Suryakant Venkatrao Mahadik

Vs

Saroj Sandesh Naik (Bhosale) (Smt)

Civil Appeal No. 2453 Of 1991

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

11.12.1995

JUDGMENT

J. S. VERMA, J.

1. This appeal under Section 116-A of the Representation of the People Act, 1951 (for short "the Act") against the judgment dated 23-4-1991 passed by H. Suresh, J. of the Bombay High Court in Election Petition No. 14 of 1990, is by the returned candidate whose election to the Maharashtra Legislative Assembly from 48, Nehru Nagar Constituency, held on 27-2-1990 has been declared to be void on he ground under Section 100(1) (b) of the Act "on the ground that he, his election agent and workers have committed corrupt practice as defined under Section 123(3) and Section 123(3-A) of the Representation of the People Act, 1951".

2. Elections to the Maharashtra Legislative Assembly were announced on 18-1-1990. The nomination papers were filed by the appellant for election from 48, Nehru Nagar Constituency on 31-1-1990. His nomination was accepted on 8-2-1990. The election was held on 27-2-1990 and the result was declared on 1-3-1990. The appellant was candidate of the Shiv Sena and he was declared duly elected since he had got the maximum number of votes. The election petition was filed on 16-4-1990 by respondent Smt. Saroj Sandesh Naik (Bhosale). There was some defect in the verification of the election petition and, therefore, on 19-4-1990 the defect in verification was permitted to be cured and a fresh affidavit in support thereof was taken by the Court. The appellant took out chamber summons to dismiss the election petition under Section 86 of the Act for non-compliance of Section 81 of the Act which was dismissed on 17-11-1990. After conclusion of the trial, the impugned judgment was delivered on 23-4-1991 setting aside the appellant's election. Hence this appeal.

3. The grounds taken for opposing the election petition before the High Court, have been reiterated in this appeal. In substance, these grounds are as under :

> (1) There is non-compliance of sub-section (1) of Section 81 inasmuch as the election petition presented on 16-4-1990 was time-barred. There is also non-compliance of sub-section (3) of Section 81 inasmuch as copies of the photographs annexed to the election petition were illegible and, therefore, the copy of the election petition served on the appellant was not a true copy of the election petition. On these grounds, dismissal of the election petition under Section 86 was claimed for non-compliance of Section 81 of the Act.
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> (2) The contents of the election petition are not in accordance with Section 83 of the

Act inasmuch as it does not contain the material facts and full particulars of the corrupt practices alleged therein. For this reason, no triable issue arises in respect of the corrupt practices alleged under sub-sections (3) and (3-A) of Section 123 of the Act. It was urged that the election petition is liable to be rejected under Order 7, Rule 11 CPC.

(3) Even on facts, no corrupt practice is proved.

Re : Ground No. (1)

4. We shall first deal with the contention relating to the liability of the election petition for dismissal under Section 86 of the Act for non-compliance of sub-sections (1) and (3) of Section 81 of the Act.

5. Non-compliance of sub-section (1) is alleged on the ground that the last date of expiry of the period of 45 days from the date of election which is the limitation prescribed in sub-section (1) of Section 81 of the Act was 14-4-1990, but the election petition was in fact presented on 16-4-1990. Admittedly 14/15-4-1990 were holidays on which days the High Court and its office were closed. The question, therefore, is : Whether Section 10 of the General Clauses Act is applicable? If it applies, presentation of the election petition on 16-4-1990, the day on which the Court and its office reopened after the holidays, would be presentation within the prescribed period of limitation, but not otherwise. We have considered this question at length in the connected appeal - Manohar Joshi v. Nitin Bhaurao Patil - decided today, and held therein, that Section 10 of the General Clauses Act applies to the election petitions presented under the Representation of the People Act, 1951. For the same reasons, we hold that Section 10 of the General Clauses Act being applicable, the election petition filed on 16-4-1990 in the present case was within time and, therefore, there was no non-compliance of sub-section (1) of Section 81 of the Act.

