

PUNJAB AND HARYANA HIGH COURT

Amir Chand Tota Ram

Vs

Sucheta Kripalani

(T Chand and Bedi, JJ.)

01.11.1960

JUDGMENT

Tek Chand, J.

1. This is a petition under Article 133(1)(c) of the Constitution of India for leave to appeal to the Supreme Court, from the judgment of a Division Bench of this Court delivered on the 26th of May, 1959, in F. A. O. No. 100-D of 1958. The subject-matter of this petition originated with an election-petition filed by Shrimati Gurcharan Kaur, Maharani of Nabha, challenging the validity of the election of Shrimati Sucheta Kriplani to the Lok Sabha from New Delhi Parliamentary Constituency. The election was held on 3rd of March, 1957. The election was challenged on the allegations that certain corrupt practices had been committed by the successful candidate, Shrimati Sucheta Kriplani, and her agent. While the election petition was still before the Election Commissioner, Shrimati Gurcharan Kaur was allowed to withdraw, Shri Amir Chand, the present petitioner, was substituted as a petitioner and allowed to prosecute the petition which had been filed by Shrimati Gurcharan Kaur. A portion of the evidence was recorded by Shri Rameshwar Dayal as Election Tribunal and later on the other portion of the evidence was recorded by his successor, Shri Kartar Singh Campbellpuri. In this case the present petitioner wanted to file details of certain alleged corrupt practices but he was not allowed to give the particulars.
2. On 25th of August, 1958, the Election Tribunal held that no corrupt practices had been committed by the successful candidate and the election petition was dismissed.
3. The present petitioner then filed an appeal to the High Court and on 26th of May, 1959, a Bench of this Court dismissed the appeal, giving rise to the present petition. The learned counsel for the petitioner is desirous of obtaining leave to appeal to the Supreme Court on a number of points enumerated under para 2 of the petition. The jurisdiction of this Court under Article 133(1)(c) is very wide and no attempt has been or perhaps could be made to crystallise the exercise of the High Court's discretion. Certain tests, both of positive and negative nature, have

been formulated. Important questions, which are of great public or private importance, arising frequently and concerning a large number of cases on which there is either a conflict of opinion or in which there is no authoritative pronouncement, are considered proper for certifying that the case is a fit one for appeal to the Supreme Court.

Negatively, questions involved ought not to be peculiar to a particular case or such on which there is a long catena of uniform view. Questions merely of sufficiency of evidence on issue of facts are outside the ambit of Article 133(1)(c). In the background of the above rule the questions desired to be placed for obtaining guidance from their Lordships may now be examined.

4. The first point sought to be raised before the Supreme Court is whether the charges of corrupt practices under the Representation of the People Act are of a quasi-criminal nature and require proof of the standard which is necessary in proving a charge under the criminal law. On this the Division Bench was of the view that the charges of corrupt practices, being quasi-criminal in character, allegations relating thereto must be sufficiently clear and precise to bring home that the charges were not established without reasonable doubt.

It was also held that the ingredients of the particular corrupt practice had to be proved by the petitioner and the burden, at no stage, falls on the returned candidate to disprove any of the ingredients thereof. Reliance was placed on the observations of Hidayat Ullah C. J, (now a Judge of the Supreme Court) in *Magan Lal Bagdi v. Hari Vishnu Kamath*, 15 ELR 205 at p. 209 : (AIR 1960 Madh Pra 362 at p. 364), The learned counsel for the petitioner has expressed his inability to show any decision where a contrary view was taken. On this point, in our view, leave cannot be allowed.

5. The second point raised is whether the Election Tribunal was justified in refusing permission to amend the particulars under Section 90, Subsection (5) of the Representation of the People Act, even though the allegation of corrupt practice finds place in the election petition and there is application seeking permission to amend particulars before the Election Tribunal.

The Division Bench on this question came to the conclusion that the Tribunal could not inquire into the charges of corrupt practices unless the particulars were given clearly and specifically. The Bench was of the view that the Tribunal was justified in refusing to allow the appellant to furnish particulars after the expiration of the period of limitation prescribed for filing election petitions. In other words the Bench thought that the discretion which vested in the Tribunal had been rightly exercised. On this finding the petitioner is not entitled to get leave under Article 133(1)(c) of the Constitution.

6. The third, fourth, fifth and ninth questions have been taken together by the learned counsel.

They are to the effect whether any authority to act as agent from a candidate at an election is necessary to constitute one to be the agent; whether acquiescence or disavowal on the part of a candidate in an election is not sufficient for holding one to be the agent in respect of the election of that candidate; and whether the scope of agency under election law is much wider than that under the common law.

7. On the above questions the Division Bench expressed the view that the definition of any election agent was wide but even then it could not include a volunteer canvassing for a candidate without any authority from him or his election-agent and that the returned candidate cannot be held responsible for any corrupt practice committed by a volunteer who has no such authority from the candidate. The definition of "agency", as contained in Section 79(a), has now been amended and instead Explanation to Section 123, Sub-section (7), has been added.

