

K.V. Narayana Rao and Others

Vs

P. Purushotham Rao and Others

Civil Appeal Nos. 3597 and 4086 of 1991

(B.P. Jeevan Reddy, G.N. Ray JJ)

11.12.1992

JUDGEMENT

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B. P. JEEVAN REDDY, J.:-

1. These two appeals are preferred against the judgment and order of (a learned single Judge) the Andhra Pradesh High Court in Election Petition No. 16/90, allowing the election petition with costs and setting aside the election of the appellant (first respondent in the election petition) from No. 246, Sirpur Legislative Assembly constituency. Civil Appeal No. 3597/91 is preferred by the returned candidate while Civil Appeal No. 4086/91 is preferred by the election petitioner against the findings recorded by the learned single Judge on issues 1 to 5 recorded against him. For the sake of convenience, we shall refer to the returned candidate as the appellant and the election petitioner as the respondent.

2. Apart from the appellant and the respondent, there were four other candidates in the fray. The appellant contested as an independent candidate, the first respondent on behalf of the Telugu Desam Party and the fifth respondent on behalf of the Congress (1) Party. Respondents 2, 3 and 4 were independent candidates. Polling was held on 22-11-1989. The appellant was declared elected having secured 25,860 votes, the highest. The respondent obtained 23,419 votes whereas the fifth respondent (Congress (I)) candidate got 23,419 votes. Respondents 2, 3 and 4, the other independent candidates, got very few votes.

3. In the election petition, the respondent not only sought invalidation of the appellant's election but also sought a declaration to the effect that he is the duly elected candidate from the said constituency. The grounds on which he impugned the appellant's election are the following:

(i) That the appellant indulged in booth capturing and rigging in various polling booths, the names and numbers of which were set out in paragraph (5) of the election petition. The respondent complained of the said rigging and booth capturing to the appropriate authorities but no action was taken thereon.

(ii) That the appellant directed the employees of Bejjur Mandal to work for him in the said elections and the said employees actively canvassed for him. This fact was also brought to the notice of the District Collector but no action was taken against the employees. The teachers and wardens working in I.T.D.A. also canvassed on behalf of the appellant.

(iii) That the agents were driven out and were not permitted to enter the polling stations mentioned in paragraph (9) of the election petition by the agents and supporters of the first respondent.

(iv) The appellant propagated a false statement deliberately, with the evil intention of prejudicing the prospects of the respondent, accusing the respondent of having indirectly committed the murder of a labour leader Angala Shankar. The said Shankar was found dead in his premises on 12-11-1989. The post-mortem revealed that he died on account of drunkenness but the appellant claimed the said Shankar as his active supporter and went on propagating that the respondent and the Telugu Desam Party were responsible for his death. A procession was also taken out by the appellant from Kagaznagar police station to Bhatpalli (the village to which Shankar belonged). The supporters of the appellant raised slogans and displayed badges containing the words to the effect - the respondent and other Telugu Desam Party leaders were responsible for the murder of Shankar and exhorting the public to condemn the politics of murder adopted by Telugu Desam Party.

4. The appellant denied each and every allegation made against him. He submitted that the allegation of booth capturing and rigging is totally vague and devoid of particulars and ought to be struck off for that reason alone. With respect to the allegation of obtaining the assistance of Government servants, he submitted that the election petition does not contain an allegation that the assistance of public servants and Government servants was obtained either by the first respondent or with his consent. The appellant submitted further that the respondent was the Chief whip of Telugu Desam Party and an important leader of the Telugu Desam Party who commanded a lot of influence and power in the State. In such a situation it is idle to suggest that the appellant could indulge in any of the corrupt practices alleged against him. He also denied the allegation of propagating the false statement to the effect that the respondent was indirectly or directly responsible for the murder of Angala Shankar or that it has prejudicially affected the respondent's chances. He denied the printing and publishing of badges.

5. The Returning Officer, the sixth respondent in the election petition, filed a written statement generally denying the allegations with respect to rigging and booth capturing and involvement of public servants on behalf of the appellant. He submitted that none of the polling officers or presiding officers reported any irregularities or malpractices in the election which was conducted in maximum security conditions resulting in heavy turnout of the voters. He submitted that all the ballot papers issued to the presiding officers were fully and properly accounted for and that there were no irregularities either in the matter of counting.

6. On the above pleadings, the learned Judge framed the following eleven issues:

"(1) Whether the election of the first respondent to No. 246 Sirpur Legislative Assembly Constituency is vitiated by corrupt practices indulged in by the first respondent in booth capturing and rigging of polling booths numbers mentioned in paragraph 5 of the election petition?

(2) Whether the employees of Bejjur Mandal were directed by the first respondent to work for him and whether they were actively canvassing for the first respondent?

(3) Whether the polling agents of the petitioner were driven out and were not

permitted to enter into the polling stations by the agents and supporters of the first respondent in the polling booths mentioned in paragraph 9 of the election petition?

(4) Whether the high percentage of polling which has taken place in the said polling booths is on account of rigging?

(5) Whether the counting was done by the 6th respondent contrary to the directions given in Circular No. 5 of the General Administration Department (Section-B), Elections, dated 26-10-1989?

(6) Whether the first respondent has committed the corrupt practice under Section 123(4) of the Representation of the People Act by propagating a false statement deliberately accusing the petitioner of his indirectly having committed the murder of one labour leader by name Angala Shankar?