6. We also do not find any merit in the contention that there is non-compliance of sub-section (3) of Section 81. This argument is based on certain photographs which were annexed to the election petition. In the facts of the present case, it is unnecessary to decide whether the copies of the photographs served on the appellant along with copy of the election petition were illegible or not. Those photographs were of certain posters alleged to have been put up in the constituency and to have contained slogans of the Shiv Sena, of which party the appellant was a candidate, which amounted to appeal to voters on the ground of Hindu religion. The argument of learned counsel for the appellant is that in the absence of legible copies of those photographs, the contents of which are relied on for the allegation of corrupt practice under Section 123(3) of the Act, the relevant pleading in that behalf was not supplied to the appellant inasmuch as the copy of the election petition served on him was deficient to that extent. In our opinion, this question does not really arise in the present case since the contents of those posters have also been expressly pleaded in the election petition. These facts are pleaded in para 12 of the election petition and the contents of the four photographs annexed to the election petition of which the copies are alleged to be illegible are expressly pleaded in clauses (ii), (iii), (vi) and (vii) of sub-para (b) of para 12 of the election petition. In such a situation, the photographs annexed to the election petition after expressly pleading their contents in para 12 of the election petition, were only evidence of the pleading contained in para 12 of the election petition and it is not a case of incorporating into the election petition the contents of those photographs by reference without stating it in the election petition. On these facts, the decision applicable is that in Sahodrabai Rai v. Ram Singh Aharwar, which clearly indicates that the failure to supply copy of such a document annexed to the election petition, the contents of which have in addition been expressly pleaded in the election petition does not amount to non-compliance of sub-

section (3) of Section 81 to attract dismissal of the election petition under Section 86 of the Act. In such a situation the document annexed to the petition is only evidence of the pleading incorporated in the petition. Thus there is no merit in the argument that the election petition was liable to be dismissed under Section 86 of the Act for non-compliance of sub-section (1) and/or sub-section (3) of Section 81 of the Act.

Re : Ground No. (2)

7. The grounds of corrupt practices under sub-sections (3) and (3-A) of Section 123 are based on certain speeches by appellant Suryakant Venkatrao Mahadik and some others made on different dates, wall paintings and slogans of Shiv Sena of which the appellant was a candidate and some video cassettes alleged to have been displayed during the election campaign of the appellant. Such speeches include those made in a meeting held on 29-1-1990 by some leaders of Shiv Sena, speeches made on 16-2-1990 and 19-2-1990 by some persons other than the appellant and a speech made by the appellant on 11-2-1990.

8. Shri Soli J. Sorabjee, learned counsel for the respondent confined the respondent's case in this appeal only to the speech of the appellant on 11-2-1990. He stated in all fairness that the speeches made in the meeting of 29-1-1990 are irrelevant inasmuch as they relate to the period prior to the date on which the appellant became a candidate at the election and cannot, therefore, amount to corrupt practice. It is surprising that this obvious position in law was overlooked by the High Court and reliance was placed even on the speeches made in the meeting on 29-1-1990 to support the finding of corrupt practices held proved against the appellant. Similarly, Shri Sorabjee made no attempt to support the High Court's findings to the same effect on the basis of speeches made by certain other persons in the meetings held on 16-2-1990 and 19-2-1990 since the finding is in respect of speeches by persons other than those pleaded in the election petition. It is difficult to appreciate how the High Court could reach this conclusion and find a case for the election petitioner different from and in addition to that pleaded by her.

