

Iqbal Singh

Vs

Avtar Singh and Others

Civil Appeal No. 3223 of 1993

(CJI M. N. Venkatachaliah, R. M. Sahai JJ)

26.07.1994

JUDGMENT

R. M. SAHAI, J.

1. The short question that arises for consideration in this appeal filed by the appellant, an engineer by education, an agriculturist by profession who tried his hand in politics, by contesting the Assembly Election of 1992 for 104-Faridkot Assembly Constituency as an independent candidate, is whether the High Court committed any error of law in dismissing his election petition filed under Section 80 of the Representation of the People Act, 1951 (hereinafter referred to as "the Act") on preliminary objection, raised by the returned candidate that the petition did not contain a concise statement of material facts setting forth full particulars of the corrupt practice as required by Section 83 of the Act.

2. The High Court dismissed the petition, also, because the copy supplied, to the returned candidate, was not a true copy within meaning of sub-section (3) of Section 81 of the Act as it did not carry the necessary endorsement in the affidavit accompanying the election petition. Further the High Court found that even if the allegations made in the election petition were correct they were not sufficient to make out any case of corrupt practice or any ground under Section 100 of the Act. It is, therefore, proposed to examine the correctness of the finding on corrupt practice only as if that finding is held to be well founded then it shall not be necessary to examine the other findings.

3. Election for the Faridkot Constituency was held in 1992. One of the candidates who had filed his nomination was one Shri Harmail Singh Dhillon who was a member of the Congress Party and expected to be declared as official candidate. But when the returned candidate was declared as official candidate of the party he withdrew from the contest on the last day. He was later appointed as General Secretary of the Pradesh Congress Committee by Shri Beant Singh who was President of the Pradesh Congress Committee. The two incidents, that is, the withdrawal of Shri Dhillon, and his appointment, shortly thereafter, as General Secretary are the two facts on which the entire election petition and the allegation of corrupt practice which is the sole ground for challenging the election is structured. According to appellant since Shri Dhillon was a very popular person and held number of offices and if he would have contested the election the returned candidate who too was a Congress nominee had no chance of being elected, therefore, Shri Beant Singh who was friendly with the returned candidate exercised his influence on Shri Dhillon and persuaded him to withdraw and as a quid pro quo of the same he appointed him as General Secretary of the Pradesh Congress Committee. Relevant allegations in the petition are extracted below :

"9. That in order to remove Respondent 2 from the contest for 104-Faridkot

Assembly seat, Respondent 1 and Respondent 3 conspired and bargained with Respondent 2 by offering him to get appointed as General Secretary of Punjab Pradesh Congress Committee as quid pro quo for withdrawing from the contest.

19. That on perusal of paras 16, 17 and 18 as above it becomes crystal clear that the appointment of Respondent 2 as General Secretary of Punjab Pradesh Congress Committee as quid pro quo for withdrawing from the electoral process amounts to gratification and is, thus, corrupt practice.

20. That the fact that Respondent 2 was appointed General Secretary of Punjab Pradesh Congress Committee by Respondent 3 at the behest of Respondent 1 (as discussed in paras 5 and 12) in doing so for the purpose of inducing Respondent 2 to withdraw from the electoral contest amounts to corrupt practice as defined in Section 123(1) of the Representation of the People Act and so held in a number of judgments given by our own High Court and Apex Court and thus, Respondent 1 and 3 have committed corrupt practice and as such Respondent 1's election to 104-Faridkot Assembly Constituency is liable to be set aside.

21. That the fact that Respondent 3 acted as agent of Respondent 1 to appoint Respondent 2 as General Secretary of Punjab Pradesh Congress Committee and getting him to withdraw from the electoral contest for the said election amounts to corrupt practice which has materially affected the outcome of the election result. As Respondent 2 is a man of great influence in this Constituency and would have tilted the balance against Respondent 1 as both belong to the same party but opposite groups. It is pertinent to add here that Respondent 2 is related to late S. Darbara Singh and S. Jagmeet Singh Brar, who at present is leading the dissident group in the Congress Party in Punjab. Hence, under Section 100(d)(ii) of the Representation of the People Act, it is prayed that this election be set aside."

In his submissions and written argument filed by the appellant, who appeared in person, it was urged that since the returned candidate did not dispute that Shri Beant Singh was the President of the Pradesh Congress Committee with whom the returned candidate was on good terms, nor did he dispute that Shri Dhillon was appointed as General Secretary of the Congress Committee it was not necessary for the appellant to lead any evidence and the allegation of corrupt practice stood proved. The High Court found that there was no other material from which it could be gathered that the two incidents, that is, the withdrawal of Shri Dhillon and his appointment as General Secretary, Pradesh Congress Committee were interrelated and Shri Beant Singh was responsible, directly or indirectly, in persuading him to withdraw and as a price for that withdrawal, appointed him as General Secretary.