Now the expression "agent" includes an election agent, a polling agent and any person who is held to have acted as an agent in connection with the election with the consent of the candidate. Previously, an agent was one who had acted in connection with the election either with the knowledge or with the consent of the candidate. To establish agency now, not knowledge but consent has to be established. Howsoever wide the concept of agency in election law may be there must always be an authority to constitute agency. In the Londonderry case, 1 O'M and H 274 (278), O'Brien J. referring to the Windsor case said :

"Mr. Justice Willes, in that case, in those accurate terms for which he is remarkable, said, 'I have stated that authority to canvass -- and I purposely used the word authority and not employment, because I meant the observation to apply to persons authorised to canvass, whether paid or not for their services--would, in my opinion, constitute an agent.' I cannot concur in the opinion that any supporter of a candidate who chooses to ask others for their votes and to make speeches in his favour, can force himself upon the candidate as an agent, or that a candidate should be held responsible for the acts of one from whom he actually endeavours to dissociate himself."

Again in the Taunton case, 2 O'M and H 66, at p. 74, Grove J. said:

"I am of opinion that, to establish agency for which the candidate would be responsible, he must be proved by himself or by his authorized agent to have employed the persons whose conduct is impugned to act on his behalf, or to have to some extent put himself in their hands, or to have made common cause with them for the purpose of promoting his election. To what extent such relation may be sufficient to fix the candidate must, it seems to me, be a question of degree and of evidence to be judged of by the Election Petition Tribunal."

Both these cases were followed in Mathai Mathew Manjuran v. K.C. Abraham, 10 ELR 376

(403). The question of agency, which is sought to be raised, is purely academic as the finding, of the Bench is that Shri Ranbir Singh, the editor of the "Milap" was not the agent of the successful candidate and there was no evidence in support of this allegation. This, being a finding of fact, cannot furnish a ground for leave to appeal to the Supreme Court. We cannot, therefore, certify a conclusion drawn from evidence and circumstances of a particular case to be a fit one for appeal to the Supreme Court. On this point, therefore, no question of fitness arises.

8. The sixth question is whether the burden of proving that a particular statement of facts made by a person was believed by one to be true or it was not believed to be true, rests upon the petitioner. The Bench came to the conclusion that the petitioner had to prove this fact even though the news which had been given circulation was false. On the facts the Bench came to the conclusion that the petitioner had failed to prove that Shri Ranbir Singh, editor of the "Milap", believed the news as to Shrimati Gurcharan Kaur not contesting the election, to be false or believed it not to be true. The petitioner, according to the view taken by the Bench, not only failed to show that Shri Ranbir Singh was the agent of the successful candidate but he had committed no such corrupt practice as was enumerated in Section 123, Sub-section (4) of the Representation of the People Act.

9. Questions 7 and 8 have been taken up together by the petitioner's counsel. He wants to raise an issue that it was not necessary on the part of the petitioner to prove that Shrimati Gurcharan Kaur would have been elected as member of the Lok Sakha had no publication of the false statement of facts regarding her withdrawal taken place. The Bench of this Court, while dealing with this matter, was of the opinion that the present petitioner had failed to prove that the prospects of Shrimati Gurcharan Kaur's election were prejudiced by publication of the news of her withdrawal, in so far as she got 3,771 votes out of 1,04,161 cast at the election.

From these and other circumstances the Bench was within its right to draw a conclusion one way or the other. In view of the finding that no corrupt practice had, in fact, been committed either by Shrimati Sucheta Kriplani or by Shri Ranbir Singh no question of fitness for appeal to the Supreme Court really arises.

10. The next question which has been raised by the petitioner no longer arises. This question relates as to whether the burden of proof of want of consent is upon the respondent that a particular corrupt practice was committed by her agent despite orders and instructions to the contrary given by her. It has already been found that the relationship of agency has not been created on the facts and circumstances of this case. The question of burden of proof thus is merely academic.

11. The next questions sought to be raised before the Supreme Court relate to the scope of

"undue influence" alleged to have been exercised in this case by Pandit Jawahar Lal Nehru, Prime Minister of India. Under Section 123, Sub-section (2) of the Representation of the People Act, "undue influence" is any direct or indirect interference or attempt to interfere on the part of the candidate or his agent, or of any other person, with the free exercise of any electoral right. These questions have been numbered in the petition as 11 and 12 and are reproduced below :

"11. Whether the fact of asking Manmohini Sehgal to retire from the contest under Section 55A of the R. P. Act by Shri Jawahar Lal Nehru, Prime Minister of India when Shrimati Manmohini Sehgal was no longer a member of the Congress Party does not amount to a corrupt practice namely undue influence as defined under Sub-section (2) of Section 123 of the R. P. Act".

"12. Whether Pandit Jawahar Lal Nehru, Prime Minister of India and Leader of a political party is entitled to ask a candidate at election to retire from the contest and interfere in the way of exercise of electoral franchise."

