to transportation of voters from village Nauli alone. In any case, Lalmani Singh (PW 4) would have immediately called upon the polling agent of the Congress candidate at the other booth located in the same polling station to make a complaint to the Presiding Officer of that booth in regard to the transportation of voters hailing from Bichhauri and Siani. That also not having been done, the testimony of Lalmani Singh (PW 4) must be characterised as untrustworthy. As it is, the entire oral evidence on the point appears to us to be of that character for the reason that no written complaint was made to the Presiding Officer of polling booth no. 122, regarding the transportation of voters from Bichhauri and Siani which we find wholly unproved.

24. The case of the appellant in relation to the transportation of voters to Khinmini polling station stands on a still stronger footing. Reference in this connection may first be made to the relevant contents of Schedule III which appear in item 5 thereof. Column 3 of that item states the name of the village from where voters were transported as "from adjoining hamlets" which on the face of it is an expression calculated not to supply any information whatsoever about the place from where voters were transported. It is vague in the extreme and in fact borders on the meaningless. Practically the same is true of the contents of the last column of the item which gives the names of the electors transported to the polling station as "men and women" which expression hardly needs any comment. The inference which must be drawn from the contents of the item is that when Schedule III was framed, the petitioners-electors had no knowledge at all of any particular voters having been transported to Khinmini polling station or of the places from where they were picked up. The oral evidence produced gets a severe jolt from this circumstance alone and must be characterised as a vain attempt to support a case concocted later. Besides, the item is so lacking in particulars that it should not have been allowed to be proved at the evidence stage, nothing specifically having been disclosed such as would give notice to the appellant as to what case he had to meet.

25. As already stated, the learned single Judge appears to have been impressed by the two written complaints, Exs. P-3 and P-5 in forming the opinion that the oral evidence produced in support of the transportation of voters to Khinmini polling station was reliable. However, it further appears that he did not closely scrutinise the other connected documentary evidence of which diary Ex. P-4 is enough to shatter the case propounded against the appellant. We have extracted above the contents of item 22 forming part of that diary. The item states that a complaint regarding transportation of voters by Smt. Vidyawati Rathore had been made to the Presiding Officer. The relevant entry in the item however is very suspicious and appears to have been made by way of an overwriting, the original entry most probably being "None" which means that by the time the diary was prepared in the first instance, no complaint had been made to the Presiding Officer. Naturally, the word "None" must have been inserted after the poll was over and if that be so, the overwriting must be deemed to have been made later on and behind the back of the appellant's polling agents which would not only constitute a serious irregularity on the part of the Presiding Officer but also indicate that all is not

well the complaint in the entry - which furnishes a circumstances pointing to an attempt on the part of the Congress candidate and the Presiding Officer to concoct evidence - a circumstances which casts a thick cloud of suspicion on the veracity of the entire oral evidence produced on the point.

26. We conclude that the transportation of voters to Khinmini polling station also remains unproved.

27. For the reasons stated we reverse the finding of the learned single Judge of the Allahabad High Court on the point of the commission of the corrupt practice described in clause (5) of Section 123 of the Act. Consequently the appeal succeeds and is accepted and the impugned judgment is set aside. In the result the petition under Section 81 of the Act is dismissed. The appellant shall have his costs in both the courts from the contesting respondents.

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