

A

BACHAN SINGH

v.

PRITHVI SINGH & ORS.

February 5, 1975

[A. ALAGIRISWAMI AND R. S. SARKARIA JJ.]

B

Representation of the People Act 1951—S.123(2) and (7)—Publication of posters with pictures of Prime Minister and Chiefs of Staff—Whether amounts to undue influence.

The appellant in his petition challenging the election of the respondent alleged (1) that the respondent had been guilty of committing a corrupt practice under s.123(7) of the Representation of the People Act, 1951 in that he had obtained the assistance of a member of the armed forces in his election and (2) that he had distributed posters with the pictures of the Prime Minister and other important ministers together with the three chiefs and four Generals of the Armed Forces bearing the caption 'Pillars of Victory' and thereby exercised undue influence within the meaning of s.123(2) of the Act. The High Court dismissed the petition.

C

Dismissing the appeal to this Court.

D

HELD: (1) Since the deletion of the words 'or a polling agent or a counting agent' from Explanation (2) of s.123(7) by the Amending Act 47 of 1966, a member of the armed forces, merely by acting as a polling agent, is not deemed to assist in the furtherance of the prospects of a candidate's election within the contemplation of s.123(7) of the Act. Secondly, the Lance Naik had categorically asserted that he did the canvassing on his own and not in the company of the respondent. [441 G]

E

(2) (a) The publication of the poster was an act of impropriety but not one of corrupt practice falling within the mischief of s.123. Members of the armed forces spoken of in this clause mean persons in flesh and blood and not their inanimate photographs. [443 B]

F

(b) In one sense even election propaganda carried on vigorously, blaringly and systematically through charismal leaders or through various media in favour of a candidate by recounting the glories and achievements of that candidate or his political party in administrative or political field, does meddle with and mould the independent volition of electors, having poor reason and little education in the exercise of their franchise. That such a wide construction would not be in consonance with the intentment of the legislature is discernible from the proviso to this clause. The proviso illustrates that ordinarily interference with the free exercise of electoral right involves violence or threat of injury of any kind to any candidate or an elector or inducement or attempt to induce a candidate or elector to believe that he will become an object of divine displeasure or spiritual censure. The prefix 'undue' indicates that there must be some abuse of influence. 'Undue influence' is used in contra-distinction to 'proper influence'. Construed in the light of the proviso cl. 2 of s.123 does not bar or penalise legitimate canvassing or appeals to reason and judgment of the voters or other lawful means of persuading voters to vote or not to vote for a candidate.

G

Such proper and peaceful persuasion is the motive force of our democratic process [442 E-G]

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 186 of 1973

From the Judgment & Order dated the 27th November, 1972 of the Punjab & Haryana High Court in Election Petition No. 15 of 1972.

H

Kapil Sibal, N. D. Bhargava and S. K. Gambhir, for the appellants.

S. N. Marwah, Lalita Kohli, K. C. Dua and Naunit Lal, for the Respondent No. 1

The Judgment of the Court was delivered by

SARKARIA, J. Prithvi Singh Azad (hereinafter referred to as the returned candidate), Bachan Singh, Naurang Singh and Lachhman Singh contested the election to Punjab Vidhan Sabha from the Khanna (Reserved) Assembly constituency. Azad was the nominee of the Congress Party and Bachan Singh of the Akali Dal.

The poll was held on March 11, 1972. On March 12, 1972, Azad was declared elected. He secured 25,984 votes, whereas Bachan Singh appellant No. 1 polled 24,865 votes. The other two forfeited their securities.

On April 26, 1972, Bachan Singh, the unsuccessful candidate and one elector, Harcharan Singh, jointly filed an election petition under the Representation of the People Act, 1951 challenging the election of the returned candidate on several grounds. In the event of Azad's election being set aside, Bachan Singh claimed a further declaration under s.101 of the Act of his own election.

The petition was dismissed by the High Court. Hence this appeal by the petitioners.

Before us, only two grounds have been pressed into argument by Mr. Kapil Sibal, learned Counsel for the appellants.

Firstly, it is contended that the returned candidate had obtained the assistance of one Lance Naik Gurdev Singh, a member of the Armed Forces of the Union, in his election and was thus guilty of committing the corrupt practice defined in s.123 (7).

In this connection, the petitioner tried to establish two facts : (a) that Lance Naik Gurdev Singh was appointed as his polling agent by the returned candidate and the former acted as such at the polling station, Rahon Majra; (b) that the Lance Naik actually canvassed for votes in the company of the returned candidate. In regard to the first fact, the petitioners relied upon the statement of L/N Gurdev Singh, who was examined as C.W.1., and the certified copy Ex.P.W. 30/4, of the Polling Agents' Form. Regarding the second fact, they examined P.W.6 Subedar Bachan Singh, P.W.7 Bant Singh P.W.8 Bhagat Singh P.W.9 Rulda Singh, P.W.10 Sadhu Singh, P.W.11 Bachan Singh P.W. 12 Arjan Singh, P.W. 13 Haracharan Singh. They also sought support from the statement of C.W. 1.

On both these points, the learned Judge of the High Court found against the petitioners. In his opinion, the person who had been appointed as his polling agent by the returned candidate was another Gurdev Singh (RW2) and not L/N Gurdev Singh (C.W. 1). He further held that the oral evidence adduced by the petitioners to substantiate the allegation of canvassing by the Lance Naik in association with the returned candidate, was of a partisan character, and in the absence of corroboration from any independent source, could not be accepted.