What is alleged is that Shrimati Manmohini Sehgal was asked to retire from the contest by the Prime Minister and not to contest the election as against Shrimati Sucheta Kriplani and this amounted to the exercise of undue influence within the mischief of Section 127. Question No. 12 raises a broader issue and what was really suggested by the counsel for the petitioner was that in view of the esteem in which the Prime Minister is held and in view of his universal popularity and great influence any request made by him to a candidate at election not to contest amounts to interference with the exercise of electoral franchise.

12. Before examining the factual position in this case the expression "undue influence" requires to be carefully analysed and understood. The legal phrase "undue influence" denotes something legally wrong or violative of a legal duty. In order to establish undue influence it must be proved that the influence was such as to deprive the person affected of the free exercise of his will. It must amount to imposing a restraint on the will of another whereby he is prevented from doing what he wishes to do or is forced to do which he does not wish to do.

An advice, argument, persuasion or solicitation cannot constitute undue influence. Honest intercession, even importunity, falls short of controlling a person's free exercise of his will. A persuasion, which leaves a person free to adopt his own course, is not undue influence. Otherwise a suggestion or an entreaty from somebody, held in esteem, could be treated as undue influence. In the absence of proof that a person has been in consequence of the alleged influence, deprived of free agency no question of there being an undue influence arises.

It is not objectionable to exercise an influence by acts of kindness or appeals to the free reason and understanding. So long as the free agency of the other person is not prevented or impaired by

obtaining a domination over the mind of another it cannot be deemed as an exercise of an undue influence. The essence of "undue influence" is that a person is constrained to do against his will, but for the influence he would have refused to do it left to exercise his own judgment. It has to be shown that a person's volition had thus been controlled by another whereby he could not pursue his own inclination, being too weak to resist the importunity and in view of the pressure exercised on his mind he could not act intelligently and voluntarily and had become subject to the will of the other who had thus obtained dominion over his mind.

The term "undue influence" is not susceptible of precise definition but it suggests the overcoming of the will of one by the other who superimposes his will on the weaker party despite the latter's disinclination or effective resistance. Undue influence is a species of constructive flow. Undue influence, is used in contradistinction to proper influence which may be secured through affection bestowed or from kindness indulged.

A friendly advice or an influence arising from gratitude or esteem is not undue influence unless thereby the functioning of a free mind is destroyed. Mere suggestions or appeals cannot have such an effect. An influence which exists from attachment or respect or which results from arguments or appeals to the reasons and judgment is not undue.

13. Now it may be seen as to what has been done in this case. Pandit Jawahar Lal Nehru was examined as P. W. 22 and what he said may be reproduced in his own words :

"I forget, who spoke to me about it but it is obviously our policy that congress people should not oppose each other in election and where such an event is likely to take place, we try to avoid contest between congressmen. When this fact of Mrs. Manmohini Sehgal having sent in nomination paper was brought to my notice, I expressed my regret that there should be a possibility of such a conflict between congress member I presume that she (Mrs. Manmohini Sehgal) came to an independent decision in the matter after consulting her workers. My advice no doubt was considered by her I was more interested in the maintenance of congress discipline and it was from this point of view chiefly that I advised Mrs. Manmohini Sehgal. There was no question of my compelling her to do something against her wishes or interest. It is quite absurd to say that I was intervening with anybody's electoral rights, but it is my business as a politician to put my cause before the people and to influence them to vote for it"

14. Shrimati Manmohini Sehgal, as P. W. 19, said that Pandit Jawahar Lal Nehru had called her on 12th February, 1957, and she met him at his residence. She said that Panditjee was related to her and at the meeting he advised her as an elder member of the family to retire from the contest and not to break her long association with the Congress. She said "his advice did not contain any element of threat." She also said "no pressure was put on me to withdraw from the contest". She

also stated that Pandit Jawahar Lal Nehru had said that he would like her to withdraw from the contest and also said that she could consult her workers and convey to them his advice of withdrawing from the contest.

She then agreed to consult her workers and went away. Next day she held a meeting of her workers who were of the view that the wishes of Panditjee must be respected in all circumstances and then the decision to withdraw from the contest was taken in that meeting.

15. The statements of Pandit Jawahar Lal Nehru and of Shrimati Manmohini Sehgal show that no threat was given to her and no inducement was offered and she decided to withdraw from the contest after consulting her workers in the exercise of free volition and no constraint of any kind having been put on her. She was neither coerced into submission nor was her will, in any way, subjected to any domination. It was for her to accept the advice offered or not and she thought over the whole matter and after having held consultations with her workers she made up her own mind and decided for herself that she should withdraw from the arena of electoral fight. On this evidence no ingenuity of ratiocination can avail the petitioner in showing that the influence, if any, had been exercised much less that it was undue.

A person, therefore, may wield great influence but the Courts, in interpreting these provisions, are concerned with its abuse in order to make it undue. After giving careful consideration to each one of the points canvassed in this petition I am of the view that the petition is entirely without merit and does not deserve to be allowed. I cannot, therefore, find my way to give a certificate of fitness for appeal to the Supreme Court as prayed. In the result the petition is dismissed.

J.S. Bedi, J.

16. I agree.