

N. S. VARDACHARI

A

v.

G. VASANTHA PAI AND ANR.

August 21, 1972

[K. S. HEGDE, A. N. GROVER AND D. G. PALEKAR, JJ.]

Representation of the People Act (43 of 1951), s. 123 (2) and (4)—*Expression of opinion that candidate not qualified—If amounts to undue influence under s. 123 (2) or corrupt practice under s. 123 (4).*

B

Election to Legislative Council from Graduates' constituency—If non-political.

Constitution of India, 1950, Art. 171(3) (a) (b) and (c)—If Candidate should be member of electoral College.

C

Practice—Imposition of penal Costs.

In 1967, the first respondent and S contested for election for a seat in the Madras Legislative Council from the City Graduates' constituency, which fell vacant. S was declared elected and his election was challenged by the first respondent on the grounds, *inter alia*, that, (a) in an election from graduates' constituencies political parties were not competent to sponsor candidates, and S, having been sponsored by the Swatantra Party, was not qualified to be a candidate; and (b) that S was guilty of corrupt practices under s. 123(5) of the Representation of the People Act, 1951. The High Court set aside the election of S on the second ground. On the first ground, while holding that there was no evidence that S was sponsored by a political party, the High Court observed that election to the Legislative Council from the Graduates' constituency was a non-party election and that political parties should not nominate any candidate for that election. This Court, in appeal, confirmed the finding of the High Court that S was guilty of corrupt practices, but did not at all touch on the observations of the High Court.

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In 1970, the first and second respondents contested for election to the Legislative Council from the same constituency, which was a two member constituency, and they were both declared elected. The first respondent objected to the candidature of the second respondent before the Returning Officer, on the grounds, (1) that the High Court had decided in the earlier election petition against S, that the constituency was a non-political one and that the second respondent, having been sponsored by the Swatantra Party, any votes given to him would amount to throwing away the votes; and (2) that the second respondent was not a graduate and hence, was not qualified to be a candidate at the election. The Returning Officer rejected the objections, but the first respondent continued the propaganda against the second respondent by publishing leaflets as well as appeals in newspapers. After the two respondents had been declared elected, the appellant, an elector in the constituency, filed an election petition challenging the election of the first respondent on the ground that by his propaganda he was guilty of corrupt practices under s. 123 (2) and (4).

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The High Court, dismissed the petition with penal costs.

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In appeal to this Court.

A HELD : (1) A debate whether a candidate was qualified to stand or whether a political party was competent to nominate candidates for a particular constituency cannot be undue influence within the meaning of s. 123(2). [891G-H]

B (a) The first respondent placed his point of view before the electorate and sought support for it from the judgment of the High Court and the second respondent relied upon a press note issued by the Election Commission. Candidates in elections are not only entitled to raise political issues but can also raise social, economic and legal issues. [892 A-B]

(b) The first respondent did not make any attack on the character of the second respondent. The mere fact that his contention was untenable did not convert it into undue influence. [892B, H]

S. K. Singh v. V. V. Giri, [1971] 2 S.C.R. 197, referred to.

C (2) The first respondent was not guilty of any corrupt practice under s. 123(4). [891G]

D (a) His propaganda that the second respondent was not qualified to be a candidate was only an opinion expressed by him. He did not make any statement of fact and an opinion on a question of law could not be considered to be a statement of fact. The fact that the Returning Officer held that the second respondent was qualified to be a candidate did not preclude the first respondent from debating the issue before the electorate. [891D-G]

(b) It could not be said that the opinion was neither *bona fide* nor groundless as the contention was accepted as correct by the High Court in an election petition filed against second respondent, though that decision was reversed by this Court. [891E]

E (c) Also, the first respondent's propaganda that the High Court had held in the election petition against S, that the graduates' constituency was a non-political constituency could not be said to be a false statement, because, the High Court, in fact, said so. [891F-G]

Guruji Shrihar Balirem Jivatode v. Vithalrao and Ors, [1969] 2 S.C.R. 766, referred to.

