

Harjit Singh Mann

Vs

S. Umrao Singh and Others

Civil Appeal No. 720 of 1978

(P.N. Shinghal, E.S. Venkataramiah JJ)

12.12.1979

JUDGMENT

SHINGHAL, J. -

1. This appeal by election petitioner Harjit Singh Mann is directed against the judgment of the Punjab and Haryana High Court dated February 7, 1978, dismissing the petition by which he had challenged the election of Umrao Singh, respondent 1, hereinafter referred to as the respondent, from the Nakodar constituency of the Punjab Legislative Assembly. The result of the election was declared on June 14, 1977, according to which the respondent was declared elected as he secured the highest votes at the poll.

2. Appellant Harjit Singh Mann could not contest the election as his nomination papers were rejected by the Returning Officer on May 19, 1977, which was the date fixed for the scrutiny of the nominations. That was taken as one of the grounds for filing the election petition, the other ground being the commission of some corrupt practices by the respondent. The respondent traversed the allegations. The trial Court examined some of the preliminary objections and framed eight issues. The first two issues were decided in favour of the appellant. As regard issue No. 3, the trial Court held that a part of the allegation of corrupt practice which was sought to be incorporated in the amended petition, could not be taken into consideration as the amendment was applied for after the expiry of the period of limitation; and it was therefor ordered to be deleted. The correctness of the above findings has not been challenged before us. In fact we are required to consider the trial Court's findings only on issues Nos. 4, 5 and 6, which have all gone against the appellant issues Nos. 7 and 8 have not been pressed for our consideration. We shall therefore concern ourselves with three issues (Nos. 4, 5 and 6) and deal with them one by one.

3. Issue Nos. 4 was to the following effect :

Whether Jit Ram proposer of the Petitioner reached the office of the Returning Officer at 2.50 p.m. and filed the nomination papers of the petitioner before 3.00 p.m. on May 18, 1977 and whether the endorsement made on the nomination papers that the nomination papers were received at 3.10 p.m. was wrongly made and thereby illegally rejected the nomination papers of the petitioner on May 19, 1977 ? If so, to what effect.

4. The appellant's allegation in this respect was that although Jit Ram (PW 7), who had proposed his candidature, reached the office of the Returning Officer after depositing the necessary security in the bank at 2.50 p.m. on May 18, 1977, and the Returning Officer placed the nomination papers on his

table, he wrongly asked Jit Ram to take back the nomination papers saying that the time for filing them had expired. It was further alleged that the Returning Officer got annoyed when Jit Ram protested that he had filed the nomination papers in time, and that he wrongly noted down the time of presentation of the nomination papers as 15.10 hours. As has been stated, the trial Court has disbelieved the averment of the petitioner in this respect, and found the issue against him.

5. We have gone through the statement of Jit Ram PW 7 who, according to the appellant's case, presented the nomination papers to the Returning Officer. The witness has however admitted in cross-examination that when he was trying to deliver the nomination papers, the Returning Officer "said that he objected to the delivery of the nomination papers as the time was over". The witness no doubt claimed that he reached the office of the Returning Officer, after depositing the security, at about 2.45 p.m. and that when the Returning Officer told him that the time for the filing of the nomination papers had expired, some four other "persons" standing in the office of the Returning Officer said that "still two minutes remained for it becoming 3 o'clock and some said that one minute still remained. The trial Court disbelieved that version of Jit Ram. He really could not even read the time in the clock of the trial Court, for when he deposed that it was 3.19 p.m., the time according to that clock was 3.6 p.m. Jit Ram did not therefore have the capacity of reading or stating the time correctly, and it may in fact be said that what he deposed about the presentation of the nomination papers a couple of minutes or a minute before 3 p.m. was nothing but hearsay. The trial Court has examined the other evidence of the parties, including the statement of Returning Officer, Manohar Singh (PW 1), and we have no doubt that its finding that the nomination papers were filed 10 minutes after 3 p.m. is fully borne out by the evidence on the record and is correct.

6. It has to be appreciated that it is the requirement of the law that the Returning Officer should mention the time of the presentation of the nomination papers, and that endorsement Ex. PW 1/19 has been proved by the Returning Officer. It shows that the nomination papers were presented on May 18, 1977 at 15.10 hours by the proposer, and the endorsement to that effect was duly signed by the Returning Officer. There is no reason to disbelieve that evidence. The fact of late presentation of the nomination papers was reiterated by the Returning Officer in his order of scrutiny Ex. PW 1/20 on May 19, 1977. In that order he clearly stated that as the nomination papers were delivered to him on May 18, 1977 after 3 p.m. i.e. at 15.10 hours by the proposer Shri Jit Ram, he rejected it for that reason and also for the reason that the required oath or affirmation was not made by the candidate. It may be mentioned that the form of the nomination paper prescribed by the Conduct of Election Rules, 1961, provides for the issue of a receipt for the nomination paper and the notice of scrutiny, which has to be handed over to the person presenting the nomination paper. The serial number of the nomination paper, the name of the candidate, the name of the constituency, the date and time of presentation of the nomination paper and the date and time fixed for its scrutiny had therefore to be mentioned in that receipt, and we find from the judgment of the trial Court that the non-production of that receipt by the appellant has rightly been taken as a circumstance against him. On the evidence before it the trial Court was justified in finding issue No. 4 against the appellant and in holding that the nomination papers were filed after the expiry of the time prescribed for them i.e. at 30.10 p.m.