(7) Whether the first respondent got published badges containing a statement that Angala Shankar, who is a worker of the 1st respondent was murdered and condemning the politics of assassination pursued by the Telugu Desam Party which amounts to a corrupt practice under Section 123(4) of the Representation of the People Act?

(8) Whether the election of the first respondent to No. 246 Sirpur Legislative Assembly Constituency is liable to be declared as null and void?

(9) Whether the petitioner is entitled to a declaration that he is duly elected from No. 246 Sirpur Legislative Assembly Constituency having secured a majority of valid votes?

(10) Whether the allegations of corrupt practices covered by issue Nos. 1, 2, 6 and 7 are bereft of material particulars and whether the Election Petition is liable to be dismissed in limine on that ground?

(11) To what relief?"

7. Issue No. 10 was taken up as a preliminary issue. By an order dated 24-7-1990, the learned Judge overruled the objections of the first respondent and proceeded with the trial. Fifteen witnesses were examined on behalf of the respondent and Exhibit A- 1 to A-44 marked. The appellant examined 12 witnesses and marked one document, B-1, in his defence.

8. The learned Judge held issues 6 and 7 in favour of the respondent. Since these issues involved a corrupt practice, he declared the appellant's election as null and void under issue No. 8. He found issues 1 to 5 against the respondent-election petitioner. So far as issue No. 9 is concerned, he observed that "finding of issue no. 9 depends upon the result in the recrimination petition filed in the said election petition by the first respondent (appellant herein)."

9. In this appeal, Sri K. Madhava Reddy, the learned counsel for the appellant urged the following contentions: That the allegations with respect to issues 6 and 7 - indeed all the allegations with respect to corrupt practices alleged against the appellant - are totally vague and devoid of particulars. They are couched in most general and vague terms. On this ground alone, all the said allegations ought to have been struck off. The learned Judge ought not to have allowed the

respondent to adduce any evidence in support of the said allegations. The decision on issue No. 10 rendered at an interlocutory stage did not preclude the learned Judge from applying the law correctly. Even otherwise the evidence is wholly deficient to establish the corrupt practice covered by issues 6 and 7. The evidence is too general in nature and does not establish any of the relevant facts necessary to prove the corrupt practice. In any event, the said evidence ought not to have and cannot be looked into in support of issues 6 and 7 on account of the fact that the very allegations in that behalf are totally vague and devoid of particulars.

10. On the other hand, the learned counsel appearing for the respondent-election petitioner not only supported the finding of the learned Judge on issues 6 and 7 but also submitted that the evidence adduced by the respondent does indeed establish the corrupt practices covered by issues 1 to 5. He denied that the allegations in the election petition with respect to corrupt practices are vague or that they are devoid of particulars. He submitted that the order on issue No. 10 was questioned by the appellant unsuccessfully in this court which itself shows that the appellant's grievance on that account is unsustainable in law.

11. We shall first take up issues 6 and 7 inasmuch as it is on the basis of the said issues that the appellant's election has been set aside by the learned Judge. Both the issues in truth relate only to one corrupt practice viz., the propagation of a deliberate false statement accusing the respondent of having indirectly committed the murder of one Angala Shankar, said to be a worker of the appellant. It is stated that the badges distributed by the appellant and his supporters contained a statement that Angala Shankar, a worker of the appellant was murdered by the members of the Telugu Desam Party and also condemning the politics of assassination pursued by the Telugu Desam Party. The allegation with respect to this corrupt practice are found in paragraphs 16 and 17 of the election petition. It would be appropriate to set out the said two paragraphs in full:

"16. The 1st respondent has also committed the corrupt practice u/ S. 123 sub-sec. (4) of the R. P. Act. He propagated a false statement deliberately with evil intention of prejudicing the prospects of the petitioner's election, accusing him indirectly of having communicated murder of one labour leader by name Angala Shankar. The facts relating to this false propaganda are as follows:

(1) One Angala Shankar age of 38 a r/o Bhatpalli was found dead in his own premises on 12-11-1989. In the post-mortem it was found that Angala Shankar died on account of drunkenness. But the 1st respondent claiming him to be his active supporter, took advantage of the death of Angala Shankar and went on propagating that the petitioner and Telugu Desam Party were responsible for the death of Angala Shankar. A procession was taken out for cremating the body of Angala Shankar from Kagaznagar Police Station to Bhatpalli by the 1st respondent and supporters were raising the slogans that the petitioner and other Telugu Desam leaders were responsible for this murder of Angala Shankar and that the politics of murder by Telugu Desam must be condemned by the Public. They were also raising slogans against the petitioner, blaming him for the murder of Angala Shankar.

17. This created tension in Kagaznagar and in the entire constituency. The false accusation made by the 1st respondent and his supporters in respect of Angala Shankar death, was done deliberately with the intention to prejudice the election prospects of the petitioner. The Eenadu correspondent contacted Dr. B. L. Meena, ASP to find out the truth relating to the death of Angala Shankar. The ASP, Dr. B. L.

Meena in his press statement clearly states that it was regrettable that the death of Shankar was being made use of politically, though he was not a labour leader of any standing and there was no necessity for anybody to kill him and that he must have died on account of drunkenness. The ASP in the press statement said that it was not a political murder. But in spite of this, the 1st respondent and his supporters went on propagating by displaying badges that the deceased Angala Shankar a supporter of the 1st respondent was murdered by the TDP leaders. Angala Shankar was not a labour leader. He was a worker in Sirpur Paper Mills. He 'Was not murdered at all. His death was on account of drunkenness. But the 1st respondent got published badges containing the following words in Telugu: "Long live Angala Shankar, worker of independent candidate Sri Purshotham Rao and a SPM worker. Down with murder politics of Telugu Desam."