9. Considerable argument was advanced on behalf of the appellant to assail the High Court's judgment which suffers from many obvious discrepancies to contend that the ultimate conclusion reached by the High Court is contrary to law because it has been influenced by numerous such errors which are wholly unsupportable. Similar defects in the pleading and proof of corrupt practice based on video cassettes, wall paintings, posters and stickers were shown to contend that no triable issue arose in the absence of requisite pleading of material facts and only omnibus evidence to support the same could not amount to legal proof. It was urged by learned counsel for the appellant that the trial of the election petition assumed the form of a roving inquiry into the general philosophy of the Shiv Sena and its general actions instead of being confined to a trial of the specific allegations of corrupt practices against the appellant in accordance with the procedure prescribed by law. Learned counsel for the appellant referred also to the manner in which the order dated 26-4-1991 was made by the High Court on the stay application which shows that the learned Judge in making the decision was influenced more by his impression of the activities of the Shiv Sena rather than the merits of the case. To support this submission, he referred to the order dated 26-4-1991 passed by H. Suresh, J. on the stay application wherein he stated inter alia as under :

> "9. ... The Court has also to take into account the attitude of the party before granting stay. It is on record in this election petition as also in all other election petitions that are before me that when Bharucha, J. decided the said petition of P. K. Kunte v. Dr. Ramesh Prabhoo, on or about 7-4-1989, the very next day Bal Thackeray, in an

> editorial dated 3-4-1989, has defied the order of the Court and has publicly stated that he would not care for the courts whatever be their verdict. He has repeated that performance even after I gave my judgment in the earlier petition and the present one. I do not say that he should accept the verdict of the Court as such. But I always thought, we believe in the rule of law and not in the rule of men. If the Court has committed any error that has to be corrected in accordance with law, it is the higher court that can set it right. Or it is Parliament that can change the law. But certainly it cannot be settled at Chowpatty Sands. If a leader having a considerable mass appeal amongst the not-so-learned, the illiterate, the semi-literate, the ignorant, publicly denigrates the Court, in effect, he undermines the confidence of the public in the judiciary itself. That is the negation of the very concept of rule of law. It is time that the courts take note of such public ridicule by public leaders which, if ignored, will sooner or later make the courts socially irrelevant in this country. In these circumstances, I am inclined to think what Mr. Vashi says is right.
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> 10. It is true, the respondent has not said a word about my judgment in this election petition. Anyhow it is not on record so far. Whatever it be, he (the respondent) still belongs to the party. He is bound by what his leader says. He cannot say that he does not belong to Shiv Sena. If that is so, there is no reason that the Court should show any indulgence to grant stay in a matter of this type. There is neither equity, not law in favour of a person who has scant respect for the Court."

10. We have mentioned these facts in view of the vehemence with which it was urged by the learned counsel for the appellant, with some justification, that the learned Judge who decided the election petition was influenced by extraneous factors which coloured his perception of the law leading to several errors in the judgment and the ultimate conclusion reached in the election petition. In fact, the explanation for non-examination of the appellant as a witness at the trial, given by learned counsel for the appellant, was that on account of the attitude of the learned Judge the appellant had a reasonable apprehension of being treated if he appeared as a witness in the court. In view of the several obvious defects in the trial and the reception of considerable irrelevant evidence and reliance on several extraneous considerations in deciding the matter, all of which we are excluding from consideration, the criticism levelled at the decision cannot be rejected as baseless. However, we are proceeding to examine whether on exclusion of all such material, there remains any legal basis to decide the appeal on merits, instead of remanding the matter for a fresh trial.

11. In our opinion, it is not necessary for us to go into this question any further in the present case since Shri Sorabjee, learned counsel for the respondent has categorically confined the respondent's case to a limited question and taken the stand that one speech of the appellant alone to the extent it is expressly pleaded in the election petition and proved by evidence, is sufficient to constitute the corrupt practice under Section 123(3) of the Act to support the decision of the High Court. In view of this stand, we would first consider this aspect because it would be unnecessary to go into the other questions if the ultimate judgment declaring the appellant's election to be void can be sustained on this ground alone.

12. The allegation of corrupt practice based on the appellant's speech in para 12 of the election petition is as under :

> "12. The petitioner states that as stated hereinabove, the respondent was the officially sponsored candidate of Shiv Sena for the Vidhan Sabha (Assembly elections). The

said political party, viz., Shiv Sena as stated earlier had entered into an alliance with another party known as Bharatiya Janata Party (BJP). The petitioner states that of late the said Shiv Sena and the said BJP have been contesting elections on the plank of Hindutva and the Hindu religion. Shiv Sena has been openly canvassing and appealing to the voters to vote in the name of Hindu religion....