7. An attempt was made to argue that the delay in the presentation of the nomination papers in question could not justify its rejection as it was not a defect of a substantial character within the meaning of sub-section (4) of Section 36 of the Representation of the People Act, 1951, hereinafter referred to as the Act. In order to appreciate the argument it is necessary to make a cross-reference to sub-section (1) of Section 33 of the Act which provides as follows :

33(1). On or before the date appointed under clause (a) of Section 30 each candidate shall, either in person or by his proposer, between the hours of eleven o'clock in the forenoon and three o'clock in the afternoon deliver to the Returning Officer at the place specified in this behalf in the notice issued under Section 31 a nomination paper completed in the prescribed form and signed by the candidate and by an elector of the constituency as proposer :

It is therefore the requirement of that sub-section that, inter alia, the nomination paper shall be delivered to the Returning Officer between the hours of eleven o'clock in the forenoon and three o'clock in the afternoon, so that a nomination paper delivered after three o'clock in the afternoon cannot be said to comply with that provision of Section 33. Sub-section (2) of Section 36 of the Act, which provides for the examination of the nomination papers for the purpose of deciding all objections made to any nomination, requires that the Returning Officer shall reject any nomination paper on the ground mentioned in the sub-section. We are concerned with ground (b) which provided as follows :

(b) that there has been a failure to comply with any of the provisions of Section 33 or Section 34.

So as there was failure to comply with that provision of Section 33 which required the delivery of the nomination paper between the hours of eleven o'clock in the forenoon and three o'clock in the afternoon, the Returning Officer had really no option but to reject the nomination paper.

8. We have considered the argument that such a defect was not of a substantial character within the meaning of sub-section (4) of Section 36 of the Act, but we are unable to uphold it in the fact of the clear requirement of ground (b) of sub-section (2) of Section 36, referred to above. It has to be appreciated that any other view would make the requirement for the presentation of the nomination paper before the last date for making nominations, and within the specified period of time, unworkable for it will not then be possible to draw a line up to which the delay in the delivery of the nomination papers could be condoned. In fact if the requirement of the law in that respect is not observed, and its breach is considered to be a defect which was not of a substantial character, it may be permissible to go to the extent of arguing that the nomination paper may be filed even up to the date and time fixed for the scrutiny of the nominations. That would not only cause administrative inconvenience but put the other candidates to a serious disadvantage for they would not be able to prepare themselves for any objection they may like to raise to the validity of the nomination at the time of the scrutiny of the nominations. We have no hesitation therefore in taking the view that the failure to comply with the requirement that the nomination papers shall be delivered between the hours of eleven o'clock in the forenoon and three o'clock in the afternoon is mandatory and the Returning Officer was justified in rejecting the nomination paper in question because of its breach. A similar provision in an election rule has been stated to be mandatory in Rogers on Elections, Volume III, twenty-first edition, at page 74, and it has been observed that the rule must be "literally complied with". Reference in this connection may be made to *Cutting v. Windsor* (40 TLR 395). There *Avory, J.*, referred to the requirement of Rule 7 in Part II of the Third Schedule to the Municipal Corporations Act, 1882, according to which the nomination paper had to be delivered before five o'clock in the afternoon of the last day for the delivery of nomination papers, and rejected the argument that what had occurred there was a pure technicality. He held as follows :

So far as Rule 7 provided for the time within which nomination papers must be

delivered at the town clerk's office it was mandatory. It was not within the discretion of the town clerk to receive nomination papers after the hour specified in the rule, nor was it competent to that Court to say that the delivery of a nomination paper after the prescribed time constituted a good nomination. Mr. Windsor had never been duly nominated and his election must be declared void. Mr. Cutting was the only other candidate and he must be declared to have been duly elected.

Horridge, J., agreed with him saying that if Windsor had never been nominated it was impossible for the Court to say that his election was in accordance with the principles laid down in the body of the Act. The same view has expressed in Parker's Conduct of parliamentary Elections, 1970, at page 137 :

The Returning Officer has no power to extend the time for delivery (see *Mowes v. Turner* (1 CPD 600); *Cutting v. Windsor* (40 TLR 395)).

