

Uma Ballav Rath

Vs

Maheshwar Mohanty

Civil Appeal No. 552 of 1998.

(CJI Dr. A.S. Anand, B.N. Kirpal JJ)

25.02.1999

JUDGMENT

Dr. A.S. Anand, CJI J

1. This appeal calls in question the judgment and order of the High Court of Orissa dated 23rd December, 1997, dismissing an Election Petition filed by the appellant herein.
2. Elections to 56 Puri Assembly Constituency of the Orissa Legislative Assembly were held in the month of March, 1995. The last date for filing of nomination papers was 17th January, 1995. It appears that the appellant and respondent No. 1 filed their nomination papers as "official candidates" of Janata Dal. Their nomination papers were supported by authorisations in Forms A and B under the signatures of Shri S.R. Bommai, President of the Janata Dal. Since two candidates had claimed the reserved symbol of Janata Dal and before the last date fixed for withdrawal of candidature, no communication was received by the Returning Officer as to which one out of the two was the official candidate, the Returning Officer treated both the appellant and respondent No. 1 as independent candidates and allotted the free symbols of "Bicycle" and "Boat" respectively to them, by an order dated 20th January, 1995. The order of the Returning Officer was challenged before the Election Commission under Rule 10(5) of the Conduct of Election Rules, 1961 (hereinafter "the Rules") by both, the appellant as well as respondent No. 1. Vide order dated 25th January, 1995, the Election Commission, after examining the documents and other material on the record, held that the decision of the Returning Officer was consistent with the directions, orders and rules relevant to the subject. The order of the Returning Officer was, consequently, upheld. While the matters rested thus, it appears that on 30th January, 1995, Shri S.R. Bommai, President of Janata Dal submitted a representation to the Election Commission stating therein that no Form B had been supplied to the appellant and that the appellant had produced Form B *fraudulently*. Respondent No. 1 was stated to be the official candidate of Janata Dal. The Election Commission of India, without issuing any notice to the appellant and without granting him any opportunity of hearing opined on February 1, 1995 on a "reconsideration of the matter", that there was "no reason to disbelieve" that respondent No. 1 was the official candidate of Janata Dal for 56 Puri Assembly Constituency. A direction was issued by the Commission in exercise of its powers under Article 324 of the Constitution read with the Rule 10(5) of the Rules to consider and treat respondent No. 1 as the official candidate of Janata Dal from the concerned Assembly Constituency and to allot the reserved symbol of Janata Dal, a national recognised party to him. Pursuant to the said direction of the Election Commission, election symbol of "Wheel", a reserved symbol, was allotted to respondent No. 1 while the appellant was treated as an independent candidate. After the polls were conducted, respondent No. 1 was declared elected on the Janata Dal ticket. The appellant thereupon filed an Election Petition challenging the election of respondent No. 1 on various grounds, including the

ground that the result of the election, insofar as it concerns respondent No. 1, has been materially affected by non-compliance with the Constitution, the Act and the rules made thereunder. The Election Petition was resisted by the returned candidate and from the pleadings of the parties, the following Issues were framed on 20th September, 1995 :

"1. Whether the allotment of symbol "Wheel" in favour of respondent No. 1 treating him as an official candidate of the Janata Dal was valid and legal and if not, whether it materially affected the result of the election ?

2. Whether the counting was suspended from 6.00 AM to 8.00 AM on 12.3.1995 and if so, whether the agents of the petitioner were asked to vacate the counting hall and whether in their absence the ballot papers and other connected documents were kept in proper custody, and under seal as per the prescribed rules?

3. Whether the Election Officer was correct in rejecting the demand for recounting and if so, whether such refusal materially affected the result of the election ?

4. Whether respondent No. 1 adopted corrupt practice as provided under section 123(4) of the Representation of People Act ?

5. Whether the petitioner's result in the election has been materially affected because of illegal reception and rejection of the ballot papers ?"

3. After trial, the Election Petition filed by the appellant was dismissed.

4. Shri B.N. Singhvi, learned counsel appearing for the appellant in this appeal has confined his submissions to challenge the findings on Issue No. 1 and has not contested any of the findings recorded by the learned single Judge on Issues 2 to 5. We are, therefore, relieved of the necessity to deal with those Issues and shall confine ourselves to the determination of the correctness or otherwise of the findings on Issue No.1.

5. The learned single Judge held that the Election Commission, having decided the revision petitions on 25th January, 1995, in exercise of its jurisdiction under Rule 10(5) of the Rules, had on February 1, 1995, exceeded its jurisdiction by "reconsidering" the matter again, on a representation made by Shri S.R. Bommai, to treat respondent No. 1 as the official candidate, in exercise of the powers under Article 324 of the Constitution read with Rule 10(5). It was, accordingly, found that order of the Election Commission dated 1st February, 1995, was 'illegal' and 'without any jurisdiction'. We are in agreement with the view taken by the High Court in that behalf. Apart from the reasons given by the High Court with which we agree, we are of the opinion that the order of the Election Commission dated 1st February, 1995 is not sustainable for yet another reasons also.

6. In the communication made by Shri S.R. Bommai, he had levelled an allegation against the appellant to the effect that the Form B produced by him was 'fraudulent' and that respondent No. 1 was the official candidate. The charge made to the Election Commission against the appellant by Shri S.R. Bommai was a serious charge. The least that was expected of the Election Commission, before passing the order on 1.2.1995 was that the appellant be put on notice. That was not done. The Election Commission was exercising its quasi-judicial powers and was obliged to follow the principles of natural justice. The revisional order dated 25th January, 1995 was "reviewed" by the Election Commission on 1st February, 1995, behind the back of the appellant, without putting him on notice or giving him any opportunity to have his say. It was not a proper course to adopt. In

dealing with a matter like this, the Election Commission is obliged to follow the principles of natural justice, to the extent applicable, before passing any order. There has been clearly a breach of fair play in action in this case. This is yet another reason for us to agree with the High Court that the order of the Election Commission dated 1st February, 1995 was illegal and without jurisdiction.

7. The above finding, however, does not end the matter. For the appellant to succeed in the election petition, under Section 100(1)(iv) of the Act, he had to establish that the result of the election, in so far so far as it concerns the returned candidate, had been materially affected by non-compliance with any of the provisions of the Constitution or of the Act or of any rules or orders made under the Act. Indeed, there has been non-compliance with the provisions of the Constitution, and of the Act, and the rules and orders made under the Act but the evidence led by the appellant at the trial of the election petition falls absolutely short of establishing that the result of the election in so far as it concerns the returned candidate had been materially affected thereby. The evidence on the record does not show that the result of the election had been materially affected by allotment of symbol "Wheel" to respondent No. 1. The appellant, failed to establish, the allegation that the result of the election had been materially effected in so far as the returned candidate is concerned by action of the Election Commission and the Returning Officer. The learned single Judge found that the statements of the witnesses were vague, general and conjectural in nature and did not establish the charge made by the appellant. We have been taken through the evidence of the witnesses by learned counsel for the parties and we are not persuaded to take a different view than the one taken by the High Court either. To avoid an election, it is necessary that cogent evidence is led in support of the charge. An election cannot be set aside on "presumptions", surmises or conjectures. Clear and cogent proof in support of the allegations is essential. In the instant case, the evidence led by the appellant runs hopelessly short of establishing the charge under Section 100(1)(d)(iv) of the Act. In this view of the matter, the finding recorded by the learned single Judge of the High Court on Issue No. 1 against the appellant cannot be found fault with. We, therefore, do not find any merit in this appeal. The appeal consequently fails and is hereby dismissed but without any order as to costs.