F (3) This conclusion of the High Court, that the graduates' constituency was a non-political one, however, was wrong. [894H]

G In the form prescribed for nominating candidates for Legislative Assemblies there is a column requiring the candidate to mention whether he belonged to a political party, and if so, to which party. The electors to the Legislative Assembly are by and large illiterate and to facilitate the freedom of voting the symbol system had been introduced. The symbols are of two types reserved and free. It was necessary for the Election Commission to know whether a candidate was a nominee of a political party, because, reserved symbols are allotted to candidates sponsored by recognised political parties. The symbol system is unnecessary in the elections to the Legislative Council, because, the electors are generally educated. Therefore, the absence of such a column in the form prescribed for nominating candidates to the Legislative Council does not lead to the inference that election to the Legislative Council from the

H Graduates' constituency is non-political. [894 F-H; 895 A-C]

(4) Article 171(3)(d) of the Constitution says that members of the Assembly should elect, as nearly as may be, 1/3 members of the Council from amongst persons who are not members of the Assembly; but no

such stipulation is made in the other clauses of the Article. But from that it could not be concluded that when elections are held under clauses (a), (b) and (c) of Art. 171(3), the person to be elected must be one who is a member of the electoral college in question. The candidate may either be a member of the electoral college or even an outsider. If a person possesses all the qualifications prescribed in the Constitution as well as in the Representation of the People Acts and has not incurred any of the disqualifications mentioned therein he is qualified to be a candidate. [894D-F]

G. Narayanaswami v. G. Pannerselvam and Ors. Civil Appeal No. 189 of 1971 decided on April 12, 1972, followed.

(5) In the circumstances of this case here was no justification for imposing penal costs.

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 586 of 1971.

Appeal under section 116-A of the Representation of the People Act, 1951 from the Judgment and order dated December 15, 1970 of the Madras High Court in Election Petition No. 2 of 1970.

R. M. Sheshadri, K. C. Agarwala, E. C. Agarwala and A. T. M. Sampath, for the appellant.

S. V. Gupte, S. S. Javali, P. C. Bhartari, J. B. Dadacharji and Ravinder Narain, for respondent No. 1.

S. S. Khanduja and Vineet Kumar, for respondent No. 2.

The Judgment of the Court was delivered by

Hegde, J. This is an election petitioner's appeal under s. 116-A of the Representation of the People Act, 1951 (to be hereinafter referred to as the Act). It relates to the election to the Tamil Nadu Legislative Council from the Madras City Graduates' constituency. The election was held on April 11, 1970. Seven candidates contested in that election. The election was according to the principles of proportional representation by means of single transferable vote. The Madras City Graduates' constituency was a two member constituency. The 1st respondent, Vasantha Pai was declared elected in the first count itself. The second respondent Narayanaswamy was declared elected in the second count. The election of Vasantha Pai was challenged by the appellant Vardachari who is an elector in the constituency in question on the ground that Vasantha Pai was guilty of corrupt practices mentioned in sub-ss. (2) and (4) of s. 123 of the Act. The High Court came to the conclusion that the petitioner has failed to make out his case and consequently dismissed the election petition. Hence this appeal.

- A** The charges levelled against Vasantha Pai are : (1) that he (Vasantha Pai) falsely carried on propaganda to the effect that the High Court of Madras had decided in an earlier election petition between him and R. N. Seshadri that the constituency in question is a non-political and Narayanaswamy having been sponsored by the Swatantra Party any votes given to him will amount to
- B** "throwing away" of the votes and (2) that Narayanaswamy being a non-graduate was not qualified to be a candidate at the election.

- It may be noted at this stage that Vasantha Pai did object to the candidature of Narayanaswamy before the Returning Officer on the two grounds mentioned earlier. The Returning Officer rejected those objections holding that there was no material before him to show that Narayanaswamy had been sponsored by the Swatantra party and further that in his view a non-graduate is not disqualified from seeking election from a graduate constituency. Even after the Returning Officer rejected the contentions of Vasantha Pai, he admittedly carried on the propaganda referred to earlier by publishing leaflets as well as appeals in the Newspapers.
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- D**

Section 123 enumerates what are corrupt practices for the purposes of the Act. Sub-s. (2) of that section to the extent material for our present purpose reads :

- E** "Undue influence, that is to say, 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 consent of the candidate or his election agent, with the free exercise of any electoral right."