The matter has been dealt with in Parliamentary Elections by A. Norman Schofield, second edition, on pages 149-150 under the rubric "Delivery at wrong time' and it has been held that the requirement in that respect is mandatory.

9. So as the provision of Section 33 regarding the delivery of the nomination papers between the hours of eleven o'clock in the forenoon and three o'clock in the afternoon was not complied with, the Returning Officer had no option but to reject the nomination paper in question as required by Section 36(2)(b) of the Act and the finding of the trial Court in that respect is quite correct.

10. Issue No. 5 raises the question whether the appellant reached the office of the Returning Office at 3.45 p.m. on May 18, 1977, and took oath in the presence of the Returning Officer who, however, failed to make the necessary endorsement on the nomination paper.

11. It is not in controversy that it was obligatory under clause (a) of Article 173 of the Constitution for the appellant to make and subscribe, before a person authorised in that behalf by the Election Commission, an oath or affirmation according to the form set out for the purpose in the Third Schedule, and that he could not be qualified to be chosen to fill a seat in the legislature of a State without doing so. The importance of that requirement of the Constitution has been reiterated in subsection (2) of Section 36 of the Act for ground (a) thereof provides that the Returning Officer shall reject a nomination paper on the ground that on the date fixed for the scrutiny of nominations the candidate was, inter alia, not qualified to be chosen to fill the seat in the Legislative Assembly under Article 173 of the Constitution. The requirement for the making and subscribing the oath or affirmation was therefore clearly mandatory.

12. The appellant tried to establish the plea that he reached the office of the Returning Officer at 3.45 p.m. on May 18, 1977, and took oath in the presence of the Returning Officer who, however, failed to make the necessary endorsement to that effect. That averment was denied on behalf of the respondent, and we find that the trial Court has adequately dealt with the evidence on the record in that respect. It will be sufficient for us to mention that the Election Commission took care to point out the importance of the requirement for the making and subscribing the oath or affirmation in their "Handbook for Returning Officers", and directed that the "authorised person" before whom that was done would "forthwith give a certificate to the candidate" that he had made and subscribed the oath before him on the date and hour mentioned in the certificate. It has been emphasised that the certificate would be given to the candidate without his applying for it, for that would avoid all

controversy later on as to whether he had taken the oath or not. Annexure VI provides for the issue of that certificate in the portion which appears just below the perforated portion of the form of oath or affirmation prescribed by the Constitution. It may be pointed out in this connection that the appellant admitted in his statement that he was given a slip by his proposer Jit Ram (PW 7), in which it was mentioned that he should take oath or make the affirmation before the Returning Officer on May 19, 1977. It is therefore quite clear that the oath or affirmation had not been made or subscribed at the time of the presentation of the nomination papers, and as the appellant was not able to produce the certificate of his making or subscribing the oath or affirmation before the Returning Officer thereafter, in the manner alleged by him, there is nothing wrong with the view taken by the trial Court that he did not really do so, and we do not think it necessary to reappraise the evidence in that connection.

13. Issue No. 6 dealt with the question whether the respondent was guilty of the corrupt practice of bribery alleged in paragraph 11 of the petition. The allegations were amended by the appellant, but a part of them were ordered to be deleted and there is no grievance in that respect. The remaining allegation was to the following effect :

11. That after the last Parliament Elections and installation of Janata Party Government at the Centre, it became evident that the State Government would be toppled and the Ministers of the previous Congress Government and specially respondent 1 with a view to bribe the voters of the Constituency, he started giving large sum of discretionary grants in the constituency. To name a few Bara Pind, Littran, Dalla etc. He used his influence in the Department that the funds were released during elections. This was done with the object of influencing the electors of those villages to vote in favour of respondent 1. Respondent 1 went to village Bara Pind on May 25, 1977 at 5.00 p.m. and in the presence of Master Jasmel Singh handed over a cheque No. K-314781 dated April 29, 1977 for a sum of Rs. 20,000 out of the accounts of Punjab State Sports Council to the lady Sarpanch Smt. Banti and Biant Kaur and gave a lecture requesting the co-villagers to vote for him, since he had given the money. On May 27, 1977 respondent 1 went to village Littran at 4 p.m. and gave a cheque of Rs. 5,000 in the presence of about 50 villagers including Chanan Singh Mistri to S. Balwant Singh Bali a cheque No. K-314782 and called upon those present to vote for him. The cheque was issued out of the funds of Punjab State Sports Council.

