

# SUPREME COURT OF INDIA

Harsh Kumar

Vs.

Bhagwan Sahai Rawat

C.A.No.5252 of 2002

(V. N. Khare, Y. K. Sabharwal and S. B. Sinha JJ.)

21.08.2003

## JUDGEMENT

### **Y. K. Sabharwal, J.**

1. The appellant contested election to 56-Hathin Assembly Constituency. Respondent No. 1 was declared elected by margin of 1354 votes. The appellant polled 22423 valid votes whereas respondent No. 1 polled 23777 valid votes. The election was contested by 9 candidates. Respondent No. 3-Daler Singh was one of the candidates. Daler Singh polled 3908 votes.

2. The appellant challenged the election of respondent No. 1 in an election petition filed by him under Ss. 80, 80-A and 82 read with Ss. 100 and 101 of the *Representation of the People Act, 1951* (for short the 'Act') on various grounds. The election petition has been dismissed and, therefore, the appellant has filed this appeal challenging the impugned judgment of the High Court.

3. Learned counsel for the appellant has only pressed two points - one as to the improper acceptance of nomination paper of Daler Singh and the other relating to the corrupt practice of bribery - allegedly committed by respondent No. 1 as pleaded in para 9 of the election petition.

4. Regarding the first point, the contention of the learned counsel for the appellant is that Daler Singh was not qualified to be chosen as a member of the State Assembly and his nomination paper was improperly accepted by the Returning Officer. Article 173 of the Constitution, inter alia, provides that a person shall not be qualified to be chosen to fill a seat in the Legislature of a State unless he is, in the case of a seat in the Legislative Assembly, not less than 25 years of age. The case of the appellant is that respondent No. 3, Daler Singh, was less than 25 years of age, his date of birth being 10th July, 1975 and thus the nomination paper filed by him was improperly accepted and, therefore, the election in question deserves to be set aside.

5. As per the nomination paper of Daler Singh, who was a candidate of Bahujan Samaj Party, his age was 25 years and one month as on 3rd February, 2000 being the last date for filing nomination. He had filed an affidavit before the Returning Officer giving this age. Neither the appellant, nor any other candidate nor the Returning Officer raised any objection as to the age of Daler Singh. Daler Singh was also not asked to file any document in support of the proof of his age. The sheet anchor of the claim of the appellant as to the age of Daler Singh is Exhibit A-36 wherein date of birth of Daler Singh has been shown as 10th July, 1975. If that be so, Daler Singh would be less than 25 years of age and not qualified to contest the election. Exhibit A-36 is a mark sheet issued by Government Senior Secondary School, Aurangabad, Bhiwani, Haryana giving the details of various students with their roll Nos., marks obtained in various subjects, the result as also the date of birth. Exhibit A-36 was proved by P.W. 9 (Raman Vohra), Superintendent, Haryana Education Board. In cross-examination, P.W. 9 stated that his office does not make any verification about the date of birth while declaring the result of a candidate and also that in their office, there is no birth certificate of Daler Singh.

6. To appreciate the aforesaid evidence, it is further to be kept in view that neither Daler Singh was examined as a witness nor his father Girraj Singh and also that no objection was taken at the time of the scrutiny of the nomination. Further, Exhibit R-216 is the admission card in respect of admission of Daler Singh in school. The date of birth of Daler Singh as mentioned in Exhibit R-216 is 18th November, 1974. The document purports to have been signed by father of Daler Singh as well. Exhibit R-219 is a school leaving certificate. In this document too, on the basis of particulars in R-216, the date of birth of Daler Singh recorded is 18th November, 1974. Exhibit A-40 is a certificate issued by Civil Surgeon, Faridabad which records the date of birth of Charan Singh another son of Girraj Singh as 12th December, 1975. If that is so, the date of birth of Daler Singh cannot be 10th July, 1975. The onus to prove the age of Daler Singh so as to succeed in the plea that his nomination paper was improperly accepted was on the appellant. The appellant has failed to prove the age of Daler Singh. In view of the aforesaid evidence, Daler Singh cannot be held to be less than 25 years of age merely on the basis of mark sheet (Exhibit A-36). It cannot therefore, be held that the nomination paper of Daler Singh was improperly accepted.