(The proviso is not relevant for our present purpose.)
Sub-s. (4) thereof says :

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- "The publication by a candidate or his agent or by any other person, with the consent of a candidate or his election agent of any statement of fact which is false, and which he either believes to be false or does not believe to be true, in relation to the personal character or conduct of any candidate, or in relation to the candidature or withdrawal of any candidate, being a statement reasonably calculated to prejudice the prospects of that candidate's election."
- G**

Before examining the points in issue, it is necessary to set out a few more facts.

- H**
- In 1967 a seat in the Madras City Graduates' constituency fell vacant. For that seat election was held on August 21, 1967. In

that election Vasantha Pai was one of the contestants. One of the other contestants was R. N. Seshadri. R. N. Seshadri was declared elected having secured the highest number of votes. Thereafter Vasantha Pai challenged the validity of the election of Seshadri on various grounds. One of the grounds taken by Vasantha Pai was that in an election from graduates' constituencies political parties were not competent to sponsor candidates, Seshadri having been sponsored by the Swatantra party, was not qualified to be a candidate. Yet another ground taken was that Seshadri was guilty of corrupt practices coming within sub-s. (5) of s. 123 of the Act. The High Court set aside the election of Seshadri on the ground that he was guilty of corrupt practices mentioned in sub-s. (5) of s. 123. Dealing with the question whether Seshadri was qualified to be a candidate at the election or not it observed that there is no satisfactory evidence before it to come to a conclusion that Seshadri had been sponsored by a political party. But proceeding further it observed :

"It is quite well known that the election to the Madras Legislative Council from the Madras District Graduates' Constituency is a non-party election. No party symbols are assigned to the candidates. The political parties cannot also nominate any candidate for this election."

Aggrieved by the decision of the High Court, Seshadri took up the matter in appeal to this Court. This Court affirmed the finding of the High Court that Seshadri was guilty of the corrupt practices mentioned in sub-s. (5) of s. 123 of the Act. Evidently this Court was not invited to consider the correctness of the observations of the learned trial judge that "election to the Madras Legislative Council from the Madras District Graduates' Constituency is a non-party election". The judgment of this Court did not touch that point.

After the decision in Seshadri's case, Vasantha Pai persisted in carrying on propaganda that the Madras High Court had held that the election to the Madras Legislative Council from the Madras District Graduates' Constituency is a non-party election and no political party can sponsor a candidate in that election. He also carried on the propaganda that Narayanaswamy's candidature had been sponsored by the Swatantra party and therefore according to him, he was not qualified to be a candidate.

Having set out these facts we will first consider whether Vasantha Pai was guilty of a corrupt practice coming within sub-s. (4) of s. 123. The charge under this head is based on two grounds viz. that he had falsely carried on propaganda that the High Court had ruled that the constituency in question was a non-political constituency and further that he had carried on a false propaganda

A that Narayanaswamy was not qualified to be a candidate. The ingredients of the corrupt practice mentioned in s. 123(4) as set out by this Court in *Guruji Shrihar Baliram Jivatode v. Vithalrao and ors.*⁽¹⁾ are :

- B** 1. The publication by a candidate or his election agent or any other person with the consent of the candidate or his election agent of any statement of fact.
2. Which statement is false and which was believed by the candidate to be false or at any rate was not believed by him to be true;
- C** 3. The said statement relates to the personal character or conduct of a candidate or in relation to his candidature or withdrawal and
4. The same being a statement reasonably calculated to prejudice the prospects of that candidate's election.