12. The allegations in, these paragraphs were met in paragraphs 15 and 16 of the written statement. Besides denying the truth and correctness of the said allegations, it was also submitted by the appellant that "the said allegation is highly vague and bereft of particulars. It is not stated on what date and at what place and in whose presence, the respondent indulged in such propaganda. It is not even stated in the said para on what date and time the procession was taken and who were the supporters of the respondent who raised the slogans accusing the petitioner and Telugu Desam leaders of being responsible for the murder of Angala Shankar. Hence, all the allegations in para 16 deserve to be struck off." Similar objection was taken with respect to the allegations contained in para 17 of the election petition.

13. The learned counsel for the appellant submitted that in paragraph 16 the names of the supporters alleged to have raised slogans to the effect that the respondent and other Telugu Desam leaders were responsible for the death of Angala Shankar are not mentioned. Similarly, the slogans allegedly raised by the processionists have not been set out. It is not stated on which date the procession was taken nor the route of the procession is mentioned. It is not stated that the appellant carried on the propaganda knowing that the fact propagated by him is false. With respect to allegations made in para 17, it is submitted by the learned counsel that the names of the supporters who went on propagating by displaying badges have not been mentioned; the place where the badges were printed is not mentioned nor the dates and places where the said propaganda was carried on are mentioned. The learned counsel submitted that the allegations are totally wanting in particulars, for which reason the said two paragraphs ought to have been struck off. He submitted that the mere fact that this court refused to admit the Special Leave Petition against the finding on issue No. 10 cannot be a ground for not entertaining the said plea in this regular appeal. He submitted further that no amount of evidence can be looked into in support of such allegations. The learned counsel further attacked the evidence of the several witnesses examined in this behalf on merits. According to him, none of the witnesses ought to have been believed. The very vagueness of the allegations has permitted the respondent election petitioner to put forward witnesses at his convenience and of his choice, it is argued.

14. Section 83 of the Representation of People Act, 1951 states that an election petition "(a) shall contain a concise statement of the material facts on which the petitioner relies; and (b) shall set forth full particulars of any corrupt practice that the petitioner alleges including as full a statement as possible of the names of the parties alleged to have committed such practice and the date and place of the commission of each such practice."

15. Though the penalty of dismissal of the election petition for non-compliance with the

requirements of Section 83(1) is no longer there, still the rule 'contained in Section 83 cannot be said to be without a purpose. The purpose is to pin down the election petitioner to specific allegations and also to enable the contesting respondent to meet the said allegations effectively. The law in this behalf has been stated in several decisions of this court of which it would be sufficient to refer only to two. The first decision is S. N. Balakrishna v. Fernandes, AIR 1969 SC 1201. This court observed (at p. 1212 of AIR):

"The section (Section 83) is mandatory and requires first a concise statement of material facts and then requires the fullest possible particulars. What is the difference between material facts and particulars? The word 'material' shows that the facts necessary to formulate a complete cause of action must be stated. Omission of a single material fact leads to an incomplete cause of action and the statement of claim becomes bad. The function of particulars is to present as full a picture of the cause of action with such further information in detail as to make the opposite party understand the case he will have to meet. There may be some overlapping between material facts and particulars but the two are quite distinct. Thus the material facts will mention that a statement of fact (which must be set out) was made and it must be alleged that it refers to the character and conduct of the candidate that it is false or which the returned candidate believes to be false or does not believe to be true and that it is calculated to prejudice the chances of the petitioner. In the particulars the names of the persons making the statement, with the date, time and place will, be mentioned. The material facts thus will show that ground of corrupt practice and the complete cause of action and the particulars will give the necessary information to present a full picture of the cause of action."

16. In *Lalit Kishore Chaturvedi v. Jagdish Prasad Thada*, 1990 (Suppl) SCC 248 :(AIR 1990 SC 1731), it was held that an election petition should contain a concise statement of the material facts on which the petitioner relies and also set forth full particulars of corrupt practice including time and place at which the corrupt practice was committed. Failure to furnish such particulars, it was held, would render election petition infirm and liable to be dismissed under Order VII Rule 11, Code of Civil Procedure.

17. Applying the principle of the above decisions, it cannot be said that there is no force in the contention of the learned counsel for the appellant. In paragraph 16, it is not stated on which date was the procession taken out. Similarly, the names of the supporters who are supposed to have raised slogans were also not mentioned. Similarly, in paragraph 17, the names of supporters are not mentioned. It is also not mentioned whether the false propagation was done only during the procession or at other places as well; and if it was done at other places, neither the name of those places are mentioned nor the persons who so propagated are mentioned. Let us now turn to the evidence adduced by the respondent-election petitioner in support of the said corrupt practice covered by issues 6 and 7. The oral evidence in this behalf consists of PW-2 (election petitioner) and PWs. 3 to 11 whereas the documentary evidence comprises of A-3, A-25, A-26 and A-44. The evidence of the election petitioner (PW-2) in this behalf is to the following effect: On 12-11-1989 one Angala Shankar, a worker in Sirpur Paper Mills died in his house. The appellant claimed that Shankar was a supporter of his and alleged falsely that the election petitioner and the Telugu Desam Party people murdered him. Two of his workers were arrested and taken to the police station, They were asked to make a statement implicating the election petitioner. After the post-mortem, Shankar's body was placed on the top of a jeep and taken in a procession from Sirpur to Bhatpalli. The said procession was led by the appellant and "all his workers." The appellant and his workers were

