

N. Horangse

Vs

M. Tsubongse

Civil Appeal No. 1236 (NCE) of 1984

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

13.03.1985

JUDGMENT

VARADARAJAN, J. -

1. This appeal by the respondent in Election Petition 3 of 1983 on the file of Gauhati High Court is directed against the judgment of a learned Single Judge, allowing the election petition and setting aside the election of the appellant Horangse from the Longkhim-Chre constituency of the Nagaland Legislative Assembly on the ground of corrupt practice, namely, presentation of four red waist-coats to three Gaon Burahs and one Barik of Lirise village on October 27, 1982 to induce them to cast their votes in his favour.
2. The respondent/election petitioner, M. Tsubongse who contested as a Congress (I) candidate lost to the appellant who contested as a Naga National Democratic Party candidate (for short 'NNDP') by a margin of 133 votes in the election held on November 10, 1982. He filed his election petition seeking the appellant's election to be set aside on the ground that he was guilty of four instances of corrupt practice falling under Section 123(1) of the Representation of People Act, 1951 (for short 'the Act') and on three other grounds, namely : (1) display of a banner with the caption "Do not sell Nagaland to India", a corrupt practice within the meaning of Section 123(3-A) of the Act; (2) exceeding the limit of expenditure amounting to corrupt practice within the meaning of Section 123 (6) of the Act and (3) use of Government vehicles for the purpose of the election. The learned Single Judge, who tried the election petition, found only one of the aforesaid grounds of corrupt practice, namely, presentation of four red waistcoats proved and the other grounds not proved, and he allowed the election petition and set aside the appellant's election on that ground. It is, therefore, necessary to set out the case of the parties briefly in regard to this single ground.
3. The result of the election held on November 10, 1982 was announced on the day of counting November 12, 1982 by the Returning Officer, Tuesung. The respondent had secured 3082 valid votes while the appellant, who was the Deputy Speaker of the last Legislative Assembly of Nagaland had secured 3215 valid votes and as declared elected by a majority of 133 votes. The respondent alleged in the election petition that the appellant gave four red waistcoats to the voters Lisechem, PW 11, Lithrongse, PW 12, Murimong, PW 13 and Lithsaba at 4 p.m. on October 27, 1982 for inducing them to cast their votes in his favour in the presence of B. Tsarise, PW 14 and Tselongse, PW 15 of Lirise village who witnessed the offer and reported the matter later to the respondent.
4. The appellant denied that the waistcoats were given either by himself or in order to induce the recipients to cast their votes in his favour. His case was that he visited Lirise village some time prior

to October 1982 and was received by the villagers who considered him as one of their leaders. In view of the custom of Nagas to receive guests or others and exchange gifts, he sent five waistcoats to be given to four Gaon Burahs and the eldest Barik of the village long before the election process started. The waistcoats were not given to procure votes or to induce the recipients to cast their votes in his favour. Thus he denied that he committed any corrupt practice and contended that the election petition is not bona fide and has been filed only to harass him.

5. During the trial the appellant's case was that he sent the five waistcoats as gifts through Tsarise, PW 14 in September 1982 and that he did not personally distribute them after the election process had started in order to induce the recipients to cast their votes in his favour. The dispute was thus confined to the date of distribution of the waistcoats, namely, whether they were given in September 1982 or on October 27, 1982, as to whether the appellant gave them personally or sent them through PW 14 and as to whether they were given to induce the recipients to cast their votes in favour of the appellant or only to keep up the appellant's promise made in August 1982 to send some gifts in return for the gift made to him earlier as per custom.

6. The respondent examined Lisechem, PW 11, Lithrongse, PW 12, Murimong, PW 13, B. Tsarise, PW 14 and Tselongse, PW 15 for proving this item of corrupt practice. On the side of the appellant there is the evidence of the appellant RW 1, Chupongse, RW 3, Krishna Kumar, RW 4 and Yanstasi, RW 5 about this charge.

