Chhedi Ram

Vs

Jhilmit Ram and Others

Civil Appeal No. 688 of 1981

(E. S. Vankataramiah, O. Chinnappa Reddy, Syed M. Fazal Ali JJ)

05.12.1983

JUDGMENT

CHINNAPPA REDDY, J. -

1. At the General Election to the Uttar Pradesh Vidhan Sabha held in 1979, Jhilmit Ram was elected from the Jakhsuie Constituency reserved for the Scheduled Castes. He secured 17,822 votes. Chhedi Ram, the runner-up secured 17,449 votes. Thus the difference between the successful candidate and the candidate who secured the next highest number of votes was 373 votes. There were four other candidates of whom Moti Ram secured 6710 votes. Chhedi Ram challenged the election of Jhilmit Ram on the ground that Moti Ram was Kahar by caste, not entitled to seek election from the reserved constituency, that his nomination had been improperly accepted and that the result of the election was materially affected. The Election Tribunal found that Moti Ram was a Kahar by caste and not a member of the Scheduled Castes. It rejected the evidence offered on behalf of Moti Ram that he was a Gond and not a Kahar and recorded a finding that deliberate attempts had been made to manufacture evidence to show that Moti Ram was a Gond. The Tribunal also noticed that Moti Ram himself was not prepared to enter the witness box to give evidence. Having arrived at the finding that Moti Ram's nomination had been improperly accepted, however, the Tribunal was not prepared to set aside the election of Jhilmit Ram as it took the view that the result of the election had not been shown to have been materially affected as a result of the improper acceptance of the nomination. The election petition was, therefore, dismissed. Chhedi Ram has preferred this appeal.

2. We are afraid the appeal has to be allowed. Under Section 100(1)(d) of the Representation of the People Act, 1951, the election of a returned candidate shall be declared to be void if the High Court is of opinion that the result of the election, in so far as it concerns the returned candidate, has been materially affected by the improper acceptance of any nomination. True, the burden of establishing that the result of the election has been materially affected as a result of the improper acceptance of a nomination is on the person impeaching the election. The burden is readily discharged if the nomination which has been improperly accepted was that of the successful candidate himself. On the other hand, the burden is wholly incapable of being discharged if the candidate whose nomination was improperly accepted obtained a less number of votes than the difference between the number of votes secured by the successful candidate and the number of votes secured by the candidate who got the next highest number of votes. In both these situations, the answers are obvious. The complication arises only in cases where the candidate, whose nomination was improperly accepted, has secured a larger number of votes than the difference between the number of votes secured by the successful candidate and the number of votes got by the candidate securing the next highest number of votes. The complication is because of the possibility that a sufficient number of votes actually cast for the candidate whose nomination was improperly accepted might

have been cast for the candidate who secured the highest number of votes next to the successful candidate, so as to upset the result of the election, but whether a sufficient number of voters would have so done, would ordinarily remain a speculative possibility only. In this situation, the answer to the question whether the result of the election could be said to have been materially affected must depend on the facts, circumstances and reasonable probabilities of the case, particularly on the difference between the number of votes secured by the successful candidate and the candidate securing the next highest number of votes, as compared with the number of votes secured by the candidate whose nomination was improperly accepted and the proportion which the number of wasted votes (the votes secured by the candidate whose nomination was improperly accepted) bears to the number of votes secured by the successful candidate. If the number of votes secured by the candidate whose nomination was rejected is not disproportionately large as compared with the difference between the number of votes secured by the successful candidate and the candidate securing the next highest number of votes, it would be next to impossible to conclude that the result of the election has been materially affected. But, on the other hand, if the number of votes secured by the candidate whose nomination was improperly accepted is disproportionately large as compared with the difference between the votes secured by the successful candidate and the candidate securing the next highest number of votes and if the votes secured by the candidate whose nomination was improperly accepted bears a fairly high proportion to the votes secured by the successful candidate, the reasonable probability is that the result of the election has been materially affected and one may venture to hold the fact as proved. Under the Indian Evidence Act, a fact is said to be proved when after considering the matters before it, the court either believes it to exist or considers its existence so probable that a prudent man ought, under the circumstances of the particular case, to act upon the supposition that it exists. If having regard to the facts and circumstances of a case, the reasonable probability is all one way, a court must not lay down an impossible standard of proof and hold a fact as not proved. In the present case, the candidate whose nomination was improperly accepted had obtained 6710 votes, that is, almost 20 times the difference between the number of votes secured by the successful candidate and the candidate securing the next highest number of votes. Not merely that. The number of votes secured by the candidate whose nomination was improperly accepted bore a fairly high proportion to the number of votes secured by the successful candidate - it was a little over one-third. Surely, in that situation, the result of the election may safely be said to have been affected.