wearing badges containing the words "Angala Shankar Amar Hai. Telugu Desam Hatya Rajkeeyelu Nashinchali." (reference is to A-24). A meeting was held near the house of Shankar addressed by the appellant. In that meeting, the appellant stated that with a view to frighten the voters the election petitioner indulged in the murder of Shankar. After the funeral was over it was propagated throughout the constituency that Telugu Desam Party and the election petitioner has indulged in the murder of Shankar. On 13-11-1989 he along with his workers and workers of some other parties staged a dharna in front of the police station. The ASP Sri Meena (PW-10) assured them that there would be no false implication and that proper investigation will be done. On 14-11-1989 (Tuesday) the appellant addressed a meeting at Daigam (Mandal Headquarters) where he told the voters that if the election petitioner is elected he would indulge in ruthless murders. He also charged him of accusing the murder of Shankar. Indeed, Shankar had nothing to do with politics. He was not a follower of the appellant. The post-mortem disclosed that he died on account of drunkenness. The said false propaganda had adverse effect as most of the people believed the same as they were illiterates.

18. It would be noticed that many of the facts stated in the deposition are not found stated in the election petition. In the election petition, it is not stated that two of the workers of the respondent were arrested and taken to police station and were pressurised to implicate the respondent. There is no mention of a meeting held near the house of Shankar which is said to have been addressed by the appellant. The meeting at Daigam mandal headquarters has also not been mentioned. Indeed, the respondent himself admitted in cross-examination that many of the particulars mentioned by him in his deposition have not been stated in the election petition. Though he asserts in cross-examination that he himself saw the appellant distributing the badges in Daigam Mandal, he admitted that he has not mentioned this fact in the election petition.

19. PW-6 was the polling agent of the respondent. He stated that badges similar to A-24 were distributed in Attini village by the father-in-law of the respondent, who is the Sarpanch of the village. He denied the suggestion made in the cross-examination that he was deposing falsely being a follower of the respondent and on account of enmity with the father-in-law of the appellant. PW-7 is the Sarpanch of the Bhatpalli village to which village Angala Shankar belonged. He stated in chief examination that he was informed "by the first respondent's people" that Angala Shankar was murdered by the respondent and his agents. He stated that the workers of the appellant were propagating that Shankar was murdered by the respondent and his supporters. They were also wearing badges like A-24 when they were carrying on such propaganda. He says that when he enquired the wife of Angala Shankar, she said that she does not know how Shankar died or whether he was murdered. In cross-examination the witness stated that out of the two polling booths in the village, the respondent got majority in one polling booth but not in the other. He stated that in both the polling booths in the village put together the Telugu Desam Party and the Congress (I) got majority of votes whereas the appellant was in the third place.

20. PW-8 is the wife of the deceased, Angala Shankar. She stated that the body of her husband was found in the backyard of her house by her when she was going to the well to fetch water in the morning. She does not know how he died. According to her, appellant came there on the date of death of her husband and took the body in a jeep to Sirpur and that later the body was brought back in the jeep accompanied by a number of people. They were saying that the people of Narayana Rao got her husband killed. They were also raising slogans that the respondent and his people were responsible for the murder of her husband. In cross-examination she stated that there was one injury on the neck of her husband and that the police had suspected her in the death of her husband though, according to her, the said suspicion was unfounded. She denied the suggestion that the police

suspected her on the ground that she was having illicit relationship with one Pandala Ramulu, the arrack vendor. She admitted that in her statement before the police she did not state about the slogans raised nor about the body of her husband taken in a jeep. PW-9, a coworker of the deceased and who is also married to Shankar's sister deposed that he came to know about the death at about 7.30 a.m. and that thereupon he went to Shankar's house. He says that the appellant and the police came there at bat time and took the body in a jeep to Sirpur. After the body was brought back there was a funeral procession in the village in which the appellant, police and public participated. He stated that Purshotham Rao, (the appellant) and his people were saying that on account of election Angala Shankar was got murdered by Narayana Rao and his people. This propaganda was carried on till the polling day. In cross-examination he admitted that the respondent-election-petitioner is the President of Sirpur Paper Mills Workers Union. He stated further that PW-8 did not send word to him but that on coming to know through someone he went to see the dead body but did not observe whether there were any injuries on the body of Shankar. He neither gave a report to the police nor made any effort to send information to police. He stated that by the time he went there were a number of persons near the dead body. He stated that he does not know the names of the workers who were wearing badges similar to A-24 while doing propaganda. PW-3 is another worker in the Sirpur Paper Mills. He stated that Angala Shankar was not concerned with any political activity but that his death was taken advantage of by the appellant and his supporters for political purposes. He says that he witnessed the dead body of Shankar being taken in a procession raising slogans against Telugu Desam Party and the respondent. He stated further that he was called to the police station where the appellant was also present and that they pressurised him to reveal the names of the persons responsible for the murder of Shankar. He was further told that if he says that the respondent is responsible for the said murder he will be set free. He was put in the lock-up and was released only when the respondent and members of the other parties held a 'dharna' in front of the police station. In cross-examination he admitted that he is a worker of Telugu Desam Party and that he was a coaccused along with the respondent-election petitioner in a case of kidnapping. He says that he was tortured by the police but admits he did not go to any doctor to obtain certificate with respect to injuries upon him. He also admitted "my party, Telugu Desam Party was in power. The election petitioner was the chief whip." Yet he says that the police was acting against the Telugu Desam Party and in the interest of the appellant. He further stated in cross-examination that he does not remember the dates of the meetings in which the appellant carried on propaganda against the election petitioner though he says that on those occasions he saw the appellant and his workers displaying badges similar to A-24.