7. On a consideration of the oral and documentary evidence the learned Judge of the High Court found that his item of charge of corrupt practice is proved beyond reasonable doubt and he accordingly allowed the election petition and set aside the appellant's election as stated above. However, the learned Judge did not rule out that the appellant had distributed red waistcoats in September 1982 as observed by him in paragraph 15 of his judgment which will be extracted in due course.

8. The appellant, RW 1 has denied in his evidence that he went to Lirise village on October 27, 1982 or presented the red waistcoats personally. He has stated that he visited that village two or three days after August 15, 1982 at the request of the head Gaon Burahs, RW 3, and was welcomed by the Gaon Burahs and others where PW 14, then a leading worker and member of the NNDP was also present and was taken to the house of RW 3 and presented with a shawl as per the custom of the Nagas and that as he had gone there urgently and had not taken anything to make a gift by way of return as per the custom, he promised to send some gifts later and he thereafter ordered under Ex. C dated September 2, 1982 for the making of five red waistcoats through Krishna Kumar, RW 4 and got them from him on September 10, 1982 and sent them in the same month through PW 14 for being distributed to the Gaon Burahs of Lirise village. He has stated that he filed the nomination paper on October 13, 1982 and that PW 14 who was Area Council Member joined the Congress (I) party in the midst of the election and supported the Congress (I) candidate. Krishna Kumar, RW 4, the proprietor of a tailoring firm at Kohima has corroborated the evidence of RW 1 about placing of the order Ex. C on September 2, 1982 and taking delivery of the waistcoats on September 10, 1982. He has stated that Ex. C written by the appellant is signed by him and that as the appellant was a known person he delivered the waistcoats though Ex. C was not surrendered to him on September 10, 1982. The Head Gaon Burah, RW 3 has corroborated the evidence of RW 1 that he met the appellant at Longkhim in August 1982 and requested him to visit Lirise village and that he accordingly came to Lirise village and was received in the Mong Mong month and presented with a cloth, and that the appellant regretted that he had not brought anything to be presented by way of return and promised to send waistcoats later. He has further stated that PW 14 subsequently told him

that the waistcoats had arrived and he thereupon asked him to distribute them and give one of them to him also and they were given to him and other Gaon Burahs. Yanstasi, RW 5, has corroborated the evidence of RW 3 about the appellant's visit, saying that two months before the election held in November 1982 he had gone to Lirise to meet the appellant, and that the appellant was received by the villagers and taken to the Head Gaon Burah's House and presented with a sangtam cloth and that the appellant regretted that he had not brought any present to be given by him and assured that he would send waistcoats later. RW 5 was head Gaon Burah and he became Special D. B. at Seotsing from September 15, 1983. He has denied that he had worked for the appellant in the elections held in 1977 and 1982, in both of which he had been declared duly elected. RW 3 has not been cross-examined seriously about the month of the appellant's visit to Lirise village, namely, Mong Mong month, which according to the evidence of RW 5 is September in which the Mong Mong festival is celebrated by the Nagas. Ex. C was not filed in the court at the earliest stage. RW 1 has stated in his evidence that his wife came across it after he had filed his written statement in the election petition and gave it to him for being produced during the trial. Maybe, no reliance could be placed on Ex. C to find out when the waistcoats were ordered to be made and about when they were actually delivered by RW 4 to the appellant. PW 14 has not been cross-examined regarding the month in which he left the NNDP and joined Congress (I) party, which according to his evidence, was in August 1982. Similarly RW 1 has not been cross-examined about when PW 14 left the NNDP and joined the Congress (I) party, which according to his evidence, was in the midst of the election in which he filed the nomination paper on October 13, 1982. It is not improbable that the appellant had sent the waistcoats through PW 14 who was a prominent member of the NNDP and the Area Council Member at that time for being distributed to the Gaon Burahs by way of return of the present of the shawl made to him during his earlier visit as per the custom amongst Nagas to exchange gifts during the visit of important persons like M. L. As. and others. The appellant was the Deputy Speaker of the Nagaland Legislative Assembly at that time. The said custom amongst the Nagas is spoken to even by respondent PW 1 who has stated in his evidence that normally villagers also would present gifts to visiting M. L. As. and the visiting M. L. As. also would make presents to the villagers as per the custom of the Nagas. We find no satisfactory reason for rejecting the evidence of RWs 1 to 5. As a matter of fact, even the learned counsel for the respondent in this appeal before the trial court does not appear to have seriously challenged the acceptability of the evidence of these witnesses in the course of his arguments before the learned Judge. The learned Judge has stated in his judgment in regard to this matter thus : "It has been contended that even if it is assumed that the respondent (appellant in this appeal) had taken delivery of five red waistcoats on September 10, 1982 as reflected in Ex. C, this would not rule out the distribution in October 1982. It is further submitted by the learned counsel for the petitioner (respondent in this appeal) that even if distribution of some waistcoats had taken place in September 1982 as deposed by RWs 4 and 5, the same is not enough to discard the allegation of distribution of other waistcoats in October 1982. This submission is apparently right inasmuch as because some persons had been given in September 1982 in pursuance of assurance made in August 1982 it would not by itself rule out the giving of such gifts in October, more so when the price of one waistcoat seems to be around Rs. 100.

