

**PATNA HIGH COURT**

Ram Narain Prasad Yadav

Vs

Subnath Deogam

Election Appeal No. 11 of 1958

(S.C. Misra and Shib Chandra Prasad, JJ.)

20.03.1959

**JUDGMENT**

**Shib .Chandra. Prasad, J.**

1. This is an appeal from the judgment of the Election Tribunal of Chhotanagpur dismissing the petition filed by the appellant for declaring the election of respondent No. 1 as a member of the Bihar Legislative Assembly, void and for further declaration that the petitioner, having secured the second largest votes had been duly elected. The petitioner along with five other persons, who are respondents here, were candidates for a seat in the Bihar Legislative Assembly from Manoharpur Constituency No. 244 in the district of Singhbhum in the last General Election held in 1957. The election results were published by the Returning Officer on the 18th March, 1957 declaring the respondent No. 1 duly elected.

2. The petitioner-appellant's case was that respondent No. 1 was an Adibasi belonging to the "Ho" community classified as a scheduled tribe. He had contested the election on behalf of the Jharkhand party, the aims and objects whereof were to secure a separate administrative unit for the Adibasis inhabiting the Chhotanagpur Division and the district of Santhal Pargana in the State of Bihar and some districts of Orissa and the neighbouring States. Respondent No. 1 and Jharkhand party to which he belonged adopted "Cock" as election symbol, which was duly recognised by the Election Commission. The appellant alleged that this "Cock" was considered by Adibasis, namely, Ho, Mundas and Oraons, and the other communities of the scheduled tribes as a symbol representing their object of worship namely their presiding deities of villages and forests including the deities of prosperity, adversities and those controlling diseases. One of the recognised modes of the worship of these deities or some of them is that Cocks are sacrificed before those deities to get happiness and to get rid of miseries. A cock is kept tied for two days without any food and on the day of the sacrifice it is taken to the Puja Asthan where some rice is put and after prayers to the Bongas, namely, the deities, for getting happiness and to get rid of

miseries, the cock is placed near the rice. If the cock pecks at the rice, the Adibasis consider their Bongas to be pleased. They thereafter sacrifice the cock. If the cock does not peck at the rice, they consider their deities to be displeased and prayers are offered until the cock pecks at the rice when it is sacrificed. The appellant asserted that for the Adibasis the cock has special appeal to their religious sentiments and that respondent No. 1, in order to arouse hatred against the petitioner, who is non-Adibasi and in order to get the support of votes of the aforesaid constituency, the majority of whom belonged to the "Ho" and other Adibasi communities, printed and got published leaflets in Devanagri script and circulated them widely through himself, his agents and supporters, who did it with his consent, knowledge or connivance.

3. The appellant filed copies of these leaflets as Annexures A and B to his election petition, the English translations of which are as follows:

"Annexure A - In the box of the Jharkhand party is printed the symbol of cock. Put your votes in the box with cock symbol. 'O' rise ye children of men. Respected sons of men open your eyes, lend your ears, recognise me and my crow. In your services and worships. In the worship of your forest God (Buru). In stomach pain and headache. At the time of your distress and miseries - I am with you even after giving my life. You recover (from illness) even by applying knife at my neck. This thought gives me pleasure. In exchange of this give me chara in the shape of vote. I am victorious. Do not forget me, otherwise I tell, ye sons of men will suffer eternal miseries. Crow of cock, Cock crowed, rise now, open your eyes, be prepared for duty. Yours only Cock."

"Annexure B - 'Jai Kharkhand' 'Jai Hind' Do not spoil your votes by casting them in other than 'Sandi Sim' (box with cock symbol). Dear brothers and sisters, you know that the creation of a Jharkhand State is not a small (easy) task. It is a very big (difficult) job. From what we have heard and seen in the past we have experienced and learnt that so long we are unable to get the State of Jharkhand, our miseries will have no end. The brothers of Orissa, Madhya Pradesh and Bengal in collaboration with the brothers of Bihar are ready to work after creation of the Jharkhand State. Dear brothers and sisters, therefore, it is no time for us to lose heart. With the strength of the Jharkhand party our country is progressing towards well being and it would advance on. Brothers and sisters, it was with your help and sympathetic consideration that in the last election the Jharkhand party's name has come in the limelight and spread throughout the country. My prayer to you is that in the ensuing election you would work with full pleasure and strength.