21. PW-4 claims to be a worker in the Markandeya Printing Press in Sirpur Kagaznagar where the badges (Exhibit-24) are said to have been printed. He says that he was the person who printed the said badges on the order placed by the appellant and one Tirupath Rao. The order was for 20,000 badges but only 3,000 were printed. In cross-examination, he stated that he entered into an agreement with the owner of the press with respect to his employment therein and that a copy of the agreement is with him while the other was with the owner of the press. He admitted that the owner of the press is the husband of his sister and that he himself did not take the order relating to the printing of A-24. He also admitted that Exh. A-24 does not show that it was printed at Markandeya Printing Press. He further submitted that the owner of the Press Chandraiya was alive and summons were also sent to him. (Chandraiya has not been examined). He stated that though no summons were issued to him he came to Hyderabad on his own to depose on behalf of the respondent. In re-examination he produced document A-25, said to have been the agreement between him and the owner of the press. A-25 is signed by him and not by the owner of the press.

22. PW-5 is a resident of Bhatpalli village. He says that he went to the house of Shankar when he

came to know of his death and there he found police and some leaders from Kagaznagar. Appellant was also there and some of them were saying that the deceased was murdered. The body was taken in a jeep and was brought back on a jeep in procession. The processionists were raising slogans "Angala Shankar Amar Hai. 'Telugu Desam Hatya Rajkiyelu Nashinchali. Telugu Desam Murdabad. Narayana Rao Hatyan Rajkiyelu Nashinchali." It is stated that such propoganda was carried out till the date of polling. In cross-examination he stated that formerly he was employed in Sirsilk factory. He is a worker of Telugu Desam Party though he denied he is a supporter and follower of the respondent. He also stated that in the polling booths of his village, the respondent got the majority of votes.

23. Before we take up the remaining three witnesses viz., PWs. 1, 10 and 11, it would be appropriate to refer to Exhibits A-3 as well as A-26 and A-44. Exh.A-3 is a news item published in Telugu Daily 'Eenadu' dated 14th November, 1989. It was filed by PW-1 who is a reporter of the said newspaper based at Kagaznagar. The report says that in village Bhatpalli, three kilometers away from Kagaznagar, the dead body of Angala Shankar was found in his compound on Sunday; that preliminary medical examination disclosed that he had consumed liquor before his death; that the Assistant Superintendent of Police, Sri B. L. Meena opined that the said deceased might have died due to consumption of arrack and that unless the post-mortem is carried out, it was not possible to say the precise reason of his death; that the ASP also said that it is regrettable that the said death is being used politically though the deceased was neither a prominent political leader nor did he have any political standing in the sense that somebody would gain by his death; the ASP ultimately opined that it is not a political murder.

24. Exhibit A-26 is the case diary relating to Crime No, 109/89 (under Section 302, I.P.C.) Police Station, Kagaznagar. It was written by the circle inspector of police, Kagaznagar (PW -11), The case diary records inter alia that certain injuries were found on the body of the deceased, Angala Shankar and that in the inquest report, Col 11(a), Kankaiya and Yadigiri of Kagaznagar and workers of Telugu Desam Party shown as suspects basing on the evidence of I.W-8 (examined as PW-3 in the election petition ) Exh. A-44 is a portion of Exh. A 26, marked separately. A-44 reads as follows :

"Sri P. Purushotham Rao, an independent candidate contesting to Assembly of A. P, Hyderabad, claimed the deceased, as his supporter and alleged that the TDP workers who held a small meeting at Debbatigudam has quarrelled with the deceased, killed him by throttling and was alleged to be brought and thrown in the backyard of his house."

25. Now coming to oral evidence pertaining to Exhs. A-3 and A-26/ A-44 we may first refer to the evidence of P.W. 1, He stated that he sent the report Exh. A-3, In cross-examination the witness stated that he is working as a teacher since January, 1990. He denied the suggestion that he was got appointed by the election petitioner. He deposed that he is a casual reporter and is not paid any amount towards reporting except the cost of stationary. He does not know whether his elder brother acted as polling agent of the election He is working as a local exporter of the newspaper since 1988. He admitted that no other paper except 'Eenadu' published a news item like Exh. A-3. He denied that the said report was falsely filed by him with a view to help the prospects of Telgu Desam Party in the said constituency.