#(a) * * *(b) * * *##

(c) The petition states that during the course of election/campaigns, number of public meetings were held by the respondent, his election agent and other party workers with the consent of the respondent and/or his election agent in the petitioner's constituency. In the said meetings the respondent and his party workers were jointly and defiantly propagating that the Shiv Sena party was for the Hindus and that if you are a Hindu you should vote for the respondent and the Shiv Sena to power.... The petitioner says that the text of some of the speeches are as under :

(i) A huge gathering of about 25,000 to 30,000 people was held at "SARVESHWAR MANDIR' on Sunday, the 11th February, 1990 when 'AKHAND HARINAM SAPTAH' was in progress at the conclusion of the ceremony the respondent made inciting speeches based on religion, religious practices, evils of secularism and exhorted voters to vote for Shiv Sena and support the cause of Hindus and Hindu religion. The respondent sought the blessings of the gathering and appealed to them to support Shiv Sena and vote them to power. The holding of the meeting at a Mandir and performance of Puja before the speeches violated the basic rule as to use of religious places for political purposes;"

The above averments contained in the body of the election petition in para 12 satisfy the requirement of Section 83(1) of the Act inasmuch as the material facts on which reliance was placed for alleging the corrupt practice were stated along with full particulars of the corrupt practice to enable the returned candidate to meet the allegation made against him. The date, time and place of the act amounting to corrupt practice was pleaded and it was expressly pleaded that the returned candidate himself invoked the blessings of the gathering and appealed for votes and support for the cause of Hindu religion. This appeal was made at a religious place and during a religious gathering, obviously for greater effect. Returned candidate being himself a Hindu and invoking support for the Hindus and Hindu religion in a religious gathering of Hindus during his election campaign, the averment made was of a direct appeal to the voters by the returned candidate for votes on the ground of his religion. Thus, there is no deficiency in the pleading of this corrupt practice under Section 123(3) of the Act. The only question is whether the same has been proved.

Re : Ground No. 3

13. The witness examined to prove the allegation of the above corrupt practice is PW 4 Namchari Baba Pol, a Police Sub-Inspector, who was attached to the Kurle Police Station in the Nehru Nagar Assembly constituency at the relevant time. He has deposed that during this election it was his duty to report to his superior about the important events each day and for that purpose he used to maintain the record in a diary. He stated, on refreshing his memory from an entry in the diary, that he had visited the Sarveshwar Mandir on 11-2-1990 at noon since he had known that the appellant was to go there; that he had found the appellant, Dr. Pednekar, Bhao Korgaonkar and several other Shiv Sena workers in the temple where the religious festival of "Akhand Harinam Saptah" was in

progress. He has stated that the appellant (referred to as respondent in the election petition) and some others gave speeches at that time which lasted for about half an hour. About the contents of the speech of the appellant (referred to as respondent in the election petition), he has stated as under :

> "... The respondent and Dr. Pednekar gave a speech stating that for the protection of Hindutva it was necessary to give vote to Shiv Sena...."

There is nothing in his cross-examination to discredit his version to this extent. In view of the nature of his duties during election period, he was a natural witness of the incident. The diary which he maintained for that period was produced by him in the court in which an entry of his visit to the temple that day was noted and nothing was elicited in cross-examination to detract from the merit of his version to this extent. This is the only direct evidence on the point to which there is no rebuttal by the appellant inasmuch as the appellant did not enter the witness-box to deny this version. The explanation given by learned counsel for the appellant for the appellant's failure to enter the witness-box even it true, does not relieve the appellant from the consequence of an adverse inference arising against him on this point. This is a fact of which the appellant had personal knowledge since this act was attributed to the appellant himself. He was the best person to deny that assertion if he challenged the same and to offer himself for cross-examination by the other side. This he has failed to do. There being no inherent defect in the testimony of PW 4 and he being a natural witness of the incident on account of his official duty during the election period, the above statement made by him must be accepted. The question now is whether this statement amounts to proof of the corrupt practice under Section 123(3) of the Act.