9. The sum of Rs. 100 per piece mentioned by RW 1 in his evidence is the price of each of the blankets which he had distributed to some persons in the village in 1981 and not of each of the waistcoats given in 1982. It is not the case of any of the parties that waistcoats were presented by or at the instance of the appellant once in September 1982 and again to the same Gaon Burah in October 1982. Nor is it probable that only waistcoats would have been presented on both the occasions to the same individuals. Even if the evidence of RWs 1 to 5 is considered to be unsatisfactory to prove that the red waistcoats were presented only in September 1982 and not in

October 1982, that does not mean that the respondent's case that the red waistcoats were given to PWs 11, 12 and 13 on October 27, 1982 to induce them to cast their votes in favour of the appellant stands proved. The respondent has to prove his case which is disputed by the appellant independently of the fact whether the appellant has proved his defence or not.

10. Now we proceed to consider the evidence of PWs 11 to 15. Lisechem, PW 11, a Gaon Burah of Lirise village mentioned the date of the appellant's visit first as September 27, 1982 and then corrected it as October 27, 1982 and again stated that he does not remember the month or date of receipt of the waistcoat by him from the appellant and he has added that it was after the date of the election. He has stated that the appellant came to his house on October 27, 1982 and gave him a red waistcoat and asked him to cast his vote in his favour and not to inform others about the presentation of the waistcoat and that soon after the appellant left his house. PWs 14 and 15 came to his house and asked him about what had been given to him by the appellant and he thereupon showed the waistcoat to them and told them that it was given to him.

11. Lithrongse, PW 12, another Gaon Burah of Lirise village has stated that the appellant came to his house at 4 p.m. on October 27, 1982 and presented a red waistcoat to him and asked him to cast his vote in his favour and that soon after the appellant left his house. PWs 14 and 15 came there and asked him as to what was given to him and he thereupon told them that the appellant gave him a waistcoat and they asked him to remember it and not to deny it later. He is unable to deny that appellant visited the village in August or September 1982 or to say whether it was in 1981 when admittedly he received a blanket from the appellant on a prior occasion when the appellant was the Deputy Speaker of the Legislative Assembly. It is seen from his evidence that PW 15 belongs to the Congress (I) party and that PW 14 was previously in the NNDP and has subsequently joined the Congress (I) party.

12. Muri Mong, PW 13 of Lirise village has stated in his evidence that the appellant came to his village after 4 p.m. on October 27, 1982 and presented a red waistcoat to him and asked him to cast his vote in his favour and that a minute after the appellant left his house, PWs 14 and 15 came there and asked him if a waistcoat was presented to him by the appellant. He has denied that PW 14 gave the waist coat to him in the first part of September 1982 and that the appellant did not visit his village or present the waistcoat on October 27, 1982. He has stated that he is an old man and that he does not remember months and dates.