26. P.W. 10 is the Assistant Superintendent o f Police referred to in A-3 .He stated that the death of Angala Shankar was investigated by the inspector of police and that he supervised the investigation. In that connection, the press asked him certain questions Exh. A-3 is the statementby him before the

press. In connection with the said murder Yadigiri and P.W, 3 were taken to the police station and Interrogated. The election petitioner and some others came and demanded the release of the said two persons. Since there was no incriminating material against the said two persons, they were released. He said that Exh. A-23 is the case diary relating to the said case. In cross-examination he stated that the father-in-law of Angala Shankar gave a report to the police station stating that there were injuries on the neck of the deceased, which was registered by the sub-inspector. He spoke of the investigation done by the circle inspector of police including the interrogation of P.W. 3. He further stated that the appellatant claimed that the deceased was his supporter and alleged that Telugu Desam Party workers killed him by throttling and threw his dead body in backyard of his own house. He stated that by the time he gave the statement (A-3) the motive behind the killing was not established. He denied that Kankaiya and P.W.3 released only because of and after dharna held by the respondent and other political parties. He stated finally that the case relating to the Angala Shanker's death is still under investigation.

27. P.W. 11 is the Circle Inspector who investigated the case relating to the death of Angala Shankar. He proved Exh. 26. He stated that P.W. 3 and Yadigiri were interrogated in connection with the said murder. According to him, they were the workers of the respondent-election petitioner. The body was found in the backyard of the deceased's house, It was taken to the hospital in the police jeep, The appellatant was present at the time of inquest. After the post-mortem, the body was taken away followed by four or five jeeps. He asserted that he saw some people wearing badges like Exh. A-24 but he is not able to say whether they were the followers of the appellatant. He says that the respondent election petitioner complained to him about the false propaganda being done, by distribution of badges, that he was responsible for the death of Angala Shankar. In cross-examination he stated that he examined P.Ws. 8 and 9 (widow and brother-in-law of the deceased) at the time of inquest but not the appellatant. He stated that the wife of the deceased was one of the suspects along with one Pandala Ramalu, an arrack vendor. He denied the suggestion that the deceased was assaulted in a nearby village by Telugu Desam Party workers.

28. On behalf of the appellatant, twelve witnesses were examined including the appellatant himself (R.W.1). Their evidence is generally of a negative nature with respect to these issues and has not been relied upon by either of the counsel before us. We, therefore, do not think it necessary to refer to the said evidence on these issues.

29. It is on the above evidence that we have to decide whether the corrupt practice covered by issues 6 and 7 has been established. The corrupt practice alleged is the one falling under Cl. (4) of S. 123. It reads as follows :

"(4) The publication by a candidate or his agent or by any other person with the consent of a candidate or his election agent, of any statement of fact which is false, and which he either believes to be false or does not believe to be true, in relation to the candidature, or withdrawal of any candidate, being a statement reasonably calculated to prejudice the prospects of that candidate's election."

30. A reading of the clause shows that for establishing the said corrupt practice, the petitioner has to prove the following facts:

(i) Publication of any statement of fact which is raise and which the maker believes to be false or does not believe to be true;

- (ii) Such publication must be by a candidate or his agent or by any other person with the consent of such candidate or his election agent;
- (iii) The publication must relate to the personal character or conduct of a candidate (or in relation to the candidature or withdrawal of any candidate);
- (iv) The statement must be such as is reasonably calculated to prejudice the prospects of such other candidate.

31. In the present case, the publication attributed to the appellant is found stated in paragraphs 16 and 17 of the election petition, quoted in full hereinbefore. In short, the allegation is that the appellant falsely and deliberately and with the intention of prejudicing the prospects of the respondent, accused him indirectly of having committed the murder of Angala Shankar. Slogans to this effect are said to have been raised by the appellant and his supporters during the funeral procession of Shankar. Such a propaganda was also carried on by the appellant and his supporters by displaying badges which badges were got published by the appellant. We have referred to the oral evidence in support of the said allegations in extenso. In our opinion, the evidence is totally insufficient to establish the said corrupt practice. It must be remembered that proof of a corrupt practice vitiates the election by itself. It is not necessary to prove in such a case, it has materially affected the election. It is, therefore, necessary that such a corrupt. practice must be clearly alleged and cogently established. The allegations in this behalf contained in paragraphs 16 and 17 of the election petition are, however, vague in several particulars. The names of the supporters who raised slogans during the funeral procession are not mentioned. The time and date of the funeral procession is not mentioned nor is it mentioned that such a propaganda was carried on till the date of polling and if so, by whom and at which places in the constituency nor is the connection between such persons and the appellant stated. The election petitioner (P.W. 2) has tried to make certain improvements in the course of his deposition, which have already been pointed out while setting out his evidence. His evidence does not make it clear on which dates and at which places was the said propaganda carried on and by whom or in what manner. The evidence of P.W. 4, who is said to have printed the badges Exh. A-24 does not inspire any confidence. In the election petition it was not mentioned that the badges were printed at the Markandeya Printing Press nor was it stated that they were printed by P.W. 4 who was working in the said Press. The said witness was put forward only at the trial. In proof of his employment in the said printing press, he produced an alleged agreement of employment which is not signed either by the owner or the manager of the press but only by himself. The owner or manager of the press is not examined. The evidence of P.W. 8, the widow of Shankar, too does not inspire any confidence. Indeed, she herself is stated to have been a suspect along with a liquor vendor in the said case and was, interrogated. All that she says is that a procession was taken out by the appellant and his supporters wherein certain slogans were raised. She does not say that similar propaganda was carried on by the appellant and/or his supporters even on the days subsequent to the funeral procession. P.Ws. 9 and 3 are the workers in the Sirpur Paper Mills. P.W. 3 is admittedly a worker of the Telugu Desam Party. The election petitioner is the President of the workers' union in the said Mills. The names of these witnesses are also not mentioned in the election petition. P.W. 9 generally states that the said false propaganda was carried on till the polling day by the workers of the appellant who were wearing badges of the type of Exh. A-24. This is a very general statement, because he does not name the workers nor the place at which the said propoganda was carried on nor the dates. P.W. 7 is the Sarpanch of Bhatpalli village whereas P.W. 5 is a resident of that village (the deceased Shankar belonged to, Bhatpajli). P.W. 7 stated that the appellant and his workers - whom he did not name -were carrying on propoganda that Shankar was murdered by the respondent and his supporters and that such propaganda was carried

