

Aad Lal

Vs

Kanshi Ram

Civil Appeal No. 1064 of 1978

(P. N. Shinghal E. S. Venkatramiah JJ)

20.12.1979

JUDGMENT

Shinghal, J. -

1. Aad Lal, who contested the election to the Punjab Legislative Assembly from the Fazilka constituency in June, 1977, filed a petition to challenge the election of Kanshi Ram, hereinafter referred to as the respondent. He has filed the present appeal against the judgment of the High Court of Punjab and Haryana dated February 20, 1978, as his petition has been dismissed with costs. While the appellant was a candidate of the Janata Party and secured 19,929 votes, the respondent was a candidate of the Congress Party and secured 23,409 votes. There were other contestants at the election, but they fared badly and it is not necessary to refer to them. The appellant challenged the election of the respondent on the ground that he was not qualified to contest the election under Section 100(1)(a) of the Representation of the People Act, 1951, hereinafter referred to as the Act, as he did not make and subscribe the oath prescribed by clause (a) of Article 173 of the Constitution. He also pleaded that the respondent committed corrupt practices under sub-sections (5), (2) and (4) of Section 123 of the Act. We shall refer to the allegations when we deal with the issues which were framed by the trial Court. It will be sufficient to say here that the respondent traversed all the allegations against him.

2. Issue No. 1 raised the question whether the respondent made and subscribed a valid oath at the time of filing his nomination papers. The precise allegation was that he did not make and subscribe the oath "according to the form set out in Schedule Third of Constitution as required under clause (a) of Article 173 of the Constitution of India". It was further alleged that although he was "required to make an oath either in the name of God or on solemn affirmation and not in both ways", he did not do so and was therefore not qualified to contest the election.

3. It is not in controversy that the oath of the respondent is recorded in Ex. PW 1/1 and that, so far as its contents are concerned, it is according to the form set out for the purpose in the Third Schedule to the Constitution. The allegation in the election petition that the form of the oath was defective, is therefore quite untenable and has not been raised before us. It is true that Ex. PW 1/1 shows that the words "swear in the name of God" and "solemnly affirm", were both allowed to stand, and the one or the other alternative was not struck off. It is however quite clear from the endorsement on Ex. PW 1/1, of the authorised officer, who was himself the Returning Officer, that the respondent made and subscribed the oath in his presence and "in the name of God", at 1.27 p.m. on May 18, 1977. This has been proved by the statement of Returning Officer Darshan Singh Multani PW 2. The Election Commission of India had emphasised the importance of making and subscribing the oath, and in its "Handbook for Returning Officers" it had stated in paragraph 8 of

Chapter II that the authorised person should forthwith give a certificate to the candidate that he had made and subscribed the oath before him. It emphasised that the certificate should be granted without his applying for it so that all further controversy in the matter may be avoided. That certificate is on the record as Ex. PW 1/1A, and the Returning Officer has proved that it was given by him to the respondent. He has further stated that he had scored off the Gurmukhi equivalent of the words "solemn affirmation" from the certificate (Ex. PW 1/1A immediately after the oath was administered to the respondent but that portion was not scored off from the oath form Ex. PW 1/1 because of rush of work. The statement of the Returning Officer and certificate Ex. PW 1/1A clearly disprove the contention of the appellant of the appellant to the contrary, and the trial Court was quite justified in placing reliance on them.

4. It may mentioned that the appellant tried to raise a new plea in the trial Court that the respondent merely made the oath but did not subscribe it before the Returning Officer. It was, however, rightly rejected by that court because there was no basis for any such allegation in the election petition. The finding of the trial Court on issue No. 1 is therefore correct and does not call for interference.

5. Issue No. 2 related to the allegation that the respondent himself hired or procured vehicles for the free conveyance of voters, that they were used with his consent for the carriage of voters free of charge and that he thereby committed the corrupt practice falling within the mischief of sub-section (5) of Section 123 of the Act. The allegation relates to conveyance of voters in tractors Nos. PUW-550 and PUW-668.

