

Brij Mohan

Vs

Mange Ram and Others

Civil Appeal No. 2649 (NCE) of 1984

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

13.03.1985

JUDGMENT

A. VARADARAJAN, J. -

1. This appeal by the first respondent in Election Petition No. 8 of 1982 on the file of the Punjab and Haryana High Court is filed against the judgment of the learned Single Judge, allowing the election petition and setting aside the appellant's election to the Haryana Legislative Assembly from the Jind constituency in the election held on May 19, 1962. Out of 26 nomination papers filed 24 were found to be valid and ultimately 14 candidates remained in the field. The real contest was Brij Mohan, who was an independent candidate supported by the Lok Dal and the first respondent Mange Ram who contested Congress (I) candidate. In the counting which took place on May 20, 1982 it was found that the appellant had secured 27045 valid votes while the first respondent had secured 26899 valid votes and the appellant was accordingly declared elected.

2. The first respondent filed the election petition challenging the appellant's election on the following grounds, namely : (1) corrupt practice of bribery as defined in Section 123(1) of the Representation of People Act, 1951; (2) corrupt practice of publication of various statements relating to the personal character of the first respondent which were false; (3) result of the election insofar as it related to the appellant having been materially affected by on masse violation of the statutory provisions and (4) large scale reception of void votes in favour of the appellant but for which the first respondent would have been declared elected. The first respondent prayed in the election petition for (1) the appellant's election being set aside as void on the above grounds; (2) the appellant being declared to have committed corrupt practice and (3) the first respondent being declared to have been duly elected.

3. The learned Single Judge who tried the election petition allowed it with costs on only one ground and set aside the appellant's election as void on that ground, namely, that he committed the corrupt practice of bribery by contributing a sum of Rs. 5000 towards the cost of construction of a temple for the backward classes in Kandela village in order to get the votes of the members of those classes cast in his favour in that election. It is, therefore, necessary to state the case of the parties briefly in regard to only this item of corrupt practice.

4. The first respondent has alleged in the election petition that the appellant visited Kandela village on or about May 16, 1982 accompanied by his father Sita Ram and two others Ram Kishan and Amrit Lal and they contacted Dalip Singh, Sarpanch of the village and one Dewan Singh, Secretary of the backward classes. The appellant appealed to the backward class voters assembled at the house of one Dharam Singh for casting their votes in his favour. The voters present there included Dewan

Singh, Hari Ram, Devi Ram, Fateh Singh and Mauji Ram. The voters told the appellant that they intended to cast their votes in favour of the Congress (I) candidate as they had always been in favour of the Congress (I) party. The appellant, thereafter, had a talk with the Sarpanch Dalip Singh and one Dharam Singh and subsequently stated, for inducing the voters to cast their votes in his favour, that he was prepared to give a donation of Rs. 5100 as he had been told that they needed some money for their mandir. Accordingly, he gave a sum of Rs. 5100 to the Sarpanch Dalip Singh who passed it on to Dharam Singh and Dewan Singh. The votes thereafter assured the appellant that they would vote for him and ensure that every vote belonging to their class will go in his favour.

5. The appellant denied this allegation saying that he never visited Kandela village in the company of Sita Ram, Ram Kishan and Amrit Lal and never gave Rs. 5100 to the Sarpanch Dalip Singh and that the entire allegation in the election petition regarding this item of corrupt practice is false and mischievous.

6. In regard to this item of corrupt practice there is evidence of the election petitioner/first respondent Manage Ram, PW 1, Dewan Singh, PW 16, Mauji Ram PW 90, Fateh Singh, PW 91 and Prahlad, PW 92 on the side of the first respondent and of the appellant, RW 1 on the side of the appellant. The learned Single Judge found that after a Commissioner appointed by the Court contacted PW 16 and obtained a register from him PW 16 was suspended by the District Education Officer, Jind by an order dated November 23, 1982 and transferred to Narnaul situate 200 miles away from his original place which was his home town and he opined that it was done in order to overawe PW 16 so that he may not appear as a witness in this election petition. He further observed that "It was in his (appellant's) interest to see that this witness did not come on record. If illegal pressure was brought to bear on a witness who had come to this Court to depose about this charge, normal inference and presumption would be that the pressure had been brought to bear upon him either by the party who was interested in seeing that damaging evidence was not led against him or by someone else at his instance. I am clearly of the view that respondent 1 had somehow or other secured that order of suspension and transfer of Dewan Singh, PW 16". We are wholly unable to appreciate this reasoning of the learned Judge. We do not see how the appellant was obliged to explain the circumstances under which PW 16 came to be suspended and transferred to Narnaul by the District Educational Officer's order dated November 23, 1982 after the Commissioner appointed by the Court approached him and obtained a register from him or how the adverse inference could be drawn against the appellant by the learned Judge merely because the appellant was unable to explain how PW 16 came to be suspended and transferred by the District Educational Officer's order dated November 23, 1982 after a register had been obtained from him by the Commissioner appointed by the Court and it came to be known that PW 16 may be examined as a witness in this election petition. We think that there is no justification whatsoever to draw any such adverse inference against the appellant.

