

D. K. Sharma

Vs

Ram Sharan Yadav and Others

Civil Appeal No. 5211 of 1990

(Kuldip Singh, N. M. Kasliwal JJ)

09.09.1992

JUDGEMENT

KULDIP SINGH, J .:-

1. Ram Sharan Yadav was declared elected to the Bihar Legislative Assembly from Goh constituency at the poll held in February, 1990. D. K. Sharma was one of the contesting candidates. Ram Sharan Yadav secured 46,027 votes whereas D. K. Sharma secured 31,375 votes. Apart from them there were 18 other validly nominated candidates who also contested the election but secured much lesser votes. D. K. Sharma challenged the election of Ram Sharan Yadav by way of election petition under the Representation of the People Act, 1951 (the Act). The High Court dismissed the election petition by its order dated October 17, 1990. This appeal under S. 116-A of the Act is against the judgment of the High Court.

2. In the election petition two reliefs were claimed by the appellant-petitioner. The election of respondent Ram Sharan Yadav was challenged on the ground that his nomination paper was illegally accepted by the Returning Officer. It was averred in the petition that the earlier election of respondent No. 1 to Bihar Legislative Assembly in June, 1977 was set aside by the Patna High Court by its judgment dated April 10, 1980 on the ground of commission by him of the corrupt practice specified in Clause (2) of S. 123 of the Act. The said judgment was upheld by this Court by its order dated October 30, 1984 (reported in AIR 1985 SC 24). The respondent having incurred the disqualification for a period of six years which was to expire on October 30, 1990, the acceptance of his nomination papers by the Returning Officer in February, 1990 was improper and illegal. The appellant-petitioner further prayed that the election of the respondent No. 1 being void the votes cast in his favour be treated as thrown away and the appellant-petitioner be declared elected to the seat from Goh Constituency.

3. The election petition was filed in April, 1990. During the pendency of the election petition the President of India in exercise of the powers under sub-section (3) of S. 8A of the Act issued a notification dated July 3, 1990, published in the Gazette of India dated July 9, 1990, disqualifying respondent No. 1 for a period of six years from October 30, 1984. On the basis of the Presidential-Notification the Speaker of the Bihar Legislative Assembly by notification dated July 18, 1990 declared the seat from Goh Assembly Constituency vacant. The appellant-petitioner, thereafter, confined his election petition to the second relief claimed therein.

4. The only question before the High Court was whether the appellant be declared elected from the

Goh Assembly Constituency? The appellant-petitioner contended before the High Court that the voters in the constituency had been educated about the disqualification of respondent No. 1 and they were asked not to cast their votes in favour of the said respondent. Relying on the judgment of this Court in *Konappa Rudrappa Nadgouda v. Vishwanath Reddy* (1969) 2 SCR 90: (AIR 1969 SC 604) it was contended that all the votes cast in favour of respondent No. 1 be declared wasted and should be thrown away. It was further contended that since the appellant-petitioner had secured the second largest number of votes amongst the contesting candidates, he should be declared elected to the Bihar Legislative Assembly. In *Konappa's* case there were only two candidates in the field. *Vishwanath Reddy* was declared elected to the Mysore Legislative Assembly and *Konappa* who was a contesting candidate challenged his election on the ground that *Reddy* was disqualified from standing as a candidate for election and for an order declaring that he -*Konappa*- be declared elected. This Court accepted the contention of *Konappa* in the facts of that case where there were only two candidates in the field and observed as under :-

"If the number of candidates validly nominated is equal to the number of seats to be filled, no poll is necessary. Where by an erroneous order of the Returning Officer poll is held which, but for that order, was not necessary, the Court would be justified in declaring those contesting candidates elected, who, but for the order, would have been declared elected.....When there are only two contesting candidates, and one of them is under a statutory disqualification, votes cast in favour of the disqualified candidate may be regarded as thrown away, irrespective of whether the voters who voted for him were aware of the disqualification. This is not to say that where there are more than two candidates in the field for a single seat, and one alone is disqualified, on proof of disqualification all the votes cast in his favour will be discarded and the candidate securing the next highest number of votes will be declared elected. in such a case, question of notice to the voters may assume significance, for the voters may not, if aware of the disqualification have voted for the disqualified candidate."

5. Taking cue from the above quoted observations of this Court in *Konappa's* case (AIR 1969 SC 604) the appellant-petitioner led evidence before the High Court to show that the voters were given sufficient notice and they were aware of the disqualification of respondent No. 1 before they voted for him. The appellant-petitioner examined 15 witnesses including himself. The High Court discussed the evidence in detail and rejected the same on the following reasoning :-

"Almost all the witnesses examined on behalf of the petitioner claimed that they were workers of petitioner *D. K. Sharma* in the election and had canvassed that no vote should be cast in favour of *Ram Sharan Yadav* who had been disqualified for having committed corrupt practice and any vote cast in his favour shall be thrown away. None of them have stated that they also exercised their votes. Not a single voter has been examined on behalf of the petitioner to state that even if he had the notice of disqualification of *Ram Sharan Yadav*, he exercised his vote in his favour. Apart from this oral evidence, not a single chit of documentary proof has been brought on the record on behalf of the petitioner. No one has stated that any leaflet stating these facts was distributed amongst the voters or the voters were informed through display of any pamphlet or poster. *Ram Sharan Yadav*, respondent No. 1 had secured 46027 votes and it is difficult to accept that such a large number of voters could exercise their votes in favour of a disqualified candidate with the knowledge that their votes shall be wasted. In the situation prevailing in our country elections cannot be decided

on the ipse dixit of witnesses coming from one side or the other. The question is one of fact and: has to be proved by positive evidence. It is not safe to hold that such a large number of voters spread throughout the length and width of the constituency have been educated by petitioner D. K. Sharma and his workers that Ram Sharan Yadav was a disqualified candidate and any vote cast in his favour shall be wasted on the basis of the oral evidence adduced on behalf of the petitioner. In the case of Bristol South East Parliamentary Election, (1961) 3 All ER 354, evidence was led that a contesting candidate had sent out notices to all persons entitled to vote stating that by reason of his status as a peer in United Kingdom Wedgwood Bens was disqualified from being elected a member of Parliament and that all votes given for him would be thrown away and be null and void. Similar notices were published in the news papers circulating in the constituency and were posted at the entrance to polling stations. On such evidences, the court of Queen's Bench held that the disqualification of Wedg wood Berm was known to the electors before they cast their votes. It may be very difficult to post such notices to each and every voter of the constituency informing them about the disqualification of a particular candidate. But such a notice could have been published in the newspapers circulating in the area or hung at important places in the locality including the places the polling stations were located. The voters in this country have become very conscious even though a large number of them might be illiterate. They have not only started taking great interest in the election but exercise' their franchise after knowing every thing about contesting candidates and their parties. It is, therefore, not possible to hold on the basis of the oral evidence that 46027 voters who cast their votes in favour of respondent No. 1 did so after having noticed about disqualification of respondent No. 1 and knowing that their votes shall be wasted. It follows, therefore, that the second prayer of the petitioner to declare him as duly elected after throwing away the votes of respondent No. 1 cannot be allowed."

6. We have heard learned counsel for the appellant and have carefully gone through the judgment of the High Court. We find no infirmity of the same. We agree with the reasoning and the conclusions reached by the High Court.

7. We dismiss the appeal with costs. Appeal dismissed.

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