Chandrakanta Goyal

Vs

Sohan Singh Jodh Singh Kohli

Civil Appeal No. 3228 of 1991

(J. S. Verma, N. P. Singh, K. Vankataswami JJ)

11.12.1995

JUDGMENT

J. S. VERMA, J.

1. This is an appeal under Section 116-A of the Representation of the People Act, 1951 (for short "the Act") by the returned candidate against the judgment dated 1st and 2nd July, 1991 of H. Suresh, J. of the Bombay High Court in Election Petition No. 19 of 1990 by which the election of the appellant has been set aside on the ground under Section 100(1) (b) for commission of corrupt practices under sub-sections (3) and (3-A) of Section 123 of the Act. The appellant was the candidate of the Bhartiya Janata Party and the respondent was the candidate of the Janata Dal for election to the Maharashtra Legislative Assembly from No. 33, Matunga Constituency held on 27-2-1990. The appellant became candidate at the election on 8-2-1990. The date of poll was 27-2-1990 and the election result was declared on 1-3-1990 at which the appellant was declared duly elected having secured 31,530 votes while the respondent (election petitioner) had secured 28,021 votes and the Congress candidate secured 28,426 votes. The election petition was filed on the ground under Section 100(1) (b) alleging commission of corrupt practices under Section 123(3) and 123(3-A) of the Act. These corrupt practices were alleged on the basis of certain speeches made on 29-1-1990 and 24-2-1990 by leaders of the political alliance of BJP and Shiv Sena which supported the candidature of the appellant who was a BJP candidate. In addition, speeches of the appellant made on 8-2-1990 and 15-2-1990 were also relied on. The gravamen of the charge of corrupt practices was that these speeches amounted to appeal to the voters on the ground of Hindu religion which is the religion of the appellant.

2. The High Court reject the claim made in the petition that the speeches of the appellant made on 8-2-1990 and 15-2-1990 amounted to the above corrupt practices. Learned counsel for the respondent rightly made no attempt to assail this finding of the High Court to support the judgment. We have been taken through the contents of the speeches made by the appellant on 8-2-1990 and 15-2-1990 in her election campaign. We find nothing therein to doubt the correctness of the High Court's finding that both these speeches are innocuous and there is nothing in them to constitute any of the corrupt practices under sub-sections (3) and/or (3-A) of Section 123 of the Act.

3. So far as the speeches of 29-1-1990 are concerned, there can be no doubt that the same have no relevance in the present context inasmuch as they were acts prior to the date on which the appellant became a candidate at the election. This being so, any speech made prior to the date on which she became a candidate at the election cannot form the basis of a corrupt practice by any candidate at that election since any act prior to the date of candidature cannot be attributed to her as a candidate at the election. For this reason, the learned counsel for the respondent rightly made no attempt to

dispute this position. (See Subhash Desai v. Sharad J. Rao.)

4. Any further discussion of the speeches given at the meetings held on 29-1-1990 is, therefore, unnecessary.

5. The only remaining speeches for consideration are those made at the meeting of 24-2-1990 by certain leaders of the alliance. There was no speech made by the appellant at that meeting. The offending speeches are alleged to have been made by Bal Thackeray of the Shiv Sena and Pramod Mahajan of the BJP. The High Court has held that these speeches amount to corrupt practices under sub-sections (3) and (3-A) of Section 123 of the Act. I is significant that the corrupt practice found proved against the returned candidate is on the basis of speeches made by Bal Thackeray and Pramod Mahajan without giving any notice under Section 99 of the Act to either of them in spite of this objection being expressly raised before the learned trial Judge which is evident from paras 64 and 65 of the impugned judgment, which read as under :

> "64. At this stage, Mr. Sathe submitted that since I have already held that the leaders Bal Thackeray and Pramod Mahajan had made appeals which were violative of Sections 123(3) and 123(3-A) of Act, 1951, and since the leaders are other agents than election agent of the respondent, before I give any finding, I must issue notice under Section 99 of Act, 1951. I have not been able to appreciate this submission of Mr. Sathe. Having come to the conclusion that the respondent has committed corrupt practices, maybe because of the consent she had implicitly given to the speeches given by her leaders, the Court need not wait till a notice under Section 99 is issued. I can right now declare the respondent's election as void. It is after such declaration is made, if necessary, and if I have to name any individual person, other than the candidate or her election agent, it is for me to issue notice. It has nothing to do with any party's desire. I am also aware of the fact that the Supreme Court has emphasised the need to maintain purity in election process and, therefore if anyone is found to have indulged in corrupt practices, it is proper that such a notice be given. Thereafter he must be given an opportunity to cross-examine the witnesses, if he so desires and he has to be heard. But it is not mandatory that in every matter the Court should adopt proceedings under Section 99 of the Act, 1951.
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> 65. In the present case, I do not propose to issue any such notice as I do not intend to name them in these proceedings. I understand that as far as Bal Thackeray is concerned, there are are already such notices pending against him. I am not aware whether any such notice is pending against Pramod Mahajan. But, I think, if one has regard for the time that is consumed in such electoral battles within the precincts of the Court, particularly at the cost of large number of other urgent matters pending in this Court, I would say that it is not expedient in the interest of justice to issue such notices. A pragmatic approach in all such matters is the paramount need of the hour. I would therefore say 'thus far and no further' in matters of this type, in a situation like this, hoping that it is for the leaders to reflect upon what they have done, in their own conscience. It is a sad commentary on our electoral law, despite Court verdicts, election campaigns are carried on in a manner rendering the legal process socially irrelevant."

