

Avtar Singh Brar

Vs

Tej Singh and Others

Civil Appeal (NCE) No. 735 of 1982

(Syed M. Fazal Ali, A. Varadarajan, Ranganath Misra JJ)

16.01.1984

JUDGMENT

FAZAL ALI, J.-

1. This election appeal arises out of an election to the Baghapurana Constituency (district Faridkot) to the Punjab Legislative Assembly. The polling took place on May 31, 1980 and the counting was done on June 1, 1980. Tej Singh, respondent, secured 25,694 votes whereas Avtar Singh (Appellant) secured 25,571 votes. There were three other candidates also in the field, viz., (1) Sathi Ruplal, (2) Bhagat Puran Singh, and (3) Jagdish Chander. Ruplal secured 1347 votes while Bhagat Puran Singh and Jagdish Chander secured 140 and 2856 votes respectively it appears that the margin between the votes secured by Tej Singh (respondent) and Avtar Singh (appellant) was only 123.

2. Avtar Singh filed an election petition in the Punjab and Haryana High Court against Tej Singh alleging that he was guilty of committing corrupt practices. Detailed in the petition and in the statement of facts. Ruplal supported the appellant but Bhagat Puran Singh and Jagdish Chander did not put in any appearance despite service and therefore, the proceedings were taken ex parte against them. Tej Singh denied having indulged in any corrupt practice as alleged by Avtar Singh.

3. It is not necessary for us to go into further details because, in our opinion, the appeal must succeed on a short point. The main corrupt practice said to have been indulged in by Tej Singh was that he had got circulated pamphlets and posters among the voters of the constituency wherein he had mentioned that Ruplal had withdrawn his candidature and any vote given to him (Tej Singh) would be deemed to be a vote for Ruplal, and the said posters were printed not by Ruplal but at the instance of Tej Singh.

4. On a perusal of the evidence - both oral and documentary - adduced by the parties, we are clearly of the opinion that the allegations of corrupt practices indulged in by Tej Singh have been clearly proved. The posters said to have been printed and circulated are Annexures P-1 and P-2 which appear at page 42 of the second paperbook and it may be necessary to extract certain portions thereof -

Keeping in view the present conditions in the country it is imperative to defeat the dictatorial Congress in these elections.

Therefore, I fervently appeal to all the voters of Baghapurana Constituency to vote and elect Shri Tej Singh, the joint front candidate of the Akali Dal, because Shri. Tej Singh is the only candidate

who can defeat the Congress In the end I submit that every vote cast in favour of S. Tej Singh will be deemed to have been cast in my favour.

5. According to PW 4 (Roshanlal) in whose press the posters were printed, the order for the printing was placed by Darshan Singh and Mukhtiar Singh. The witness goes on to state that a few days before Tej Singh came to his printing press and informed him that he (Tej Singh) would be sending some work for printing. Soon thereafter the witness was approached by Darshan Singh and Mukhtiar Singh. Roshan Lal also admitted that Tej Singh was known to him. The witness further proved Exs. P-5 and P-6 (vouchers) which were issued by his press and signed by him, and he stated that the payment was made to him by Darshan Singh, and Mukhtiar Singh.

6. The effect of the posters was to mislead the voters so as to make them believe that one of the candidates, viz., Ruplal, had withdrawn and any vote given to Tej Singh would be considered as a vote given to Ruplal. In other words, the effect of the posters was that all the voters who would have voted for Ruplal would now cast their votes in favour of Tej Singh. As the margin of votes between the defeated and the returned candidates was very small, viz., 123 votes, if such a misrepresentation was not made, in all probability the votes would have gone to the appellant (Avtar Singh) and, therefore, the result of the election would have been materially altered. We find a good deal of substance in the argument of the appellant. Tej Singh (RW 28) has not disputed that the payment of the vouchers (Exs. P- 5 and P-6) was made by him and the vouchers were appended by him along with the return of expenses incurred during his election campaign, which was verified by him to be a true and correct statement.

7. In these circumstances, therefore, the irresistible inference and inescapable conclusion that can be arrived at is that Tej Singh had actually paid for the posters which were printed at his instance and Ruplal was not connected with the printing of the posters. Tej Singh further admitted that Bhum Raj was in charge of his election office at Moga and that Exs. P-5 and P-6 were taken by him from Bhum Raj. He further admits that whatever expenses were incurred by Bhum Raj were incurred on his behalf. On other words, Tej Singh falsely represented to the voters that the posters were circulated by Ruplal whereas the same was done by or with the consent of Tej Singh. Therefore, it is clear that Exs. P-1 and P-2 which contained the appeal purporting to be of Ruplal were in fact printed at the instance of Tej Singh and Ruplal had no connection with the same.

8. In these circumstances, we are satisfied that the appellant has proved beyond reasonable doubt that Tej Singh had indulged in corrupt practices particularly when the printing of the posters by Tej Singh has been clearly admitted by him, as indicated above. It is also clear to us that in view of the very narrow margin of votes (123) between Tej Singh and Avtar Singh, a strong presumption and possibility that the votes polled in favour of Ruplal would have gone to Avtar Singh cannot be ruled out and that would have doubtless materially altered the result of the election. Leaving aside other grounds taken by the appellant which were in fact not pressed before us, the appellant is entitled to succeed on the ground of corrupt practices (referred to above) as contemplated by Section 123(2) [Sic 123 (4)] of the Act having been adopted by the first respondent (Tej Singh) which have been fully proved.

9. The result is that the appeal is allowed, the judgment of the High Court is quashed and the election of the First respondent (Tej Singh) is set aside. In the Circumstances, we make no order as to costs.

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