D Taking up first the propaganda of Vasantha Pai that Narayanaswamy was not qualified to be a candidate, it was only an opinion expressed by Vasantha Pai. He made no statement of fact. An opinion, much less an opinion on a question of law cannot be considered as a statement of fact. Further his opinion cannot be said to be either not *bona fide* or groundless as the same was accepted as correct by the High Court of Tamil Nadu in the election petition filed against Narayanaswamy though that decision was reversed by this Court in *G. Narayanaswami v. G. Pannerselvam and ors.*⁽²⁾.

E The fact that the Returning Officer had held that Narayanaswamy was qualified to be a candidate did not preclude Vasantha Pai from debating that issue before the electorate. Vasantha Pai's propaganda that the High Court has held that the graduates' constituency is a non-political constituency cannot be said to be false statement. The High Court advertently or inadvertently said so though it was wrong in saying so as we shall presently see. Hence the charge under s. 123(4) fails.

F Now turning our attention to the allegation of undue influence, we fail to see how a debate whether a candidate was qualified to stand or whether a political party is competent to nominate candidates for a particular constituency can be undue influence within the meaning of s. 123(2). Both candidates have placed their point of view before the electorate. Vasantha Pai sought support from the High Court's Judgment and Narayanaswamy relied on the Press Note issued by the Election Commission that political parties

(1) [1969] 2 S.C.R. 766.

(2) Civil Appeal No. 189 of 1971 decided on April 12, 1972.

are not precluded from sponsoring candidates in the graduates' constituencies. Candidates in elections are not only entitled to raise political issues, they can also raise social, economic and legal issues. The fact that a contention is untenable does not convert it into an undue influence. We do seek to limit the scope of the expression "undue influence" in s. 123(2). As observed by this Court in *S. K. Singh v. V. V. Giri*⁽¹⁾ :

"The freedom of election is twofold; (i) freedom in the exercise of judgment. Every voter should be free to exercise his own judgment, in selecting the candidate he believes to be best fitted to represent the constituency; (2) Freedom to go and have the means of going to the poll to give his vote without fear or intimidation."

In that decision this Court observed after taking into consideration s. 171(G) of I.P.C.

"It is clear that in pursuit of purity of elections the legislature frowned upon attempts to assail such purity by means of false statements relating to the personal character and conduct of a candidate and made such acts punishable thereunder. But the fact that making of such a false statement is a distinct offence under Section 171-G does not and cannot mean that it cannot take the graver form of undue influence punishable under section 171F. The false statement may be of such virulent, vulgar or scurrilous character that it would either deter or tend to deter voters from supporting that candidate whom they would have supported in the free exercise of their electoral right but for their being affected or attempted to be affected by the maker or the publisher of such a statement. Therefore it is the degree of gravity of the allegation which will be the determining factor in deciding whether it falls under Section 171C or Section 171G. If the allegation though false and relating to a candidate's personal character or conduct, made with the intent to affect the result of an election, does not amount to interference or attempt at such interference, the offence would be the lesser one. If, on the other hand, it amounts to interference or an attempt to interfere, it would be the graver offence under Sec. 171-F, read with Section 171C."

Herein it may be noted that Vasantha Pai did not make any attack on the character of Narayanaswamy. His contention was that the election to the constituency in question was non-political and that Narayanaswamy was not qualified to be a candidate, he

(1) [1971] 2 S.C.R. 197.

A being not a graduate. Vasantha Pai was entitled to place these points of view before the electorate and even tell them that if Narayanaswamy is elected he may challenge his election. It was for Narayanaswamy or his supporters to counter the arguments advanced on behalf of Vasantha Pai.

B For the reasons mentioned above we agree with the High Court that the appellant has failed to establish the charges levelled by him.