It is a pleasure that in the State of Bihar and Orissa, Jharkhand party got 'Cock Symbol'. In the State of Orissa the Jharkhand party would set up 30 candidates for Assembly seats and 3 for Parliament seats. In our own Singh Desum (Singhbhum) the Jharkhand party will set up its candidates for all seats. And it is indeed a great pleasure that the Jharkhand party has got back 'Sim Sandi' box. Those brothers and sisters who would be set up as candidates on behalf of the Jharkhand party would be allotted boxes with cock symbol. It is this cock which can remove our

miseries. Recognise very well this virtuous box with cock symbol and drop votes only in the box with cock symbol. This Sandi Sim (cock) will fly all over the States of Orissa, Bihar, Madhya Pradesh and Bengal. Therefore, brothers and sisters be careful and alert. Do not fall in false talks. Do not sell your victorious cock for money. Catch hold the victorious cock with pleasure. Test ass covered with tiger's skin and coloured jackal. Identify them at the time of weeping or talk. That is why our Marang Gomke (great leader) has been always saying to us that you brothers and sisters should lend your ears and open your eyes. Do not become blind and deaf otherwise you would earn eternal miseries for your grandchildren (descendants). Therefore I humbly pray to you to put your votes in the box with cock symbol. Jai Jharkhand" "Jai Hind"

One who prays Shri Shubhnath Deugram, M. L. A. Dumbisai."

4. The further allegations of the appellant are that the contents of these leaflets were read over by respondent No. 1 himself as well as his agents and supporters with his consent and knowledge in every gathering, hat, bazar etc., the details of which have been given in Annexure C of the election petition, appealing to the religious sentiments of the Adibasis and impressing upon them that the wrath of the deities will fall on them if they failed to cast their votes in favour of respondent No. 1. The sum and substance of the contents of the aforesaid two leaflets according to the petitioner was that if votes were not cast in favor of respondent No. 1, misfortune will fall on the voters and that they will incur the displeasure of the deities and their "Cock" and they will have eternal sufferings. On the other hand, if they voted for respondent No. 1, it would amount to supplying food to cock and they would enjoy the eternal happiness. The appellant contended that publication of these leaflets greatly influenced the votes to cast their votes in favor of respondent No. 1.

5. Then the allegations of the appellants are that respondent No. 1 and his party got two maps printed and widely circulated in the Constituency. Those maps are marked Exs. 4 and 5. They contained statements which conveyed or purported to convey an idea to the electors that Jharkhand had been recognised as a separate State in the Constitution of India from the 1st November, 1956 and that the circulation and publication of the two maps raised in the minds of the electors a false hope which had greatly affected the result in favour of respondent No. 1. The details of the allegation have been mentioned in the annexure attached to the election petition.

6. The appellant also charged with the corrupt practice of having procured two trucks bearing registration Nos. BRS 634 and BRS 834 on 4-3-1957, from one Sushil Babu of Jaraikelela for the conveyance of electors from village Digha to Trilposi Polling station and a sufficient number of electors of the said village, who had in their hands identity slips bearing the symbol "Cock", had been brought to that polling station in those vehicles and had cast their votes in favour of respondent No. 1.

7. It was also alleged that respondent No. 1, his agent, Arthur Pankaj of Nowmundi, and Kanu Deogam of Dumbisai, one of his workers, came together armed with guns on the 7th March,

1957, during polling hours, stood in the vicinity of the polling booth Ponga, with a view to scare away voters and a large number of voters were scared away, who would have voted for the petitioner and that a large number of voters did not at all exercise their right of franchise.