7. The appellant RW 1 had denied that he had gone to Kandela village on May 16, 1982 either alone or in the company of Sita Ram and others. He had denied that he contacted the Sarpanch Dalip Singh and others and gave Rs. 5100 as alleged in the election petition and that the voters of Kandela village held out any promise for casting their votes in his favour. In the cross-examination no suggestion was made to RW 1 that he gave a sum of Rs. 5100 for the construction of a mandir for the backward class voters of Kandela village on May 16, 1982 or on any other date to induce them to cast their votes in his favour.

8. The first respondent, PW 1 has stated in his evidence that the appellant visited Kandela village on May 16, 1982 accompanied by the Sarpanch Dalip Singh, Hari Ram, Dewan Singh and others, that

all of them and the members of the backward classes assembled in the house of the Backward Classes Samiti Chairman Dharam Singh, that the appellant gave Rs. 5100 to the members of the backward classes for the construction of a Vishwakarma Mandir in the village and the Society passed a receipt for that amount and also made an entry in its own books of accounts kept in the regular course of business and that the members of the backward classes who received the amount promised to cast their votes in favour of the appellant. In his cross-examination he has stated that the bribe money was paid by the appellant on May 15, 1982. It would appear from his evidence that he claims to have personal knowledge about the alleged visit of the appellant and others to Kandela village on May 16, 1982 and about the alleged payment of Rs. 5100 by the appellant for the construction of a temple for the backward classes people of the village in order to induce the voters of those classes to cast their votes in his favour. But in his affidavit verifying the election petition he has stated that the allegations made in para 9(d) of the election petition regarding this item of corrupt practice are based upon information regarded by him from Dewan Singh. Therefore, the evidence of PW 1 regarding this item of alleged corrupt practice is wholly unacceptable.

9. Dewan Singh, PW 16 has stated in his evidence that he is the Secretary of the Managing Committee of a temple that was being constructed in Kandela village for the members of the backward classes, that the appellant attended a meeting of the backward classes in Dewan Chand's house on May 15, 1982, and volunteered to give a donation of Rs. 5100 for that temple provided the members of the backward classes cast their votes in his favour and that on May 16, 1982 one Madan Lal gave Rs. 5100 to the Temple Committee's President Dharam Singh in his presence and he himself made the entry Ex. PW-16/2 about that payment in the Temple Committee's cash-book, Ex. PW-16/1. He has admitted that the entire cash-book, Ex. PW-16/1 is in his handwriting and does not bear the signature of any office-bearer of the Vishwakarma Samiti. But he has denied that he has got up this cash-book in connivance with the first respondent for the purpose of this election petition. His evidence that the appellant offered on May 15, 1982 to give a sum of Rs. 5100 in the house of Dewan Chand and that it was given by one Madan Lal to Dharam Chand is inconsistent with the allegation in the election petition that the appellant offered to give Rs. 5100 on May 16, 1982 as donation and gave it himself to the Sarpanch Dalip Singh and he passed it on to Dharam Singh. Therefore, the evidence of PW 16 regarding this item of alleged corrupt practice cannot be accepted.