It is hardly necessary to say that the allegations were traversed by the respondent and the trial Court found that they had not been established. The corrupt practice which was thus alleged against the respondent was one under Section 123(1)(A)(b), according to which any gift, offer or promise by a candidate or his agent or by any other person with the consent of a candidate or his election agent of any gratification, to any person whomsoever with the object, directly or indirectly of inducing an elector to vote or refrain from voting at an election is a corrupt practice. In view of the allegations mentioned above, it appears that it was not the allegation of the appellant that the gift, offer or promise was made as a reward to an elector for having voted or refrained from voting within the meaning of sub-clause (ii), and it could only be said to fall under sub-clause (b) of sub-section 1(A) as the allegation was that the bribery was meant to induce the electors to vote for the respondent. It is nonetheless an essential ingredient of the definition of the corrupt practice of 'bribery' that the gift, offer or promise should be by the candidate or his agent or by any other person with the consent of the candidate or his election agent. Part VI of the Act deals with disputes regarding elections and Part VII deals with corrupt practices and electoral offences. Section 79 of the Act provides that both in parts VI and VII, unless the context otherwise requires, the definitions mentioned in it would govern the interpretation of those parts. Clause (b) of the section defines the expression 'candidate' as follows :

'candidate' means a person who has been or claims to have been duly nominated as a candidate at any election.

It has therefore to be seen whether the respondent had been duly nominated as a candidate at the election in question, or whether he claimed to be duly nominated at that election at the time when the corrupt practice was alleged to have been committed by him. It is nobody's case that the respondent laid any such claim at any point of time until his nomination paper was scrutinised; and he was held to be a validly nominated candidate only after the nomination was scrutinised by the Returning Officer on May 19, 1977. He could not therefore be said to be a 'candidate' within the meaning of Section 123 read with Section 79 of the Act until that date. The allegation in paragraph 11 of the election petition was to the effect that the cheque of Rs. 20,000 was delivered at village Bara Pind on May 25, 1977 and the votes were solicited on that date. As regards village Littran, the allegation was that a cheque of Rs. 5000 was delivered on May 27, 1977 and votes were solicited. It is not disputed however that the precise evidence against the respondent was that he made an order for the delivery of Rs. 20,000 on April 17, 1977 in respect of village Bara Pind and on April 29, 1977 in respect of village Littran, in his capacity as the Minister for Revenue. Both those orders were therefore made before the respondent was a candidate at the election in question and it is not disputed before us that he ceased to be a minister on April 30, 1977, when Punjab was brought under the President's rule. So even if it were assumed that the respondent sanctioned the two payments for the purpose of gaining popularity in Bara Pind and Littran villages, with an eye to his ultimate candidature from Nakodar Assembly constituency, it cannot be said that his action amounted to a gift, offer or promise by him as a "candidate" at the election in question so as to amount to the corrupt practice of bribery under clause (1) of Section 123 of the Act. As regards the alleged distribution of cheques on May 25 & May 27, 1977, it will be enough to say that even if it were presumed that the respondent was allowed to do so after he ceased to be a minister, the mere delivery of cheques could not possibly amount to bribery when, as has been stated, there was no element of bargain in regard to it.

14. It may be mentioned that the trial Court rightly took the view that it was necessary for the purpose of proving the corrupt practice of bribery to establish that there was an element of "bargaining" in what the respondent was alleged to have done for Bara Pind and Littran. Reference in this connection may be made to the decision of this Court in *Ghasi Ram v. Dal Singh* ((1968) 3 SCR 102 : AIR 1968 SC 1191 : 36 ELR 60) where it was held with reference to the decision in *Amirchand v. Surendra Lal Jha* (10 ELR 57) that if a minister redresses the grievances of a class of the public or people of a locality or renders them any help, on the eve of an election, it is not a corrupt practice unless he obtains promises from the voters in return, as a condition for his help. It was also held that the "evidence must show clearly that the promise or gift directly or indirectly was made to an elector to vote or refrain from voting at an election", and that "if there was good evidence that the minister bargained directly or indirectly for votes, the result might have been different". The decision in *Ghasi Ram* case ((1968) 3 SCR 102 : AIR 1968 SC 1191 : 36 ELR 60) was followed in *Om Prabha Jain v. Abnash Chand* ((1968) 3 SCR 111 : AIR 1968 SC 1083 : 36 ELR 101), *Bhanu Kumar Shastri v. Mohan Lal Sukhadia* ((1971) 3 SCR 522 : (1971) 1 SCC 370 : AIR 1971 SC 2025) and *Chaitanya Kumar Adatiya v. Smt. Sushila Dixit* ((1976) 3 SCC 97). It was therefore necessary for the appellant to plead and prove that there was bargaining between the respondent and the voters and he did what he is alleged to have done in Bara Pind and Littran for that reason but, as the trial Court has pointed out, that was no such allegation in the election petition. So when the element of bargain was completely absent from the allegation against the respondent, the trial Court was justified in holding that the alleged corrupt practice had not been established. The trial Court has considered the evidence on the record in this respect and its finding

on issue No. 6 is quite correct and nothing worthwhile has been urged before us to require its reconsideration.

15. As there is no merit in this appeal it is dismissed with costs.

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