3. The learned counsel for the respondents invited our attention to the decisions of this Court in Vashist Narain Sharma v. Dev Chandra (1955 SCR 509, 516 : AIR 1954 SC 513 : 10 ELR 30), and Samant N. Balakrishna v. George Fernandez ((1969) 3 SCR 603, 644 : (1969) 3 SCC 238 : AIR 1969 SC 1201 : 41 ELR 260). In Vashist Narain case (1955 SCR 509, 516 : AIR 1954 SC 513 : 10 ELR 30), the difference between the number of votes secured by the successful candidate and the number of votes secured by the candidate who got the next largest number of votes was very nearly the same as the number of votes secured by the candidate whose nomination was improperly accepted. Unless it was possible to say that all the wasted votes would have gone to the candidate who secured the highest number of votes next to the successful candidate, it was not possible to hold that the result of the election had been materially affected. It was in those circumstances that Ghulam Hasan, J. observed :

> But we are not prepared to hold that the mere fact that the wasted votes are greater than the margin of votes between the returned candidate and the candidate securing the next highest number of votes must lead to the necessary inference that the result of the election has been materially affected. That is a matter which has to be proved and the onus of proving it lies upon the petitioner. It will not do merely to say that all

> or a majority of the wasted votes might have gone to the next highest candidate. The casting of votes at an election depends upon a variety of factors and it is not possible for any one to predicate how many or which proportion of the votes will go to one or the other of the candidates. While it must be the petitioner in such a case is confronted with a difficult situation, it is not possible to relieve him of the duty imposed upon him by Section 100(1)(c) and hold without evidence that the duty has been discharged. Should the petitioner fail to adduce satisfactory evidence to enable the Court to find in his favour on this point, the inevitable result would be that the Tribunal would not interfere in his favour and would allow the election to stand.

4. We do agree with the observations of Ghulam Hasan, J. in the context of the facts of that case. It does not, however, mean that whatever the number of wasted votes and whatever the margin of difference between the number of votes secured by the successful candidate and the number of votes secured by the next highest candidate, the court would invariably hold that the result of the election had not been materially affected. In an appropriate case having regard to the margin of difference between the votes secured by the successful candidate and the candidate securing the next highest number of votes and the proportion which such margin bears to the wasted votes, it is permissible for the court to hold that the burden of proving that the result of the election has been materially affected has been discharged.

5. In Samant Balakrishna case ((1969) 3 SCR 603, 644 : (1969) 3 SCC 238 : AIR 1969 SC 1201 : 41 ELR 260), the Court observed :

> In our opinion the matter cannot be considered on possibility. Vashist Narain case (1955 SCR 509, 516 : AIR 1954 SC 513 : 10 ELR 30) insists on proof. If the margin of votes were small something might be made of the points mentioned by Mr. Jethamalani. But the margin is large and the number of votes earned by the remaining candidates also sufficiently huge. There is no room, therefore, for a reasonable judicial guess. The law requires proof. How far that proof should go or what it should contain is not provided by the Legislature. In Vashist case (1955 SCR 509, 516 : AIR 1954 SC 513 : 10 ELR 30) and in Inayatullah v. Divanchand Mahajan (15 ELR 210) the provision was held to prescribe an impossible burden. The law has however remained as before. We are bound by the rulings of this Court and must say that the burden has not been successfully discharged .....

We do not think that this case lays down any different principle than what we have already said. On the other hand, the sentence italicized by us indicates that where the difference between the number of votes secured by the successful candidate and the number of votes secured by the highest candidate is marginal, it may be possible in the circumstances of a case to hold that the burden has been discharged. We have already indicated our view that in this case, the burden has certainly been discharged.

6. An attempt was made by the learned counsel for the respondents to dislodge the finding of the Election Tribunal that Moti Ram was Kahar and not a Gond. But having gone through the relevant evidence, we affirm the finding of the Election Tribunal and agree with the Election Tribunal that a crude attempt was made to fabricate evidence that Moti Ram was a member of the Scheduled Castes. In the circumstances, the appeal has to be allowed. We do so but without costs.

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