8. There were other allegations also in the election petition, but I am not mentioning them here because in this appeal the points raised before us have been limited to the allegations which I have set forth above.

9. In his reply, respondent No. 1 denied all these allegations. According to respondent No. 1, the 'Cock' does not represent any deity of the Adibasis and the symbol 'Cock' has no special appeal to their religious sentiment. He denied having got those leaflets printed and circulated by himself or through his agents or supporters. Similarly, respondent No. 1 has also made the same denials regarding the maps and their distribution, as also the allegation that the aim of the Jharkhand party was to create a separate unit for Adibasis only, the contention of the respondent No. 1 being that the creation of a separate administrative unit was to be meant for the inhabitants of the area and not simply for the Adibasis and in fact several non-Adibasis were set up by his party as candidates for election to the Parliament and the various State Assemblies and Councils during the election. The respondent also denied the allegations made regarding the procurement of the trucks and carrying voters from village Digha to Triposi polling station as well as the allegation of intimidation and scaring away the voters by means of guns.

10. The Tribunal found that voters had actually been carried to Triposi Polling Booth in one of the trucks, but there was no evidence to show that respondent No. 1 or his men or supporters or anybody on his behalf had procured those trucks and had carried the voters to the polling booth or that it had been done with his consent or with the consent of his agent. As regards the other truck, no evidence had been adduced on behalf of the petitioner. The Tribunal also observed that even if it were found that the voters had been carried, it appears that only 20 or 25 voters had been so carried and that was not sufficient to prove that the election had been materially affected. It was further found that an order under Section 144 of the Criminal Procedure Code, had been promulgated banning carrying of arms and three guns had been seized, but it had not been established that the voters had been scared away. Finally, the Tribunal found that (Exs. I and II) had actually been printed at the instance of Jharkhand party and that one of them, namely, Ex. I (Annexure A) contained an appeal to religious sentiments and religious worship before their deities or deity. It also contained threats of eternal miseries and vote was sought to be procured in lieu of the chara for the Cock. The other leaflet (Ex. II) did not contain any such appeal. The two maps (Exs. 3 and 4) had not been printed either by respondent No. 1 or at his instance by anybody else, nor by the Jharkhand party to which he belonged and that the petitioner had failed to prove the allegation that leaflets like Exs. I and II or the maps like Exs. 3 and 4 had been published at the instance of respondent No. 1 or at the instance of the Jharkhand party for respondent No. 1 or that any meeting on behalf of respondent No. 1 was held at any of the hats or slogans and statements etc., had been made. Accordingly the Tribunal held that no case had been

made out against respondent No. 1. The petition of the appellant was, therefore, dismissed.

11-13. (After discussing the evidence on the first point, his Lordship concluded) : I am, therefore, inclined to agree with the Tribunal that this charge does not appear to have been proved against respondent No. 1. It is true that voters had gone to the polling booth on a truck, but it is not possible to hold on the evidence, as it is, that this truck had been procured by the respondent or by his polling agent or by any person on his behalf with his consent or knowledge or connivance for carrying voters to the polling booth and that actually voters had been so carried by any of those persons.

14. As regards the third charge, during the course of the argument that was given up and I think rightly because the evidence does not prove that voters had been scared away by any person on behalf of the respondent. The only evidence which can be safely accepted is that some guns had been seized belonging to some persons of the party of the respondent, but this is not sufficient to prove this charge against the respondent.

15. I now come to the most important and the most controversial charge which was very strenuously pressed before us, namely, the charge that the respondent No. 1, his agent and other persons on his behalf had made a systematic appeal to the voters of the constituency to vote for him and refrain from voting for the appellant on the ground of religion and that there had been also the use of, or appeal to, the symbol 'Cock', which was a religious symbol of the Adibasis of that constituency by the aforesaid persons.