6. The learned trial Judge has not even recorded a clear finding of the appellant's consent to the speeches given by the other persons for which the returned candidate has been held to be guilty

without the compliance of Section 99 of the Act. We have already held in the connected appeal in - Manohar Joshi v. Nitin Bhaurao Patil decided today, that when a candidate is held to be guilty of corrupt practice vicariously for an act done by any person other than his agent with his consent, then the ultimate finding to this effect has to be recorded only after notice under Section 99 to that other person and an inquiry held as contemplated therein, naming the other person simultaneously for commission of such corrupt practice. This order is to be made at the end of the trial which is the effect of the combined reading of Sections 98 and 99 of the Act. For this reason, deciding the election petition and making an order under Section 98 against the returned candidate without complying with the requirements of Section 99 when the corrupt practice against the returned candidate is held to be proved vicariously for the act of another person by itself vitiates the judgment. It is also clear that the court has no option in this matter and it is incumbent to name such a person in the final verdict given in the election petition under Section 98 of the Act after making due compliance of Section 99.

7. The learned trial Judge acted contrary to law in ignoring the mandate of Section 99 and taking the view that there was an option to ignore the requirement of Section 99 to give notice to the makers of the speeches and to name them as persons guilty of the corrupt practice even though those speeches are made the foundation of the corrupt practice held to be proved against the returned candidate. The judgment is obviously vitiated since no concluded finding on this question could have been recorded against the returned candidate alone choosing to ignore the requirement of Section 99 and without also naming the makers of those speeches.

8. The question now is of the effect of the above defect in the impugned judgment. Ordinarily in such a situation after setting aside the impugned judgment the matter is to be remitted to the High Court for deciding the election petition afresh after complying with the requirements of Section 99 of the Act by giving notice to the makers of the speeches and holding the requisite inquiry. However, in the present case, such a course would not be appropriate. No act of the appellant herself is found to be offending and her own speeches were held to be innocuous even by the High Court. The only surviving allegations relate to speeches made by some leaders of the political parties for which even the High Court has not recorded a clear finding of the appellant's consent thereto and the High Court has merely said that the consent may be implied from the fact that the makers of the speeches were leaders of the political party.

9. As an abstract proposition of law it cannot be held that every speech by a leader of a political party, who is not an agent of the candidate set up by the party, is necessarily with the consent of the candidate set up by that party to make it superfluous to plead and prove the candidate's consent, if that speech otherwise satisfies the remaining constituent parts of a corrupt practice. The act amounting to a corrupt practice must be done by "a candidate or his agent or by any other person with the consent of a candidate or his election agent". A leader of a political party is not necessarily an agent of every candidate of that party. An agent is ordinarily a person authorised by a candidate to act on his behalf on a general authority conferred on him by the candidate. Ordinarily, the agent is the understudy of the candidate and has to act under the instructions given to him, being under his control. The position of a leader is different and he does not act under instructions of a candidate nor is he under his control. The candidate is held to be bound by acts of his agent because of the authority given by the candidate to perform the act on his behalf. There is no such relationship between the candidate and the leader, in the abstract merely because he is a leader of that party. For this reason, consent of the candidate or his election agent is necessary when the act is done by any other person. Thus, even in the case of a leader of the party, ordinarily, consent of the candidate or his election agent is to be pleaded and proved, if the election of the candidate is to be declared void

under Section 100(1) (b) for the corrupt practice committed by the leader. It is a different matter that the consent may be implied more readily from circumstances such as conduct of the candidate evident from his personal presence at that time and place without any protest. On this scanty material and a half-hearted presumption of consent drawn only from the fact that the speeches were made by leaders of the party, which is a constituent part of the corrupt practice and the further fact that the Legislative Assembly for which that election was held has been dissolved and the next general election thereto has also taken place, a remand in the present case is uncalled for.

10. For the aforesaid reasons, the appeal is allowed. The impugned judgment is set aside resulting in dismissal of the election petition. The appellant will get her costs throughout from the respondent.