14. The meaning of the word "Hindutva" was seriously debated at the Bar during the hearing of the bunch of appeals of which this is one. We have dealt with this aspect at length in the connected appeal - Bal Thackeray v. Prabhakar K. Kunte decided today, and it is unnecessary to reiterate the same herein. It is sufficient for the present purpose to say that the meaning of the word "Hindutva" in the speech has to be understood in the context and according to its use and the manner in which it was meant to be understood by the audience. Irrespective of the meaning of Hindutva in the abstract, what is material in each case is the kind of use made of this term and the manner in which it was meant to be understood by the audience to which the speech was addressed. The relevant pleadings in the present case as extracted above, make it clear that this particular speech by the appellant was an appeal by a Hindu to a congregation of Hindu devotees in a Hindu temple during a Hindu religious festival with emphasis on the Hindu religion for giving votes to a Hindu candidate espousing the cause of Hindu religion. Thus according to the pleadings in the election petition the speech made by the appellant was clearly an appeal to the voters on the ground of his religion. The evidence which proves the speech made by the appellant in a Hindu temple during a religious festival addressed to Hindu devotees forming the religious gathering has to be understood in this context. The word "Hindutva" used in the speech of the appellant at that time, place and occasion has to be understood only as an appeal on the ground of Hindu religion, that is, by the candidate on the ground of his religion. As earlier stated, the word "Hindutva" in the abstract and in a different context addressed to a different gathering may have different meaning related to Indian culture and heritage unrelated to religion, but in the present context it has only one meaning as indicated. In the absence of any rebuttal by the appellant against whom an adverse inference also arises on account of his failure to enter the witness-box to deny this allegation, no other conclusion is possible.

15. The above discussion is sufficient to indicate that the speech of the appellant on 11-2-1990 in Sarveshwar Mandir during the religious festival of "Akhand Harinam Saptah" to the congregation of

Hindu devotees at that time and place was clearly an appeal to the voters on the ground of his religion which amounts to a corrupt practice under sub-section (3) of Section 123 of the Act. This finding alone is sufficient to sustain setting aside the appellant's election on the ground of a corrupt practice. It is, therefore, unnecessary to record any finding on the remaining points and the other corrupt practices alleged against the appellant which have been found proved by the High Court. This judgment is not to be construed as an affirmance of any other finding of corrupt practice recorded by the High Court.

16. We may, however, observe that there is some basis for the grievance made on behalf of the appellant that the trial of the election petition in the High Court assumed the form of a roving general inquiry into the philosophy and functioning of the Shiv Sena instead of the trial being confined only to the specific allegations of corrupt practice against the appellant. The record also indicates the care was not taken to ascertain the precise allegation of corrupt practices in order to prevent reception of irrelevant and inadmissible evidence at the trial. Certain findings given by the High Court against the appellant are such that even on behalf of the respondent, no attempt was rightly made to support them. In the impugned judgment, apart from finding a corrupt practice proved on the basis of certain speeches by persons other than those pleaded, it has also been said surprisingly at one place that "in my view the question of consent does not arise in the present case". This was said in the context of a corrupt practice resulting from an act of a person other than the candidate or his agent for which pleading and proof of consent is necessary as a constituent part of the corrupt practice. The learned Judge overlooked the difference between the requirement in law of consent as a constituent part of the corrupt practice and its proof by necessary implication from the facts and circumstances of a case.

17. For the aforesaid reasons, we uphold the setting aside of the appellant's election on the above ground alone as earlier indicated. The appeal must, therefore, fail. However, in view of the manner of trial of the election petition and the several obvious defects therein, it is appropriate that the parties are directed to bear their own costs of this appeal as well as of the trial of the election petition, i.e., throughout. We direct accordingly.