

Gopalrao Ravalaji Gulve

Vs

Shantarm Punjaji Aher

Civil Appeal No. 12625 of 1996

(CJI Dr. A. S. Anand, S. Rajendra Babu, R. C. Lahoti JJ)

06.10.1999

### JUDGMENT

1. In the elections held on 15-6-1994 to the Maharashtra legislative Council from the Local authorities constituency, Nasik, Maharashtra, the appellant who had contested as an official candidate of the Indian National Congress (I), was defeated by the respondent who had contested as an independent candidate. The appellant challenged the election of the returned candidate through an election petition on various grounds of commission of corrupt practices. The election petition was resisted and the returned candidate denied all the allegations made against him. On the basis of the pleadings of the parties, the following issues were framed:

- (1) whether the petitioner proves that the respondent had consented to the campaigning and canvassing alleged to have been done by Dr Hiray and/or Yogesh aher and or prasad Hiray?
- (2) Whether any amount was given to the electors by Dr Hiray and Yogesh aher as gratification which directly induced the electors to vote for the respondent [as alleged in paras 8(a) to 8(k) of the petition] and whether with the consent of the respondent?
- (3) Whether the contents of the cassette contained in sealed covers and marked as Articles 'I' and 'II' are the tape-recorded conversations between the lady Corporators Mrs. Nafiza, Mrs Akhtarunissa, Mrs Khairunissa, Dr Hiray, his son, Prasad Hiray, Rashid and Yogesh Aher and whether the same are without any interpolation or erasures?
- (4) Whether Dr Hiray and Yogesh Aher promised and offered Rs 12,000 or any other undisclosed sum to Shri Godked and Shri Sawale?
- (6) Whether on 14-6-1994 Shri Uttamrao Dhikale along with Shri Yadavrao Tungar approached Smt Latabai at her residence and offered her a sum of Rs 10,000 so as to vote for the respondent and whether any such offer was made with the consent of the respondent?
- (7) Whether Shri Yogesh Aher and Maharu Aher had approached Shri Shivaji Raundal with any offer as and by way of bargain to induce Mr Raundal to vote for the respondent and not to vote for the petitioner and whether any such offer/bargain was made with the consent of the respondent?

(8) Whether the respondent with Shri Uttamrao Dhikale went to the residence of Shri Laxman Savji on 13-6-1994 and offered him Rs 10,000 or any sum so as to induce him to vote in favour of the respondent?

(9) Whether the respondent has committed corrupt practices as defined in clauses (1), (2) and (6) of Section 123 of the Representation of the people Act either by himself or through any other person with the respondent's consent?

(10) What order?

2. After the evidence was led by the parties, learned Designated Election Judge decided all the issues against the appellant and dismissed the election petition. Hence, this statutory appeal.

3. Mr. A.M. Khanwilkar, learned counsel appearing for the appellant has confined his submissions in this appeal to the allegations relating to the commission of corrupt practices under Sections 123 (1), 123(2) and 123(6) of the Representation of the people Act, 1951 (hereinafter referred to as "the Act"), 1 to 5.

4. The gravamen of the charge of corrupt practice levelled against the returned candidate in these issues is that money was distributed to solicit votes for the returned candidate to certain electors who were present at a meeting held on 11-6-1994 at Malegaon. That meeting is alleged to have been convened by one Dr Baliram Hiray and is supposed to have been attended by Yogesh Aher, son of the returned candidate, RW 2. In support of these allegations, the appellant has examined Sakharam Bjiku Godke, PW 2 and Shantaram Baburao Sawale, PW 3.

5. We have, with the assistance of learned counsel for the appellant, gone through the evidence of PW 2 and PW 3. Apart from the fact that both these witnesses are admittedly party workers of the appellant and therefore, interested in the success of the election petition, we find from a careful scrutiny of their evidence that both these witnesses have not even deposed that the alleged meeting on 11-6-1994 had been convened by Dr Hiray at the instance of or with the consent of the returned candidate. As a matter of fact, their evidence is singularly silent about any role played by the respondent directly or indirectly in convening that meeting or offering the alleged bribe to some named persons. It is not disputed that the respondent himself was not present at the alleged meeting of 11-6-1994. There is no material on the record to even suggest that the respondent had sponsored the said meeting or it was held at his instance or with his consent. Yogesh, RW 2, son of the returned candidate denied having visited the house of Dr Hiray in the month of June 1994 at all. He asserted in his deposition that the allegation that he was present at the house of Dr Hiray when bribe was allegedly offered by Dr Hiray was absolutely incorrect. The returned candidate appearing as RW 1 also categorically denied that any meeting had been convened at the house of Dr Hiray in which his son Yogesh, RW 2 has participated and offered bribe to the voters.

6. The vague and cryptic evidence led by the appellant has been controverted by the returned candidate, RW 1 as well as his witness Yogesh, RW 2. There is no other evidence worth the name to connect the returned candidate with the allegation relating to offer of bribe on 11-6-1994 at the residence of Dr Hiray. The evidence of PW 2 and PW 3, Sakharam Bhiku Godke and Shantaram Baburao Sawale, does not even otherwise inspire any confidence. The charge of corrupt practice relating to bribery cannot be said to have been proved through such cryptic, vague and unreliable evidence.

7. Though before the High court evidence was also led to show that proceedings at the residence of Dr Hiray on 11-6-1994 had been tape-record but that evidence was not accepted by the trial court and rightly so. In fairness to Mr Khanwilkar, it must be stated that he did not advance any argument with regard to the evidentiary value of the tape record produced in the form of audio cassette and did not question the finding of the learned Designated election Judge in that behalf. The findings recorded by the learned Designated election judge to the effect that the appellant had miserably failed to prove the charge of bribery against the returned candidate are well merited.

8. Mr Khanwilkar, learned counsel did make an attempt to address arguments on Issue 7 but faced with the untrustworthiness of the testimony of the solitary witness produced in support of this issue, PW 4 Shivaji A. Raundal did not pursue the matter any further. No other point was urged.

9. The well- considered impugned judgment of the High court calls for no interference. There is no merit in this appeal which fails and is, hereby, dismissed. There shall, however, be no order as to costs.