10. Mauji Ram, PW 90 has stated in his evidence that the appellant and his father and Sarpanch Dalip Singh collected the people belonging to blacksmith and carpenter communities in the house of the carpenter Diwana on May 14, 1982 and requested the people to cast their votes in his favour, that the people told the appellant and his two companions that they would inform that after discussing about the matter and asked the appellant and his companions to visit the village again on May 16, 1982, that accordingly the appellant and others came to the village on May 16, 1982 and asked the people to vote for the appellant, that the people told the appellant and his companions that they would vote for him if he gave money and that the appellant thereupon gave a sum of Rs. 5100 to Dharma Lohar. The evidence of this witness is that the people asked for money to vote in favour of the appellant and that thereupon he gave Rs. 5100 to Dharma Lohar whereas the allegation in the election petition is that after the voters told the appellant that they intended to vote for the Congress (I) candidate as they had always been in favour of the Congress (I) party, the appellant had a talk with the Sarpanch Dalip Singh and one Dharam Singh and he subsequently stated, for including the voters to cast their votes in his favour, that he was prepared to give a donation of Rs. 5100 as he had been told that they needed some money for their mandir and that he accordingly gave Rs. 5100 to the Sarpanch Dalip Singh and he passed it to Dharam Singh and Dewan Singh. There is thus a vital discrepancy between the pleading in the election petition and the evidence of PW 90. PW 90 has

stated that he does not know whether any receipt was passed for the amount whereas PW 16 has stated in his evidence that Madan Lal gave Rs. 5100 to the Temple Committee's President Dharam Singh in his presence on May 16, 1982 and he made an entry for the receipt of that amount in Ex. PW-16/2 in the cash-boxes, Ex. PW-16/1 and PW 1 has stated in his evidence that the Society passed a receipt for the amount and also made an entry in the cash-book about the money. It is significant to note that PW 90 was not cited as a witness in the list of witnesses filed by the first respondent on November 11, 1982 and November 26, 1982 and that he was examined as a witness only on July 25, 1983. In these circumstances, we think that no reliance could be placed on the evidence of PW 90 regarding this item of alleged corrupt practice.

11. Fateh Singh, PW 91 is yet another witness whose name was mentioned in the list of witnesses filed by the first respondent on November 11, 1982. He was stated in his evidence that four or five days prior to the date of poll May 19, 1982, the appellant and his father and two others, Sarpanch Dalip Singh and Madan Lal, visited Kandela village and came to the house of Diwana Khati, that many voters belonging to the backward classes were summoned to that house and the appellant and his companions offered to donate some money to the temple provided the people assembled there and other members of the community voted for the appellant and they told them that they would discuss about the matter and let them know, that two or three days thereafter the appellant came by a car and they assembled in the house of the blacksmith Dharma and that in his presence Madan Lal who came with the appellant gave Rs. 5100 to the Sarpanch Dalip Singh who in turn passed it on to Dharma Lohar and he promised that the members of his community would vote for the appellant. The evidence of his witness is not consistent with the allegation made in the election petition that the appellant gave a sum of Rs. 5100 to the Sarpanch Dalip Singh and that he passed it on to Dharam Singh and Dewan Singh. We are, therefore, unable to place any reliance on his evidence regarding this item of alleged corrupt practice.

12. Then there remains the evidence of Prahalad, PW 92. He has stated that the appellant came to Kandela village on May 16, 1982 along with the Sarpanch Dalip Singh and one Madan Lal of that village, that the appellant who had visited the village five days prior to the date of the poll suggested that the voters belonging to the community and the members of the Managing Committee should vote for him and stated that he would make some contribution for the temple funds and asked Madan Lal to give the money, that there upon Madan Lal gave Rs. 5100 to the Sarpanch Dalip Singh and he passed it on to Dharma Lohar and undertook the responsibility to have votes cast in favour of the appellant and that the temple treasurer Ram Singh passed a receipt for the amount. The evidence of this witness that Madan Lal of Kandela village gave Rs. 5100 is inconsistent with the allegation made in the election petition that the appellant himself gave that amount. His evidence that it was given to Dalip Singh though consistent with the allegation made in the election petition and the evidence of PW 91 is inconsistent with the evidence of PW 90 that it was given to Dharma Lohar. We are, therefore, unable to place any reliance on his evidence regarding this item of alleged corrupt practice.

13. The evidence of PWs 1, 16, 90, 91 and 92 referred to above is wholly unreliable and does not prove the corrupt practice of which the appellant has been found guilty by the learned Single Judge. We may state here that Mr S. N. Kacker, senior Advocate who appeared for the respondent, probably felt that the judgment of the learned Single Judge holding, the appellant guilty of this item of corrupt practice is wholly indefensible and he candidly admitted that he will not advance any argument at all in favour of the first respondent. In these circumstances for the reasons mentioned above, we allow this appeal but without costs and set aside the judgment of this learned Single Judge who found the appellant guilty of this item of corrupt practice.

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