

Komireddy Ramuloo

Vs

Chennemaneni Vidyasagar Rao and Others

Civil Appeal No. 215 of 1987

(L. M. Sharma, P. B. Sawant JJ)

06.04.1990

JUDGMENT

SHARMA, J. -

1. This appeal under Section 116-A of the Representation of the People Act, 1951 is directed against the judgment of the Andhra Pradesh High Court under Section 98 of the said Act dismissing the election petition filed by the appellant, challenging the election of respondent 1 to the Andhra Pradesh Legislative Assembly in 1985 from Metapalli constituency. Besides the appellant and respondent 1, there were several other contestants at the said election. The appellant was a member of the Rashtriya Sanjay Manch of which Smt. Maneka Gandhi was the leader; and respondent 1 was the candidate of the Bharatiya Janata Party, which was in alliance with the Telugu Desam Party. The poll was held on March 5, 1985, the result in favour of respondent 1 announced on March 6, 1985 and the present election petition was filed by the appellant on April 9, 1985 alleging corrupt practices.

2. The petitioner made following allegations in support of his charge of corrupt practices :

(i) Respondent 1 was guilty of spending in connection with the said election a sum exceeding the amount prescribed under Section 77 of the Act;

(ii) With a view to counterweigh the impact created by Smt. Maneka Gandhi who toured the constituency and addressed public meetings in support of the candidature of the petitioner, respondent 1 invited Shri Murali Mohan, a popular Telugu cinema actor, who in the afternoon of February 26, 1985 made a speech unjustly criticising Smt. Maneka Gandhi and the Sikh community and made statements amounting to corrupt practice within the meaning of sub-sections (3) and (3-A) of Section 123 of the Act;

(iii) Sri Murali Mohan, at the instance of respondent 1, declared Sri N. T. Rama Rao, Telugu Desam leader, as the incarnation of God, Lord Krishna, Lord Rama, etc. and exhorted the electors to vote for respondent 1 on that basis;

(iv) A large number of booklets containing the photographs of Sri N. T. Rama Rao in the roles of Lord Krishna, Lord Rama, etc. and the last page photograph with a caption "Telugu Desam Vijay Sarathi" (meaning a man who leads Telugu Desam to victory) was distributed in the said meeting. Respondent 1 thus indulged in the corrupt practice within the meaning of Section 123 (4) of the Act;

(v) Respondent 1 resorted to false impersonation of the electors, captured booths and got false votes polled;

(vi) Respondent 1 distributed arrack amongst the voters with a view to control the votes; and

(vii) Respondent 1 attacked the jeep of the petitioner and caused damage thereto with a view to prevent him from canvassing.

3. The petitioner also accused the Returning Officer in the matter of counting of the votes but, since this point has not been pressed before us, it is not necessary to mention the details.

4. Respondent 1, who was elected as the successful candidate, denied specifically the allegations made against him. The High Court, by the impugned judgment, rejected the petitioner's election petition.

5. After a consideration of the evidence, the High Court has held that the total expenditure incurred by respondent 1 in the election did not exceed the prescribed limit. Some entries in certain documents relied upon by the petitioner were held to be forgeries. However, since the learned counsel for the petitioner appearing before us has not challenged the High Court's findings on this issue, it is not necessary to discuss the point any further.

6. With respect to the petitioner's case about the contents of the speech of Sri Murali Mohan in the public meeting on February 26, 1985, it was held that the petitioner failed to lead sufficient evidence to sustain a finding in his favour. On the question of distribution of booklets, containing the photographs of N. T. Rama Rao in the roles of Lord Rama, Lord Krishna and others, the High Court agreed with the petitioner that the booklets were, in fact, distributed in the said meeting with an object to appeal to the religious faith of the voters but, rejected his further case that the distribution was done by or with the consent of respondent 1. The allegations regarding the distribution of arrack and capture of booths by and on behalf of respondent 1 were also disbelieved.

7. The learned counsel appearing in support of the appeal has placed before us the evidence relating to the meeting addressed by Sri Murali Mohan and the distribution of booklets, and contented that the petitioner's case is fit to be accepted. The petitioner has attempted to prove his cases by his oral evidence (PW 1) and that of Alluri Raja Reddy (PW 9). According to their story they along with another person Abdul Qayyum were proceeding on a jeep, and were held up on the road on account of the public meeting which was being addressed by Murali Mohan. It is alleged that the cinema actor was telling the audience that Smt. Maneka Gandhi belonged to the Sikh community which was secessionist in character and was responsible for the murder of Smt. Indira Gandhi. Mrs. Maneka Gandhi was also personally condemned as being unfaithful to her husband during his lifetime. On these grounds and on the further plea that N. T. Rama Rao, was an incarnation of God who was helping respondent 1, the electors were asked to vote for respondent 1. Admittedly Sri Murali Mohan did address the meeting in which respondent 1 was also present but, he (examined as RW 8), as well as, respondent 1 (RW 1) denied to have made the above statement. We have gone through the entire evidence of all these four witnesses and we hold that the evidence of PWs 1 and 9 is fit to be rejected. We, therefore, reject the case of the petitioner on this point.