7. There is also another hurdle in the way of the appellant, namely, the proof of the fact that as a result of improper acceptance of nomination paper of Daler Singh, the result of the election has been materially affected. The election of respondent No. 1 can be set aside on the ground of improper acceptance of nomination paper of Daler Singh only when the appellant further establishes that as a consequence of such improper acceptance, the result of the election has been materially affected. In *Vashisht Narain Sharma v. Dev Chandra and others*<sup>1</sup> this Court, while construing the words "the result of the election has been materially affected," has held that the result should not be judged by the mere increase or decrease in the total number of votes secured by the returned candidate but by proof of the fact that the wasted votes would have been distributed in such a manner between the contesting candidates as would have brought about the defeat of the returned candidate. Onus of proving it lies upon the person who challenges the election and in case satisfactory evidence is not adduced, the result of the election would not be interfered. This decision has been cited

with approval in catena of the subsequent decisions (See *Santosh Yadav v. Narender Singh*<sup>2</sup>). It has again been reiterated by this Court that the success of a winning candidate at a election should not be lightly interfered with. This is all the more so when the election of a successful candidate is sought to be set aside for no fault of his but of someone else. That is why, the scheme of S. 100 of the Act, especially Cl.(d) of sub-section (1) thereof clearly prescribes that in spite of the availability of grounds contemplated by sub-clauses (i) to (iv) of Cl. (d), the election of a returned candidate shall not be avoided unless and until it is proved that the result of the election, insofar as it concerns a returned candidate was materially affected. In the instant case, there is no evidence to show the material effect on the election of respondent No. 1 assuming that the nomination paper of Daler Singh was improperly accepted. We are, thus, in agreement with the view expressed by the High Court both on the question of acceptance of the nomination paper of Daler Singh as also on the aspect of material effect on the election of the returned candidate.

8. In respect of the second point, the case set up by the appellant in the election petition briefly is that respondent No. 1 on 14th February, 2000 at 8.00 a.m. in village Banchari, at 12.00 Noon in village Mitrol, at 4.00 p.m. in village Sinha; on 15th February, 2002 at 8.00 a.m. in village Bahin and at 4.00 p.m. in village Manpur collected the voters, especially unemployed youths and gave a promise to them that he would be helpful in arranging for their employment for the post of Police Department, Haryana, Haryana State Agricultural Marketing Board and Staff Selection Commission, Haryana which posts had been advertised/published in the newspapers. Respondent No. 1, of course, denied the charge laid against him by the appellant. It may be noticed that in respect of one of the departments in respect whereof it was alleged that respondent No. 1 would get the employment to unemployed youths, the last date for filing the application for seeking employment was 9th February, 2000. Respondent No. 1 also took the stand that on 14th February, 2000, he was busy in connection with a big rally which was organised at Uttawar Chowk and was addressed by Om Prakash Chautala and Farooq Abdullah, the Chief Minister of Jammu and Kashmir. Exhibit R-1 to R-214 were placed on record in the shape of documentary evidence of photographs, negatives etc. to show that there could be no question of his going to three villages on 14th February, 2000 as alleged by the appellant. We have perused the testimony of P.W. 17 (Yogender Kumar) on the aspect of visit of respondent No. 1 at village Banchari at about 8/8.30 a.m. on 14th February, 2000 wherein a meeting arranged, respondent No. 1 is alleged to have offered gratification to the villagers in the form of promise them to get employment. We have also perused other relevant evidence on this aspect. The burden of proof of corrupt practice is very heavy on the appellant. The will of the people cannot be lightly set aside, though, of course, it is necessary to protect the purity of the election. In order to succeed on the ground of corrupt practice, the appellant had to lead cogent, reliable and satisfactory evidence. The standard of proof required is not of preponderance of probability but proof beyond doubt. Assuming that the allegation of the appellant is not only the help to voters to get them employment but something more but the appellant has failed to prove that any representation or promise was made by respondent No. 1 to the voters and in exchange thereof, they voted in his favour. The High Court, on the critical examination of the evidence has rightly concluded that the appellant has failed to prove that respondent No. 1

was guilty of committing corrupt practice of bribery as alleged in para 9 of the election petition.

9. In view of the aforesaid discussion, we find no merit in the appeal. It is accordingly dismissed with costs.

Appeal dismissed.

<sup>1</sup>*AIR 1954 SC 513*

<sup>2</sup>*(2002) 1 SCC 160*