13. Tsarise, PW 14 who was admittedly in the NNDP and a supporter of that party previously claims to have joined the Congress (I) party in August 1982. He has stated in his evidence that the appellant came to Lirise village on October 27, 1982 and visited the houses of PW 11, Lithsaba and PWs 12 and 13 in that order at about 4 p.m. and that he and PW 15 went to those houses within a few minutes after the appellant's departure from there and those persons individually told them that the appellant gave them a waistcoat and asked them to cast their votes in his favour. He has admitted that when he visited the house of PWs 11 to 13 and Lithsaba he asked them to remember the date and the time and not to deny it later. He has denied that the appellant sent the red waistcoats through him in the early part of September 1982 for distribution amongst Gaon Burahs of Lirise village.

14. Tselongse, PW 15 does not remember the date of the appellant's visit to Lirise village. He has stated in his evidence that the appellant came to the village in the election period and asked the people to cast their votes in his favour. He claims to have gone to the house of PW 14 and to have seen from there the appellant visiting the houses of PW 11, Lithsaba and PWs 12 and 13 one after the other. He has stated that he and PW 14 went to those houses soon after the appellant left those

places and they individually told them that the appellant gave red waistcoats and asked them to cast their votes in his favour. He has denied that the appellant neither visited Lirise village nor presented waistcoats on October 27, 1982.

15. It is significant to note that though in the election petition it is clearly alleged that the appellant gave red waistcoats to PWs 11 to 13 and Lithsaba at 4 p.m. on October 27, 1982 for inducing them to cast their votes in his favour in the presence of PWs 14 and 15 and they witnessed the offer and reported the matter subsequently to the respondent PWs 14 and 15 do not claim in their evidence personal knowledge about the offer presentation of the waistcoats by the appellant to these four persons and about the inducement of the appellant to cast their votes in his favour. Admittedly, PW 14 had asked PWs 11, 12 and 13 to remember the date and time of the appellant's visit to their houses where he claims to have gone along with PW 15 soon after the departure of the appellant from each of those places. It is clear that these three witnesses, PWs 11 to 13 have mentioned the date and month of the appellant's visit only on the basis of what PW 14 told them to remember. PW 14, who was a staunch worker of the NNDP and had switched over too the Congress (I) party to which PW 15 belongs, some time before the election, and PW 15 are the interested witnesses. PW 15 has stated in his evidence that the appellant appealed to the people of the village to cast their votes in his favour and that he went to the houses of PW 11 to 13 in Lirise village only thereafter. If that is so, it is not likely that the appellant, then the Deputy Speaker would have carried the gunny or hessian bag containing the waistcoats himself without being accompanied even by a single worker or sympathiser of the NNDP when he is stated to have visited those four houses for presenting the waistcoats and inducing the recipients to cast their votes in his favour. The evidence of PWs 11 to 13 that PWs 14 and 15 came to their houses minutes after the appellant left their places and asked them about what had been given to them by the appellant and that when they told them that red waistcoat have been given to them with a request to favour him with their votes, they asked them to remember the date and time and not to deny the matter later - PW 14 has stated so in his evidence - is artificial and unreliable. We are, therefore, not impressed with the evidence of PWs 11 to 15 about the date of the appellant's visit to Lirise village and the presentation of the red waistcoats to PWs 11 to 13 and others. On the evidence of RWs 1 to 5, which we accept, we find that the appellant got the waistcoats distributed through PW 14 who was then a staunch worker of the NNDP in September 1982 long before the election process had started as per the custom of Nagas to make gifts in return for the gifts received by dignitaries. The evidence let in by the respondent to prove this item of alleged corrupt practice on the part of the appellant is wholly insufficient and unacceptable to prove the charge satisfactorily. We are, therefore, unable to hold the judgment of the learned Judge, setting aside the appellant's election on the ground of the alleged corrupt practice. We accordingly allow the appeal with costs in both the courts and set aside the judgment of the learned Judge.

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