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H. V. KAMATH

v.

CH. NITIRAJ SINGH

February 24, 1969

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[S. M. SIKRI, R. S. BACHAWAT AND K. S. HEGDE, JJ.]

C

Representation of People Act (43 of 1951), s. 123—Government issued Ordinance benefiting certain agriculturists prior to election—Successful candidate's party in power—Allowances granted to Government employees—Dummy pamphlets omitting unsuccessful candidate's election symbol—Whether amounts to corrupt practice.

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The appellant, an unsuccessful candidate filed an election petition for setting aside the election of the respondent who got elected as a Congress candidate to a Parliamentary constituency. The respondent was charged with several corrupt practices, viz., (i) by an ordinance the Government of the State in which the Congress Party was in power, granted exemption to certain agriculturists' holdings from payment of land revenue and the Chief Minister announced the benefit though the exemption was claimed for sometime past by the opposition parties the ordinance was passed prior to the election; the opposition parties started a campaign stating that the object of the exemption was to forfeit the land; the Chief Minister refuted the charge and told the voters that the exemption should be granted and that the opposition parties should be routed in the election; a member of the Congress Party—D, published a pamphlet refuting the false propaganda that exemption was temporary and urging the electors to vote for the Congress; (ii) the Chief Minister on the eve of the election announced increased dearness allowance to certain Government employees; (iii) the respondent or his agent distributed dummy ballot papers with the respondent's name and his election symbol, and also that of appellant's name but without his election symbol printed thereon, thereby conveying an impression that the appellant had withdrawn his candidature, and further, that the respondent and his agents on the eve of the election told the voters that the appellant had withdrawn, so the respondent had committed corrupt practice under s. 123(4); and (iv) a member of the police force in the service of the Government with the consent of the respondent actively canvassed for the respondent, thereby committing corrupt practice under s. 123(7). The High Court dismissed the petition,

HELD : The appeal must be dismissed.

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(i) On the materials, on the record, it was impossible to hold that the respondent committed the corrupt practice under s. 123(1)A. The ordinance was passed by the Government of Madhya Pradesh. As a result of the ordinance a large number of agriculturists got exemption from land revenue. Such an exemption did not amount to a gift, offer or promise of any gratification within the meaning of s. 123(1)(A) nor was it possible to say that the Government was the agent of the respondent. The Congress Party was then in power. But the exemption was not given by the Congress Party. It was given by the Ordinance which was passed by the Government. Nor does the announcement of the declaration by the Chief Minister or by the pamphlet carry the matter any further. It was not possible to say that either the Chief Minister or D acted as the agent of the respondent. [815 G]

(ii) The grant of the increased dearness allowance could not be regarded as a gift, offer or promise of any gratification within the meaning of s. 123(1)(A) nor it was possible to say that the Government or the Chief Minister was the agent of the respondent. The employees of the Government had given notice to go on strike a week before the election and without their cooperation the entire election would have been at a standstill. The Government thought that the demand of the employees was legitimate and therefore announced it on the eve of the election to meet it. [816 D-F]

(iii) The dummy ballot papers were in contravention of the instructions issued by the Election Commission of India. The appellant's name should not have been printed in them. But it was impossible to say that the dummy papers conveyed to the voters the impression that the appellant had withdrawn his candidature. The statement of the appellant's witnesses could not be accepted that on the eve of the election the respondent and his agents informed the voters that the appellant had withdrawn his candidature. The voters knew that there were two candidates in the field. Even a few days prior to the election the Chief Minister stated that the appellant was contesting the election. The respondent carried on rigorous election propaganda till the last day. [816 H]

(iv) On the evidence the charge that the member of the police force canvassed for the respondent was not established.

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 1517 of 1968.

Appeal under s. 116-A of the Representation of the People Act, 1951 from the judgment and order dated March 13, 1968 of the Madhya Pradesh High Court, Indore Bench in Election Petition No. 45 of 1967.

K. A. Chitale, Y. S. Dharmadhikari, S. S. Khanduja and *K. B. Rohatgi*, for the appellant.

G. N. Dikshit, for the respondent.

The Judgment of the Court was delivered by

Bachawat, J. This appeal is directed against the judgment of a Single Judge of the High Court of Madhya Pradesh dismissing an election petition for setting aside the election of the respondent Chaudhury Nitiraj Singh to the Hoshangabad Parliamentary Constituency No. 27. The appellant was the Praja Socialist Party candidate with the election symbol "hut". The respondent was the Congress Party Candidate with the election symbol "Two bullocks with voke on". The voting took place on February 20, 1967. The votes were counted on February 21 and February 20, 1967. The respondent having got a majority of about 20,000 votes was declared duly elected. The petition charged the respondent with several corrupt practices. The appellant now presses before us only the charge under paragraph 5(i), (ii), (iii) and (iv), paragraph 5(v), paragraph 6 and paragraph 7(ii).