4. Withdrawal of a candidate from the election and his appointment to a political office during election period may not be very proper and conducive to the democratic growth of the election process and setting up of healthy precedent. Yet even assuming the two facts it may utmost give rise to a suspicion but in election law it is not suspicion but proof which could result in setting aside of election matter are not proceedings which are decided on assumption and suspicion, however strong, cannot take the place of proof. No particulars about any inducement by Shri Beant Singh, direct or indirect, were set out. There was no mention even of date, time and place when the inducement was allegedly offered. As observed by this Court in *Bishundeo Narain v. Seogeni Rai* (AIR 1951 SC 280, 283 (para 25) : 1951 SCR 548, 556)

"Now if there is one rule which is better established than any other, it is that in cases of fraud, undue influence and coercion, the parties pleading it must set forth full

particulars and the case can only be decided on the particulars as laid. There can be no departure from them in evidence. General allegations are insufficient even to amount to an averment of fraud of which any court ought to take notice, however strong the language in which they are couched may be, and the same applies to undue influence and coercion."

Moreover the allegation made in the election petition to the effect, "that in order to remove Respondent 2 from the contest from 104-Faridkot Assembly Seat Respondents 1 and 3 conspired and bargained with Respondent 2 by offering him to get appointed as General Secretary of Punjab Pradesh Congress Committee as quid pro quo for withdrawing from the contest" was hardly sufficient, in law, to establish the corrupt practice as visualised by Section 100 unless the allegation that Shri Dhillon and Shri Beant Singh conspired and bargained, was proved which required necessary details and material to support it. Conspiracy as understood in law is an inference to be drawn from relevant facts. Mere allegation, therefore, that the two conspired, in the absence of any detail, did not, as held by the High Court, constitute a plea of corrupt practice, which the returned candidate could have been called upon to meet. The bargaining and quid pro quo alleged in the petition were plea which were required to be supported by particulars. May be that there may be cases where direct evidence may not be available, as argued by the appellant, and an inference may be drawn in law but even for that inference there must be circumstances and the circumstances must be so clinching that they must not leave any other possible inference except the one as claimed by the appellant. But mere averment was not sufficient in law and the appellant cannot claim, as argued by him that since this was a fact known to Respondents 1, 2 and 3 the requirement of law was satisfied by merely averring it and it was the duty of the respondents to disprove the same. That is not the law of burden of proof and certainly not in election matters. Again, it is not uncommon for a political party to have more than one nomination filed by way of abundant caution against any possibility of rejection of a nomination at the scrutiny. In this case the contesting candidate and the one who withdrew from contest were from the same political party.

5. Reliance was placed on Section 100(1)(b) of the Act which reads as under :

"100. Grounds for declaring election to be void. - (1) Subject to the provisions of sub-section (2) if the High Court is of opinion -

(a)

(b) that any corrupt practice has been committed by a returned candidate or his election agent or by any other person with the consent of a returned candidate or his election agent."

This clause comes into operation if the corrupt practice as defined in Section 123 of the Act is alleged to have been committed by the returned candidate. The petition did not disclose that the returned candidate was in any manner responsible for the withdrawal of Shri Dhillon. No allegation was made nor any details were furnished which could even, remotely, suggest that the returned candidate was guilty of corrupt practice. It was urged by the appellant that since Shri Dhillon withdrew on persuasion of Shri Beant Singh who was friendly with the returned candidate it should be inferred as a matter of law that the charge of corrupt practice was made out. The submission appears to be devoid of any merit as each of the allegations is required to be pleaded and proved. In absence of statement of fact in the petition which if proved may have given rise to an inference in law the High Court did not commit any error in recording the finding that the petition was lacking

in material particulars. The allegations relating to Shri Beant Singh could be said to be covered in the expression, "by any other person with the consent of a returned candidate" but in absence of any detail or statement that the returned candidate had anything to do or he at any point of time was responsible in getting the candidate of Shri Dhillon withdrawn through the help of Shri Beant Singh so that it may help him in being elected the High Court was right that the allegations in the petition of corrupt practice fell short of the requirement of law.

6. Nor the allegations were sufficient for the corrupt practice as visualised by Section 100(1)(d)(ii) of the Act which reads as under :

"100. Grounds for declaring election to be void. - (1) Subject to the provisions of sub-section (2) if the High Court is of opinion -

##(a)(b)(c)##

(d) that the result of the election, insofar as it concerns a returned candidate, has been materially affected -

(i)

(ii) by any corrupt practice committed in the interests of the returned candidate by an agent other than his election agent."

The appellant argued that the corrupt practice alleged by him was covered in clause (d) as it was a corrupt practice, "committed in the interest of the returned candidate by an agent other than his election agent". He urged that the 'agent' has been given a wider meaning by the courts and it would extend even to Shri Beant Singh who was the President of the Pradesh Congress Committee. Whether such a person would be covered in the expression 'agent' is not material as even assuming that in the larger meaning of the word 'agent' anyone may be covered but the basic averment in respect of corrupt practice committed, "in the interest of the returned candidate" being short of the details as required in law the High Court, did not commit any error of law in rejecting the petition for lack of necessary particulars and for being vague.

7. Since the order of the High Court does not appear to suffer from any infirmity on this aspect and the finding recorded by it that the petition was liable to be dismissed as the allegations of corrupt practice made in the petition were not sufficient in law it is not necessary to decide whether the finding recorded by the High Court on the other aspect is well founded or not.

8. In the result this appeal fails and is dismissed. But in the circumstances of the case that the appellant who appeared in person and argued his case with precision the parties are directed to bear their own costs.

</html