8. The evidence on the record does establish that the booklets containing the photographs of N. T. Rama Rao were distributed in that meeting, but the responsibility for the same has not been

satisfactorily shown to be that of respondent 1. Another witness examined by the respondent as RW 3 who also has refuted the petitioner's allegations appears to be a truthful person, RW 4, who maintains a cycle shop in the neighbourhood has also supported the defence case. However, as has been rightly held by the High Court, the more important circumstance against the petitioner's case is the commission to mention this allegation in his complaint petition which was filed by him before the Election Observer on March 1, 1985. According to the case of the election petitioner respondent 1 personally distributed the booklets amongst the voters, who were present in the meeting. The High Court has pointed out that admittedly three hundred to four hundred workers of respondent 1 were present at the meeting and that respondent 1 was sharing the platform with the speaker, Sri Murali Mohan, and the allegation of personal distribution is, therefore, very unnatural. It was asserted by the election petitioner that it was respondent 1 who had got the document prepared but, no attempt was made to substantiate this part of the case either by examining the printer or leading any evidence in this regard. Unless it is shown that respondent 1 himself personally took part in the printing or distribution of the booklets or the same was done by his election agent or by his agents, or by anybody else with his consent, responsibility for the same cannot be placed on his head. We fully agree with the reasoning of the High Court in deciding the point against the petitioner and holding that he has failed to prove that respondent 1 either purchased or distributed the booklets in the meeting at Metapalli or anywhere else in the constituency.

9. It has also been contended that the contents of the booklets along with the photographs do not attract the ingredients of sub-section (3) or (3-A) of Section 123 of the Act. In view of our finding in the preceding paragraph, it is not necessary to deal with this part of the respondent's argument.

10. The learned counsel for the petitioner next contended that the allegation against the capture of polling booths by respondent 1 should have been accepted. Paragraph 18 of the election petition was placed before us in this connection and it was stated that a protest was promptly lodged by the petitioner's election agent as evidenced by Annexure III (page 158 of volume II of the paper book). When it was pointed out by the learned counsel for the respondent that in Annexure III allegations were made against other candidates and not against respondent 1, the learned counsel for the petitioner realised that the document instead of supporting his case exposes its unreliable nature. The argument thereafter was not further pursued. It may, however, be mentioned that the allegations have been denied in the statement of the respondent. The evidence of PW 5 relied upon on behalf of the appellant does not prove the allegation so far as respondent 1 is concerned. According to the witness, the workers of Kishan Rao, another candidate, invaded the polling booth in his village and threatened him and the others. So far the agent of respondent 1 is concerned the only statement made is that he was also in the counting hall along with the agents of the other candidates. The other witness referred to by the learned counsel for the petitioner is PW 6, who narrated an alleged incident at Potharam. He was working as the polling agent of another candidate where respondent 1 is said to have declared that the Harijans and the members of the backward classes would not be permitted to vote. The witness proceeded to say that later respondent 1 along with his men entered into the polling booth and forcibly put the votes in the ballot box. This process continued for about fifteen minutes. On behalf of the respondent another protest petition filed by the petitioner against him was referred to, which does not include this allegation, although according to the witness, he had informed the petitioner about the incident by the same evening. We have gone through the entire evidence of this witness and we are of the view that he is not a truthful person. No other material was relied upon before us by the learned counsel for the petitioner on this question and we hold that the allegation of booth capturing against respondent 1 is not proved.

11. The only other argument addressed in support of the appeal relates to the distribution of arrack

allegedly made by and on behalf of respondent 1 with an intention to win over the voters. From the evidence it appears that two vehicles bearing Maharashtra registration numbers, were seized by the police on March 4, 1985 near the border of the State of Maharashtra in which illicit liquor was being carried. The first information report does not mention respondent 1 or anybody connected with him as having anything to do with the jeep or the liquor. The occupant of the vehicles escaped and have been shown as absconding. According to the respondent's case the vehicles and the arrack belonged to smugglers engaged in the business of bootlegging, who are abundant in number in Maharashtra. Having learnt about the incident the petitioner has attempted to make out a false case against the respondent.

12. The learned counsel for the petitioner referred to paragraph 15 of the election petition in this connection which alleges distribution of arrack by respondent 1 on February 28, 1985. The registration numbers of the vehicles seized by the police have been mentioned as being in the service of the respondent. A representation is said to have been sent by the petitioner to the Excise Superintendent. According to the further story, when the vehicles were seized on March 4, 1985, election materials belonging to respondent 1 were found therein, but the officers omitted the name of respondent 1 from FIR and permitted his people to escape. The petitioner has not filed any supporting document to show that any representation was actually sent to the Excise Superintendent as claimed. On the other hand when a complaint was lodged with the Election Observer on March 1, 1985, this incident was not mentioned. The learned counsel relied on the evidence of PWs 1, 7 and 8 for proving the story. PW 1 is the petitioner himself and as stated earlier his evidence is discrepant and uninspiring. PW 7 was not mentioned as a witness on this point in the election petition. The depositions of PWs 7 and 8 were placed before us by the learned counsel for the petitioner, but we do not find them reliable. We, accordingly, agree with the finding of the High Court on this question also. In the result, we do not find any merit in this appeal, which is dismissed with costs.

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