A Mr. Sibal contends that the High Court grievously erred in holding that it was R.W.2 and not C.W.1 who had been appointed as his polling agent by the Respondent. According to the Counsel, there are clinching circumstances in this case which show that it was Lance Naik Gurdev Singh who had been appointed and acted as the polling agent of the Respondent; that the certified copy, Ex.P.W. 30/1 obtained by the petitioner was a true copy of the original Form. R.W.2, it is submitted, is an imposter and the Polling Agents' Form P.W. 30/4, was a false and fabricated document. Once it is held, proceeds the argument, that L/N Gurdev Singh (C.W.1) had acted as the Polling Agent of the Respondent, that would lend assurance to and probabilise the account given by P.Ws. 9 to 14.

C The contention cannot be accepted.

Firstly, we do not think that the finding of the High Court that R.W.2—and not C.W.1—was the Polling Agent of the Respondent, can be said to be palpably wrong necessitating a reappraisal of the evidence by this Court. Secondly, even on the assumption that L/N Gurdev Singh C.W.1, was the person who had been appointed as the polling agent, the evidence on the record was not sufficiently clinching to bring home the charge to the Respondent.

L/N Gurdev Singh (C.W.1) himself had knocked the bottom out of the petitioner's case. The Lance Naik while admitting that he had canvassed for votes for the returned candidate, categorically asserted that he did such canvassing on his own and not in the company of the respondent. The Lance Naik was examined as a court witness. E The appellants had a right to cross-examine him. But they did not avail of this right. They did not put any question to the witness to challenge his account. L/N Gurdev Singh's statement therefore, that he had never canvassed with or at the instance of the returned candidate, would be deemed to have been accepted by them. C.W. 1 was the keystone of the arch which the petitioners tried to build to sustain this charge. Failure of C.W.1, therefore, to support the partisan P.Ws. on all the material facts constituting the charge, must lead to the collapse of whole arch. F

Moreover, since the deletion of the words "or a polling agent or a counting agent" from Explanation(2) of s. 123(7) by the Amending Act 47 of 1966, a member of the Armed Forces merely by acting as a polling agent is not deemed to assist in the furtherance of the prospects of a candidate's election within the contemplation of s.123(7). G

We would therefore reject the first contention and affirm the finding of the court below on this Issue.

The next charge which has been agitated before us relates to the poster, Esh.PW15/1 which was published by the Pradesh Congress Committee. It bore the photographs of the Prime Minister Smt. Indira Gandhi, Shri Jagjiwan Ram, Defence Minister and Shri Swaran Singh, Foreign Minister in the first row. Beneath the first row were the photographs of three Chiefs and four Generals of the Armed Forces. It bore the caption "Pillars of Victory". It is alleged that H

below these photographs was printed the Congress symbol of Cow and Calf. On a complaint being made, the Election Commission of India moved in the matter and directions were issued to the Punjab Pradesh Congress Committee to withdraw the poster, which, in consequence, was withdrawn.

In his written statement, the returned candidate pleaded that he was unaware of any such poster. In cross-examination, however, (as R.W.6) admitted that the letter Ex.R.W.6/1 had been issued by S. P. Mittal to all the Presidents of the District Congress Committees in Punjab directing them to withdraw this poster. R.W.6 admitted that this poster bore the photographs of Service Chiefs along with those of the Prime Minister and two other Ministers—all of whom were described as Pillars of Victory. He, however, disclaimed that he had anything to do with the distribution of this poster.

Mr. Sibal contends that the publication of this poster not only amounted to the exercise of "undue influence" within the contemplation of s.123(2) but also constituted an attempt to obtain or procure assistance from the members of the Armed Forces of the Union for furtherance of the prospects of the returned candidate's election within the purview of s.123(7).

The contention is ingenious but unsustainable.

Doubtless the definition of 'undue influence' in sub-s. (2) of s. 123 is couched in very wide terms, and on first flush seems to cover every conceivable act which directly or indirectly interferes or attempts to interfere with the free exercise of electoral right. In one sense even election propaganda carried on vigorously, blaringly and systematically through charismal leaders of through various media in favour of a candidate by recounting the glories and achievements of that candidate or his political party in administrative or political field, does meddle with and mould the independent volition of electors, having poor reason and little education, in the exercise of their franchise. That such a wide construction would not be in consonance with the intendment of the legislature is discernible from the proviso to this clause. The proviso illustrates that ordinarily interference with the free exercise of electoral right involves either violence or threat of injury of any kind to any candidate or an elector or inducement or attempt to induce a candidate or elector to believe that he will become an object of divine displeasure or spiritual censure. The prefix 'undue' indicates that there must be some abuse of influence. 'Undue influence' is used in contra-distinction to 'proper influences'. Construed in the light of the proviso, clause (2) of s. 123 does not bar or penalise legitimate canvassing or appeals to reason and judgment of the voters or other lawful means of persuading voters to vote or not to vote for a candidate. Indeed such proper and peaceful persuasion is the motive force of our democratic process.

We are unable to appreciate how the publication of this poster interfered or was calculated to interfere with the free exercise of the electoral right of any person. There was nothing in it which amounted

A to a threat of injury or undue inducement of the kind inhibited by s.123(2).

Nor could the publication of this poster fall within the ambit of s.123(7). The 'members' of the Armed Forces spoken of in this Clause mean persons in flesh and blood and not their inanimate photographs.

B

In short, the publication of the poster was an act of impropriety but not one of corrupt practice falling within the mischief of s.123.

No other point has been argued before us.

The appeal fails and is dismissed with costs.

Appeal dismissed.

P.B.R.