

B. Rajagopala Rao and Another

Vs

Appayya Dora Hanumanthu and Others

Civil Appeal Nos. 484 and 485 of 1987

(K. N. Saikia, M. H. Kania, S. Ranganathan JJ)

29.09.1989

JUDGMENT

KANIA, J. –

1. These two appeals arise out of the judgments in two election petitions in the Andhra Pradesh High Court questioning the election of respondent 1 as a Member of Parliament from Srikakulam No. 1 Parliamentary Constituency in the 8th General Election to the House of the people. The points raised in these appeals are common and so are the relevant facts; and, hence, they are being disposed of by this common judgment. We propose to take note of only the few facts which are necessary for the appreciation of the controversy before us.

2. The polling date for the said election along with other parliament elections in the State of Andhra Pradesh was December 27, 1984 but in Srikakulam No. 1 Parliamentary Constituency the polling was countermanded and the date of polling was later fixed on January 28, 1985. In both the election petitions the election of respondent 1 was questioned mainly on the ground that Shri N. T. Rama Rao, the Chief Minister of Andhra Pradesh as well as the President of the Telugu Desam Party as well as respondent 1 gave certain speeches and certain advertisements were got published by Shri N. T. Rama Rao through the Publicity Department of the Government of Andhra Pradesh in the newspapers containing certain statements which are alleged to amount to a corrupt practice within the meaning of the said term in Section 123(1)(A) of the Representation of the People Act, 1951 (hereinafter referred to as "the said Act"). The main question canvassed before us is whether the statements contained in these aforesaid advertisements amount to a corrupt practice under Section 123(1)(A)(b) of the said Act. Section 123(1)(A)(b) of the said Act runs as follows :-

"123. Corrupt practices. - The following shall be deemed to be corrupt practices for the purposes of this Act :-

(1) 'Bribery', that is to say -

(A) any gift, offer or promise by a candidate or his agent or by any other person with the consent of a candidate or his election agent of any gratification, to any person whomsoever, with the object, directly or indirectly of inducing -

#(a) * * *##

(b) an elector to vote or refrain from voting at an election, or as a reward to -

(i) a person for having so stood or not stood, or for having withdrawn or not having withdrawn his candidature; or

(ii) an elector for having voted or refrained from voting."

3. The advertisements very shortly stated, refer to the auspicious gifts made by the Government of Andhra Pradesh to the poor people on the eve of New Year and Sankranti. In the said advertisements, it is stated that the said government which was formed by the Telugu Desam Party was giving to the poor people whose income was below Rs. 6000 per year, a kilo of rice at Rs. 2 per kg. and the said advertisements referred to a new scheme of selling sarees and dhoties at half prices to the poor people in the State of Andhra Pradesh having green cards. Green cards were directed to be issued to all the persons whose annual income was below Rs. 6000. The supply of the rice at subsidised rates as aforesaid was also to be made to the green card holders only. The scheme to sell sarees and dhoties at subsidised rates was to be operative from January 26, 1985 to March 31, 1985.

4. In considering the question whether the said advertisement and the said speeches amount to a corrupt practice, we are of the view that the provisions of Section 123 of the said Act which deal with corrupt practices have to be interpreted, keeping in mind that dictates of commonsense require that they never could have been intended to treat speeches by members of various political parties aspiring to power and by different candidates aspiring to get elected to legislative bodies concerned as corrupt practices. We are of the view that these advertisements and speeches amount to nothing more than statements extolling the achievements of the Government of the State of Andhra Pradesh under the Telugu Desam Party headed by N. T. Rama Rao, the Chief Minister, and contain normal election promises and these statements do not amount to corrupt practices falling within the scope of sub-clause (b) of clause (A) of sub-section (1) of Section 123 of the said Act.