6. Tractor No. PUW-550 belonged to Jas Ram PW 4. The trial Court has examined his evidence and has rightly taken the view that he had reason to be unfriendly to the respondent. It has commented adversely on the demeanour of the witness. We are satisfied that he could not be said to be a reliable witness, and it is not easily believable that the respondent should have engaged Jas Ram's tractor from a distance of 12 or 13 miles when tractors were available in village Rampura. Ajaib Singh PW 5 has also been examined by the appellant in this connection, and satisfactory reasons have been given by the trial Court for taking the view that he is also an unreliable witness. The appellant examined Modan Singh PW 6 and Lal Chand PW 7 to prove the use of the tractor for carrying the voters of village Rampura to the polling station. It has been established on the record that Modan Singh is a partisan witness as he was the polling agent of an Akali candidate in the election which was held in March, 1977, and he was the polling agent of appellant Aad Lal at the election in question. The trial Court has made a mention of the contradictions in his testimony and we have no doubt that reliance could not be placed upon it. Lal Chand PW 7 has been held by the trial Court to be equally untrustworthy for he belonged to the opposite group and tried to conceal his interest in the appellant.

7. Tractor No. PUW-668 belonged to Jaimal Ram PW 8. He claimed to be an ardent supporter of Congress and stated that he had put up the Congress flag on the trolley of his tractor on the date of poll. He had, however, no hesitation in appearing as a witness against that party's successful candidate, namely, the respondent. He is in fact a relation of Jas Ram PW 4 who claimed to have supplied tractor No. PUW-550 to the respondent, and it is difficult to believe his testimony. It is not necessary to consider the statement of Krishan Ram PW 9 separately, for he is the son of Jaimal Ram PW 8. Lakhe Ram PW 10 is a chance witness, and his statement does not appear to be reliable. Hari Chand PW 11 also belongs to the group which saw unfriendly to the respondent, and the trial Court was right in rejecting his evidence also.

8. It is true that constable Dayal Chand PW 12 presented challans in respect of the use of tractors

Nos. PUW-550 and PUW-668 for carrying passengers, but the trial Court cannot be blamed if, after considering all the evidence which was led in support of the allegation, it reached the conclusion that the story that the respondent used the tractors for the conveyance of the voters on the date of the poll was "woven around" that fact. At any rate, it cannot be said that the appellant has succeeded in proving the allegation which was the subject-matter of trial, and we see no reason to differ from the trial Court on that finding of fact.

9. Issue No. 3 was based on the averments in paragraph 11 of the election petition and dealt with the question whether the respondent committed a corrupt practice under sub-section (2) of Section 123 of the Act as he got handbills (or posters) Exs. PW 14/3 and PW 14/4 printed and distributed containing a false statement regarding the result of "some alleged election to Bombay Metropolitan (Municipal Committee) in which it was shown that the Janata Party had been routed by the Congress". It was pleaded that the subject-matter of the posters was designed to exercise undue influence on the minds of the voters so that "the free exercise of their votes is effectively interfered with". Particulars of the poster and its distribution have been given in the election petition. The trial Court has considered the evidence regarding the alleged printing of the posters by or at the instance of the respondent, and has given satisfactory reasons for holding that this was not so. We find that the statements of Prem Kumar PW 14, Ram Sarup PW 16, Raja Ram PW 15, Mohan Lal PW 18, Beg Chand, PW 19, Satnam Rai PW 20, Subhash Chander PW 21, Kulwant Rai PW 22 Dal Chand PW 23, Nand Lal PW 24, Om Prakash PW 25 and other witnesses have been considered by the trial Court in detail, and satisfactory reasons have been given for taking the view that the alleged printing of the poster and its distribution by or on behalf of the respondent has not been established. We agree with that finding and no useful purpose will be served by our going over evidence once again.

10. It may be mentioned that insofar as the allegation regarding the falsity of the information contained in poster Ex. PW 14/3 is concerned, the trial Court has taken the view that even that allegation has not been established by the appellant.

11. It has to be remembered that it is an essential ingredient of the corrupt practice of "undue influence" under sub-section (2) of Section 123 of the Act, that there should be any "direct or indirect interference or attempt to interfere" on the part of the candidate or his agent, or of any other person with the consent of the candidate or his agent, "with the free exercise of any electoral right". There are two provisos to the sub-section, but they are obviously not applicable to the controversy before us. It was therefore necessary, for the purpose of establishing the corrupt practice of "undue influence", to prove that there was any direct or indirect interference or attempt to interfere with the exercise of any electoral right. There is, however, no such allegation in the election petition in paragraph 11 which was the subject-matter of issue No. 3 in the trial Court. A mere allegation that false figures were supplied or distributed in the form of a handbill (or poster) even if true, cannot be said to fall within the mischief of sub-section (2) of Section 123, for that would not, by itself, amount to interference or attempt at interference with the free exercise of any electoral right. It cannot therefore be said that the appellant has succeeded in alleging or proving the commission of the corrupt practice which was the subject-matter of issue No. 3.