on in Bhatpalli and neighbouring villages. Similar is the statement of P.W. 5. These statements are too general to inspire any confidence. Indeed P.W. 7 admitted in cross-examination that in Bhatpalli village the respondent and Congress (1) candidates got more votes than the appellant and that in one of the booths, the respondent got the majority of votes. P.W. 6 is a resident of Attini village. The appellant's father-in-law belongs to that village. P.W. 6 states that the badges like A-24 were distributed in Attini village by the father-in-law of the appellant. In cross-examination lie admitted that in the said election as also in the preceding election he supported the respondents candidature. He stated further that he saw the father-in-law of the appellant distributing the said badges though he did not give one to him. Another statement made by him in cross examination is that the father-in-law of the appellant got him an arrack contract. He denies the suggestion of enmity between him and the appellant's father-in-law.

32. Now coming to Exh. A-24 it is not even proved that it was printed at the Markandeya Printing Press nor is it clear that it was distributed by the appellant or his supporters. The evidence in this behalf is too vague. So far as A-3 is concerned, it is only a press report filed by PW-1 on which much reliance cannot be placed. During the election time such reports, inspired or otherwise, do get published and cannot be given much credence.

33. A-26 is a case diary which by itself does not show anything. Strong reliance is, however, placed upon A-44 a portion of Exh. A-26 Which according to the election petitioner established his allegation. All that it shows is that the appellant claimed, at the inquest that Shankar was his supporter and that he murdered by the workers of Telugu Desam Party. If really the appellant had made such a statement at the inquest, it is not clear as to why his statement was not recorder at the inquest. P.W. I I who conducted the inquest admitted specifically that he did not record the statement of the appellant. If so, the evidentiary value of Exh. A-44 is very little.

34. We are of the opinion that the learned Judge of the Andhra Pradesh High Court was not justified in setting aside the election of a returned candidate on such flimsy, vague and uncertain evidence, more so in the context of the vagueness of the allegations made in the election petition. The evidence is neither clear nor cogent nor does it particularise the persons who carried out propaganda, the places where it was carried on or that dates on which propaganda was carried on. The evidence is too general to merit any acceptance on such a serious issue. The learned Judge has attached excessive importance to Exhs. A-26 and A-44, treating as simultaneous public record of the said propaganda but as stated above P.W. I I admits to have not recorded the statement of the appellant though a statement attributed to him is found recorded as Exh. A-44, P. W. 10 merely supervised the investigation and he does not speak to A-44 as such. Neither A -3 nor A-44 can be relied upon to hold that the appellant or any one with his consent carried on such a propaganda. Looked at most charitably, the above evidence only proves that the body of Angala Shankar was taken in a procession (after the post-mortem) in which procession, the appellant too was present and on which occasions some persons raised slogans blaming the Telugu Desam Party for the alleged murder of Angala Shankar and also perhaps indirectly implicating the respondent as well. Nothing more. Since the connection between such sloganeer and the appellant is not established nor is the printing and distribution of badges (like A-24) by the appellant or with his consent is established, the appellant Cannot be held to be guilty of the corrupt practice. It was not a straight contest between the appellant and respondent, Congress (I) candidate was also in the field besides three other independent candidates. It cannot be presumed that persons raising slogans against Telugu Desam Party and the respondent were doing so at the instance of Or with the consent of the appellant Others too had an interest in running down the respondent. Though it is said that more than one jeep was used in the procession, number of not even one jeep is mentioned either in the

election petition or in evidence. It cannot thus be stated that these jeeps belonged to or were brought by the appellant. For the above reasons, we set aside the finding of the learned Judge on issues 6 and 7.

35. The learned counsel for the respondent contended on the basis of the decision of this Court in *M. Narayana Rao v. G. Venkata Reddy*, (1977) 1 SCR 490 at 501 : (AIR P- 77 SC 208 at p. 216) that this Court does not normally interfere with the findings of fact recorded by the High Court. Normally, it is so, but this does not mean that even where the finding is totally unsupportable, the Court should hold its hands back. The learned Judge does not seem to have kept in mind the ride that the election of a returned candidate should not be lightly set aside and that it requires clear averments and cogent proof to do so. Both of them are lacking in this case.

36. The counsel for the respondent-election petitioner sought to support the conclusion of the learned Judge on the basis of evidence with respect to other issues. In particular, the material with respect to issue No. 5 was strongly relied upon before us, Counsel submitted that counting was done by the Returning Officer contrary to the instructions, given in circular No. 5 dated 26-10-1989. It is submitted that in certain polling booths, the appellant (an independent candidate) obtained 90% or more votes whereas the candidates of the recognised political parties like Telugu Desam Party and Congress (1) got extremely meagre number of votes. In such a situation, the Returning Officer should have kept aside the ballot papers of such booths and proceeded with the counting without taking such ballot papers into account and taken further steps as prescribed by instructions 21 and 22 of the said circular. Since the returning officer has failed to abide by the said instructions, -it is, submitted, this Court should order re-poll in those booths.