C At the same time we think it necessary to observe that the conclusion of the Madras High Court in R. N. Seshadri's case that the Graduates' constituency is a non-party constituency is an erroneous conclusion. There is no reference to political parties either in our Constitution or in the Act. The political parties come into the picture indirectly though they have an important place in our political set up. Our Constitution and the Act refer to candidates as such and not to the parties to which they belong. Art. 173 of the Constitution prescribes the qualifications of the person to be chosen to fill a seat in the legislature of a State. They are :

- (1) He must be a citizen of India.
- (2) He must make and subscribe before some person authorised in that behalf by the Election Commission an oath or affirmation according to the form set out for the purpose in the Third Schedule to the Constitution.
- (3) In the case of a seat in the Legislative Assembly he must not be less than 25 years of age and in the case of a Legislative Council he must not be less than 30 years of age and
- (4) He must possess such other qualifications as may be prescribed in that behalf by or under any law made by parliament.

G Then we come to the provisions of the Act. Section 5 of the Act prescribes the qualifications for membership of a Legislative Assembly. In the case of a general constituency, the only qualification prescribed is that he must be an elector for any assembly constituency in that State. Section 6 prescribes the qualifications for membership of a Legislative Council. That Section reads :

- H "(1) A person shall not be qualified to be chosen to fill a seat in the Legislative Council of a State to be filled by election unless he is an elector for any Assembly constituency in that State.

- (2) A person shall not be qualified to be chosen to fill a seat in the Legislative Council of a State to be filled by nomination by the Governor unless he is ordinarily resident in the State."

A

The Representation of the People Act, 1950 prescribes qualifications for being enrolled as an elector. Sections 8 to 10A of the Act set out the grounds which disqualify a person from being a candidate. If a person possesses all the qualifications prescribed in the Constitution as well as in the Act and has not incurred any of the disqualifications mentioned therein then he is qualified to be a candidate. It may look anomalous that a non-graduate should be a candidate in a Graduates' constituency. But if a candidate possesses the qualifications prescribed and has not incurred any of the disqualifications mentioned in the Constitution or in the Act other consideration becomes irrelevant. That is the ratio of the decision of this Court in *Narayanaswami's* case (supra).

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It was urged on behalf of Vasantha Pai that Art. 171(3)(d) of the Constitution specifically says that the members of the Assembly should elect as nearly as may be 1/3rd members of the Legislative Council from amongst persons who are not members of the Assembly. But no such stipulation is made in the other clauses of that Art. Therefore we should conclude that when elections are held under cls. (a), (b) and (c) of sub-art. (3) of Art. 171, the person to be elected must be one who is a member of the electoral college in question. We see no logic in this reasoning. The relevant provisions do not say so. From the language of those provisions, it is clear that the candidate may either be a member of the electoral college in question or even an outsider. This question is no more *res integra*. It is concluded by the decision of this Court in *Narayanaswami's* case (supra).

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Dealing with the question that the election to the Graduates' constituency is non-political, our attention was invited on behalf of Vasantha Pai to certain rules framed under the Act as well as forms prescribed. In the form prescribed for nominating candidates for legislative assemblies, there is a column requiring the candidate to mention whether he belongs to a political party, if so, which party, whereas there is no such column in the form prescribed for nominating candidates to the legislative council. From this we are asked to infer that the election to the legislative council is non-political. In our opinion this is an erroneous contention. The electors to the legislative assembly are by and large illiterate. Hence to facilitate the freedom of voting, the symbol system had been introduced. There are two types of symbols *viz.* reserved symbols and free symbols. Reserved symbols are allotted only to

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- A** candidates sponsored by recognised political parties. Free symbols are given to others. In order to allot the reserved symbols, it is necessary for the Election Commission to know whether a particular candidate is the nominee of any political party. Symbol system is unnecessary in the elections to the Legislative Council because the electors therein are by and large educated. They can exercise their franchise without the assistance of the symbols. We can see no legal objection for any political party sponsoring candidates to the seats in the Legislative Councils.
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- C**

One other question remains to be decided. The learned trial judge has imposed penal costs of Rs. 500/- on the appellant; that in addition to the ordinary costs. It was contended before us that the learned judge had no competence to impose penal costs. We do not think it necessary to decide that question. From the facts and circumstances of this case, we do not think that there was any justification to impose penal costs. We accordingly set aside the order imposing penal costs. In other respects this appeal fails and the same is dismissed with costs.

V.P.S.

Appeal dismissed.