12. The trial Court has considered issues Nos. 4, 5 and 6 together although issue No. 4 related to the alleged corrupt practice of undue influence under sub-section (2) of Section 123 because of the alleged misrepresentation of the "true facts" relating to an incident of firing between the two groups etc.; issue No. 5 related to the printing and distribution of a poster; and issue No. 6 related to the commission of a corrupt practice under sub-section (4) of Section 123 of the Act.

13. The photograph in question which is said to relate to the incident of firing is Ex. PW 18/1. The allegation of the appellant was that there was firing in village Ghari, a few days before the election, and the respondent tried to make out through photograph Ex. PW 18/1 and poster Ex. PW 18/2 that Kambohs and Rai Sikhs were fired upon by the supporters of the appellant, at his instance, and that the appellant was a trafficker in women, and he was anti-peasant in his outlook and used to get the peasants evicted.

14. As the trial Court has pointed out, no evidence was led to prove that the photograph was prepared at the instance of the respondent. An attempt was made to prove that it was shown at Bhatinda by Madan Lal PW 30, but that was an afterthought as no such allegation was made in the election petition. It is also a matter of much significance that although the appellant claimed that all the 10 persons in the photograph were Rai Sikhs or Kambohs, one of them was found to be Mukhtiar Singh who did not belong to any of those communities. Moreover the group photograph of the 10 injured persons could not convey to a stranger that the injured persons belonged to the Rai Sikh or Kamboh communities. The trial Court has examined the evidence which was led in that connection, and is right in taking the view that the photograph showing the exhibition of the impugned photograph by Madan Lal PW 30 was not natural and had been stage-managed. The preparation and exhibition of the photograph at the instance of the respondent has not been proved by the evidence on the record. Moreover any such effort could not be said to amount to the corrupt practice of undue influence as it could not be said to be a direct or indirect interference or attempt to interfere with the free exercise of any electoral right.

15. It is not disputed that poster Ex. PW 18/2 contained a statement of fact in relation to the personal character or conduct of the appellant which fell within the mischief of sub-section (4) of Section 123 of the Act. The allegation in the election petition was that it was issued by one "R. L. Angi" and was printed at Kalpana Printing Press Fazilka. The appellant however tried to prove that the poster was issued by R. L. Aneja PW 39 and that it was he who was the author of its manuscript Ex. PW 34/1. The switch over from the authorship of R. L. Angi to R. L. Aneja was not satisfactorily explained, and goes to disprove the allegation in the election petition. Raj Kumar PW 34 has been examined to prove the printing of the poster in his Kalpana Printing Press, and his conduct has been rightly criticised by the trial Court. He did not even take the precaution of having the manuscript signed by its author, and we have no doubt that he is not a reliable witness. The statement of Mohan Lal PW 35 (sic) who claimed to have attested the signature of the author of the handbill on the declaration form, is also not a reliable witness. The trial Court has examined the statement of Ram Sarup PW 16, and has rightly taken the view that there was no satisfactory evidence of the receipt of the poster in the office of the Deputy Commissioner. No useful purpose will be served by repeating all that the trial Court has said in this connection. The poster is said to have been distributed by Om Prakash PW 25, and the appellant has examined Tirlok Singh PW 26, Satish Kumar PW 27, Gurcharan Singh PW 32, Harbhajan Singh PW 36, Mohinder Prakash PW 37, Thakar Singh PW 38, Pannu Ram PW 40, Harbans Lal PW 41, Sita Ram PW 42 and Mam Raj PW 43 and has recorded his own statement. The statements of all these witnesses have been examined by the trial Court and we are in agreement with it that they cannot be said to prove the commission of the alleged corrupt practice. In fact when the preparation of the poster under the signature of R. L. Angi itself remained unproved, we have no hesitation in taking the view that the finding of fact of the trial Court in this respect is correct.

16. There is thus no reason for us to interfere with the impugned judgment of the trial Court. The appeal fails and is dismissed with costs.

</html