37. It may be noted, that issue No. 5 is connected with other issues relating to rigging and booth capturing. So far as the said issues (viz., issues 1 to 4) are concerned, the counsel for the respondent stated fairly that the evidence led by the election petitioner in support of the said issues is of no particular consequence and that he is unable to challenge the correctness of, the findings recorded by the High Court on the issues 1 to 4. However, his main stress was upon issue No. 5. We shall, therefore, proceed to examine the said contention. Circular No. 5 contained in Memo dated 26-10-1989 was issued by the General Administration (Election-D) Department, Government of Andhra Pradesh. These instructions are said to have been issued by the Chief Electoral Officer. Indeed, these instructions were issued to all the election officers by the Election Commission for the guidance of the Returning Officers among other election officials. Evidently, they are relatable to the power of Superintendence, direction and control over all elections vested in the Election Commission by Art. 324 of the Constitution. Instruction 21 which is said to have been violated reads as follows:

"21. At the time of counting, the Returning Officer should also check up the ballot paper account of each polling booths as prepared at the close of the poll in the polling booths and the votes secured by each candidates as recorded at the Counting Table. If he find that there is an abnormal percentage of voting or unbelievable number of votes cast in a polling booth as compared to different other polling booths in the same constituency and finds that the votes cast in favour of one candidate abnormal from normal standard and the votes cast in 'favour of other candidates especially those of recognised political parties are very negligible, minimal or microscopic in number (for example say total votes assigned to a polling booth is 900 and out of this number, the ballot paper account shows 850 or more as votes cast in that polling booth and out of this 850 votes, 840 or 845 are in favour of one candidate such phenomenon is noticed in quite a number of polling booths in the

constituency, then the Returning Officer should keep aside the ballot papers and ballot papers account of particular polling booth or polling booths in a sealed cover in the presence of counting agents or candidates, without taking them into account in the Result Sheet."

22. if the result of election is not affected by ignoring those votes the Returning Officer may declare the result. If on the other hand, the margin between first two candidates is less than the total votes set aside the Returning Officer should not declare the Result, but seek the orders of the Commission and only after obtaining the orders of the Commission should proceed further."

38. A reading of the Instruction 21 shows that before the Returning Officer keeps aside ballot papers of the particular polling booths, he must be satisfied about following facts.

(1) there is abnormal percentage of voting or an unbelievable number of votes have been cast in that polling, booth as compared to different other polling booths in the same constituency;

(2) The votes cast in favour of one candidate are abnormal from normal standards and that the votes cast in favour of other candidates particularly these of recognised political parties are very negligible;

(3) Such phenomenon is noticed in quite a number of polling booths in the constituency.

39. The instruction also contains an illustration. According to the illustration if the total votes assigned to a given polling booths is 900, and if 850 or more votes out of them are cast and further if out of these, 850 votes cast, 840 or 845 are in favour of one candidate, then the Returning Officer should adopt the procedure indicated in the said instructions viz., keeping aside the ballot papers of such polling booths and counting the rest. If the result of the election is not affected by ignoring the said kept-aside votes he can declare the election. If not (i.e., if the margin between the first two candidates is less than the total votes kept-aside) the Returning Officer should not declare the result but seek the orders of the Commission. He must proceed further only after obtaining the orders of the Commission. Now, let us examine whether the said instruction is attracted in this case. The respondent-election petitioner has submitted a table, marked as Ann. (I) to the Election Petition, containing details of the votes polled by the appellant and other contesting candidates in certain polling booths. On a perusal of Ann. (I); it appears that only in one polling station viz., polling station No. 171, Kammargaon, (Bejjur Mandal) were (where?) 92.05% of the votes assigned to that polling station were cast, out of which 95.4% were polled in favour of the appellant. In another polling station viz., No. 172, Murliguda, 90.93% of votes assigned to that polling station were cast but the votes polled by appellant out of them were 86.59%. In five or six other polling booths, the appellant got 90% or more of the votes cast but total votes polled are far below 90% of the votes assigned to these respective polling stations. It is, thus, clear that only in the case of one polling station (No. 171) was the said instruction attracted. And the very instruction states such a phenomenon should occur not merely in one polling booth but in "quite a number of polling booths". Even if polling booth No. 172 is taken into account even then the instruction cannot be said to have been satisfied. The counsel for the respondent is, therefore, not right in saying that the Returning Officer violated the said instruction.

40. In this view of the matter, it is unnecessary to consider whether the disobedience to such instructions by the returning officer vitiates the election. Indeed, a Constitution Bench of this Court (see Lakshmi Charan Sen v. A.K.M. Hassan Uzzaman, AIR 1985 SC 1233) has ruled to the contrary. May be that such a disobedience coupled with other evidence on record may help the Court in coming to a finding as to the irregularities committed but standing by itself, it is doubtful whether it is sufficient to set aside the election. Inasmuch as in this case the violation of the instruction itself is not established, the question of marshalling the said infraction in support of other evidence (with respect to rigging and booth-capturing) does not arise.

41. For the above reasons, Civil Appeal No. 3597 of 1991 is allowed with costs. Civil Appeal No. 4086 of 1991 is dismissed but without costs. Order accordingly.

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