5. It was urged by Mr. Rao, learned counsel for the appellants that in the impugned judgments, the High Court has incorrectly taken the view that in order to amount to bribery within the meaning of the said term in Section 123(1)(A), the transaction must amount to a bargain by the candidate with a view to get votes. It was pointed out by him that the said view has been taken in the impugned judgments, relying upon the decision of a bench comprising two learned Judges of this Court in *Ghasi Ram v. Dal Singh* ((1968) 3 SCR 102, 109-110 : AIR 1968 SC 1191 : 36 ELR 60). We have gone through to the relevant portion of that judgment (at pages 109 and 110 of the said report). A careful perusal of the said judgment shows that what has been really held in that case is that if the promises given or made amount to a bargain entered into by a candidate for a vote or votes, that would amount to a corrupt practice; but it has not been held there that unless the act alleged amounts to such a bargain, it could not amount to a corrupt practice. In our view, that judgment does not lay down that in order to amount to a corrupt practice, the transaction must amount to a bargain for getting a vote. It was pointed out by Mr. Rao, however, that such a view seems to have been taken in two other decisions rendered by two benches, each comprising two learned Judges of this Court in *Bhanu Kumar Shastri v. Mohan Lal Sukhandia* ((1971) 1 SCC 370, 386 : AIR 1971 SC 2025 : (1971) 3 SCR 522, 543) and *Harjit Singh Mann v. S. Umrao Singh* ((1980) 1 SCC 713, 720 : (1980) 2 SCR 501, 510) and these judgments need to be overruled. We do not propose to go into the correctness or otherwise of this view because, even on the footing that in order to amount to a corrupt practice under the aforesaid provision the alleged acts need not constitute a bargain, the acts established in the present case, in our opinion, do not amount to a corrupt practice.

6. Our attention was drawn by Mr. Rao to the fact that in this case the said advertisements and the speeches had to be viewed in the context of the fact that the advertisements were issued and the

speeches were made after respondent 1 filed his nomination papers on January 4, 1985, for the election and before the election was held in the aforesaid constituency. It was further pointed out that the offer made for the sale of sarees and dhoties at subsidised rates was limited to the period from January 26, 1985 to March 31, 1985. It cannot be denied that these factors are relevant factors. We cannot, however, lose sight of the fact that this offer was made not only in this constituency but throughout the State where the elections to the House of the People were scheduled to be held, and were, in fact, held on December 27, 1984. It was only in case of this constituency that the election to be held on the scheduled date was countermanded and later held on January 28, 1985. We cannot lose sight of the fact that, as far as the said speeches and the said advertisements, which were issued by the Publicity Department of the State, are concerned, they deal in the main with the achievements of the Government of Andhra Pradesh which, of course, was being run by Ministers belonging to Telugu Desam Party to which respondent 1 also belonged. Moreover, the offer in the advertisements for the sale of dhoties and sarees at discount rates was in the nature of a benefit offered to poor persons in that State. When a government announces the measures which are intended for the benefit of any of the classes for whose amelioration the government can normally be expected to work like the poor or the economically backward classes, it is only in rare circumstances that such a promise can be said to amount to a corrupt practice within the meaning of Section 123(1)(A) even though such a promise might be made on the eve of elections. Keeping this in mind, in our opinion, although the offer to sell dhoties and sarees at discount rates was of a limited duration as aforesaid, it cannot be regarded as a corrupt practice. Such an offer was bound to have financial repercussions and it is quite possible the duration of the offer was limited to enable the government to study the financial repercussions rather than from any improper motive. We find support for this view from the decision of this Court in *H. V. Kamath v. Nitiraj Singh* ((1969) 1 SCC 601). In that case an Ordinance was passed by the Government of Madhya Pradesh as a result of which a large number of agriculturists, namely, those holdings plots of land of less than 7.5 acres area or paying land revenue not exceeding Rs. 5 were exempted from the payment of the land revenue. It was held that such a concession does not amount to a gift, offer or promise of any gratification within the meaning of Section 123(1)(A) of the said Act nor does the announcement of the declaration made at a meeting shortly before the election or the issue of a pamphlet containing that declaration at that time carry the matter any further. It was held that neither Shri D. P. Misra who was the Chief Minister nor Shri S. K. Dixit who acted as his agent were guilty of any corrupt practice within the meaning of the aforesaid provision.

7. It was next contended by Mr. Rao, although very faintly, that the High Court was in error as it had not decided all other issues which were raised in the election petition. In this regard we cannot lose sight of the fact that the term of the present Lok Sabha is likely to be over within a few months and fresh elections are likely to be held and it would, therefore, be an exercise in futility to remand the matter to the High Court for deciding the remaining issues.

8. In the result, the appeals fail are dismissed. Looking to the facts and circumstances of the case, there will be no order as to costs.

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