16. Learned counsel for the appellant-petitioner contended before us that the Tribunal had gone wrong in coming to the findings that the 'Cock' was not the religious symbol of the Adibasis and that the leaflets (Exs. I and II) had not been printed and published by respondent No. 1 or his agent or others, who were interested in him, with his consent or knowledge and that these leaflets had not been distributed and systematic appeals had not been made on ground of religion for votes on his behalf. It was contended that the Tribunal was mistaken in its appreciation of the evidence and approach to it in so far as it started with the wrong notion that while examining the evidence on charges of corrupt practices in an election petition the standard of proof should be the time as on a charge in a criminal case against an accused. It was submitted that this view was not correct. Alternatively, it was also contended that even if it were taken that the view expressed by the Tribunal was correct, the evidence in this case was sufficiently of the standard required and it ought to have given its findings on these points in favor of the appellant. On behalf of the respondent it was urged that the view of the Tribunal that the leaflet (Ex. I) contained an appeal to the religious sentiments of the Adibasis was not correct and that its conclusion that the appellant had failed to prove that the 'Cock' was religious symbol of the Adibasis and that there had been systematic appeals to religion had been correctly arrived at and should not be disturbed.

17. After careful consideration of the evidence in this case, I am of the view that the Tribunal has correctly held that the 'Cock' is not the religious symbol of the Adibasis, No doubt some of witnesses (Adibasis) on behalf of the appellant stated that they considered 'Cock' to be their religious symbol, but the facts which they have proved in respect of the part which the cock plays in the rituals of the Hos, Mundas and Oraons of the Constituency in question does not justify the conclusion that the 'Cock' is a symbol of the religion which they profess. Cock by itself does not signify any particular faith of these Adibasis, although the Cock forms an integral part of the religious ceremonies which they perform while worshipping some of their important deities. On behalf of the respondent some witnesses (Adibasis) were examined who stated that Cock was not their religious symbol. I consider that this finding of the Tribunal cannot be disturbed.

18. There can also be no doubt that the leaflet (Ex. I), as held by the Tribunal, makes clear appeal to the religious sentiments of the Adibasis who believe in the religion of Hos, Mundas and Oraons, of this Constituency. The leaflet (Ex. I) clearly refers to the prominent integral part which the Cock plays in the religious worships and ceremonies of the Adibasis when they worship their deities. Indeed the leaflet itself refers to the fact that the Cock is essentially required for the purpose of their worship of the deities in order to relieve people from distress and miseries. It refers to the fact that in the worship of forest God, in stomach pain and headache and at the time of distress and miseries the Cock is always with the Adibasis, "even after sacrificing its own life." It is also said that if people forget the Cock, they will suffer from eternal miseries.

19. Coming to the next leaflet (Ex. II). I think this has also got an appeal to religious sentiment of the Adibasis. I do not agree with the contrary opinion of the Tribunal on this point. In this connection I would refer to the last portion of the leaflet where it is said that it is the Cock which could remove the miseries of the people. "The Cock will fly all over the States of Orissa, Bihar, Madhya Pradesh and Bengal." There is also a reference to the fact that Marang Gomke (great leader) had always been saying to the people that they should lend their ears and open their eyes, and, therefore, the leaflet says that they should not become blind and deaf, otherwise they would earn eternal miseries for their grand children. Ultimately the appeal is made to put their votes in the box with Cock symbol. In my view there is an appeal to the religion in this leaflet also. The leaflets should, I think, be taken and construed in juxtaposition. The second leaflet contains the name of respondent No. 1, as one of the persons, who had made the aforesaid appeal.

20. The most important question which arises for consideration is whether there was any systematic appeal to religion on the basis of these leaflets. The allegation on behalf of the appellant is that these leaflets were distributed in meetings held at different hats and at those meetings they were read over and explained. Speeches were made in 'Ho' language and also in Hindi on the same lines as those contained in these leaflets making appeals to the religious sentiments of the Adibasis of the locality. The Tribunal has examined the evidence and has come to the conclusion that no systematic appeal had been made and all the allegations made in this connection by the appellant have been held to have been not proved by him. Having found this,

the Tribunal has come to the conclusion that although the leaflets appeared to have been printed by Jharkhand party, it could not be said that they had been printed and published by or at the instance or with the consent of respondent No. 1. The finding of the Tribunal that the leaflets (Exs. I and II) had been printed by the Jharkhand party appears to me to be correct. The Tribunal has referred to the evidence of P. W. 4 who proved that these two pamphlets had been printed at his press at the instance of one Saran Balmuchi, the Secretary of the Jharkhand party of the district of Singhbhum. The witness had also produced two manuscripts (Exs. 2 and 3) and stated that they were in the writing of Saran Balmuchi and it was this man who had paid the bills for the printing of these leaflets. I also think that this witness is reliable and has been rightly believed by the Tribunal. There can be no doubt, therefore, that these two leaflets had been printed by the party to which respondent No. 1 belonged and which had set him up as a candidate for the seat in question.

21. As regards the other two leaflets (Exs. III and IV) it is not necessary to discuss them, because the findings of the Tribunal have not been challenged before us and I think that on the evidence, as it is, the conclusion of the Tribunal that it had not been proved that these leaflets had been printed or published by the Jharkhand party, is correct.

22. As to the evidence on the point of systematic appeal, I find on a careful consideration of it that it proves that there had been appeals made to religion on behalf of respondent No. 1, his agents and workers in the meetings held in different hats. In enclosure C of the petition the petitioner has given a long list containing the names of places and the dates of the gatherings and the names of persons who had distributed leaflets and made speeches in the meetings. Names of nine hats have been given. Out of them the petitioner did not lead any evidence in respect of two hats, namely, Jatia and Jamda. The evidence on behalf of the appellant was that meetings were held in these hats which were attended by several thousands of persons. These meetings were held at the instance of respondent No. 1 some of which he himself attended and made speeches. The substance of the speeches made by respondent No. 1 and his agents and men was that the Cock was a creature to please their God, because it was by the sacrifice of the Cock that the people used to get rid from ailments and miseries. It was the desire of the Cock that people should cast their votes in the box which contained that symbol. Now, the Tribunal has not accepted this evidence on the main grounds that the witnesses had made discrepant statements regarding the speeches made by the different speakers, that some of them were interested persons and inimical to respondent No. 1 and that it was not clear and understandable as to why respondent No. 1 and his men would address the gatherings in Hindi when the appeals were to be made to Hos and Mundas and other Adibasis.

The Tribunal has referred to the fact that the respondent had examined witnesses to deny these allegations, but it was not prepared to accept the evidence of those witnesses either. It appears to be of the view that since the onus of proof was on the appellant, it did not matter if the evidence produced by the respondent was also tainted, because the only thing which the respondent had to do was mere denial of the charges.

23-26. (After discussing the evidence in Paras 23-25, the judgment proceeded): I do not think it necessary to express any opinion on the contention of (he learned counsel for the appellant that the Tribunal was in error in observing that the standard of proof necessary on a charge of corrupt practice was the same as that on a charge in a criminal case against an accused, because the evidence, in my opinion, satisfies this test, even if it be taken that this is the only test to which evidence on a charge of corrupt practice is to be subjected.

27. I, therefore, set aside the finding of the Tribunal and hold that there had been a systematic appeal for votes on the ground of religion on behalf of respondent No. 1, his agent and workers with his consent and knowledge and, therefore, he is guilty of corrupt practice under Section 123 (3) of the Representation of the People Act, 1951. That being so, under Section 100 (1) (b) of the Act the election of respondent No. 1 must be held to be void.

28. It is not necessary to consider the question whether the appellant can be declared to have been elected having secured the next largest number of votes, because this was not pressed before us.

29. The judgment of the Tribunal is set aside and the election of respondent No. 1 is declared to be void. The appeal is allowed with costs throughout. Hearing fee Rs. 250/-.

**Misra, J.**

30. I agree to the order proposed.

Appeal allowed.