- A** At the time of the election, the Congress Party, was in power and the Chief Minister Shri D. P. Mishra belonged to the Congress Party. In November 1966 the respondent was nominated by the Congress Party as its candidate for the Hoshangabad Parliamentary Constituency. The substance of the charge as made in paragraph 5(i), (ii), (iii) and (iv) and as pressed before us is that on December 23, 1966 the Government of Madhya Pradesh headed by
- B** Shri D. P. Mishra promulgated an Ordinance No. 19 of 1966 exempting agriculturists holdings land less than 7.50 acres or paying land revenue not exceeding Rs. 5 from payment of land revenue, that Shri D. P. Mishra as the agent of the respondent and with his consent made speeches at Narsinghpur and Piparia on February 16, 1967 announcing the benefit of such exemption and that the respondent thus committed the corrupt practice under s. 123(1)(A) of the Representation of the People Act, 1951. The evidence shows that the question of exemption of uneconomic holding from payment of land revenue was being agitated for some time past
- C** Towards the close of 1966 a resolution was moved by the members of the opposition parties in the Madhya Pradesh Vidhan Sabha urging such exemption. But no bill to that effect was then passed. The Government reconsidered the matter and when the Vidhan Sabha was not in session it passed Ordinance No. 19 of 1966 granting the exemption. The Ordinance was later replaced by Act. No. 6 of 1967 which was published on April 26, 1967. The exemption was advocated by the Praja Socialist Party also and was welcomed
- E** by all parties. Nevertheless on the eve of the election the opposition parties started a campaign stating that the object of the exemption was to forfeit the land to the State and raised the slogan "Lagan Maaf Zamin Saaf". The propaganda was refuted by the Congress Party. In an election speech on February 16, 1967 Shri D. P. Mishra raised the slogan "Lagan Maaf Sab Party Saaf". His object was to tell the voters that the exemption should be granted
- F** and that the opposition parties should be routed in the election. It also appears that one Shri S. K. Dixit a member of the Congress Party published a pamphlet Ex. P-2 on or about February 7, 1967 refuting the false propaganda that the exemption was temporary and was granted with a view to forfeit the lands and urging the electors to vote for the congress. On the materials on the record
- G** it is impossible to hold that the respondent committed the corrupt practice under s. 123(1)(A). The Ordinance was passed by the Government of Madhya Pradesh. As a result of the Ordinance a large number of agriculturists got exemption from land revenue. Such an exemption does not amount to a gift, offer or promise of any gratification within the meaning of s. 123(1)(A). Nor is it
- H** possible to say that the government was the agent of the respondent. It is true that the Congress Party was then in power. But the exemption was not given by the Congress Party. It was given by the Ordinance which was passed by the Government. Nor does

the announcement of the declaration at the meeting held on February 16, 1967 or by the pamphlet Ex. P-2 carry the matter any further. On the materials on the record it is not possible to say that either Shri D. P. Mishra or Shri S. K. Dixit acted as the agent of the respondent. The charge under paragraph 5(i), (ii), (iii) and (iv) is not established. Some additional embellishments of the charge were dealt with by the learned Judge and they were not pressed before us.

The substance of the charge as laid in paragraph 5(v) and as pressed before us is that on the eve of the election the Government of Madhya Pradesh headed by Shri D. P. Mishra declared that Class III and Class IV government employees would get increased dearness allowance from April 1, 1967 according to the rates sanctioned for Central Government employees, that Shri D. P. Mishra with the consent of the respondent and as his agent announced the grant of these benefits at the meetings held on February 16, 1967 at Narsinghpur and Piparia and that the respondent thus committed the corrupt practice under s. 123(1)(A). It appears that Class III and Class IV employees gave a notice to the government stating that they would go on strike with effect from February 13, 1967. Without their co-operation the entire election would have been at a standstill. The Government thought that the demand of the employees for increased dearness allowance was legitimate and therefore announced on or about February 11, 1967 its decision to grant the increased dearness allowance with effect from April 1, 1967. The grant of the increased dearness allowance cannot be regarded as a gift, offer or promise of any gratification within the meaning of s. 123(1)(A) nor is it possible to say that the Government or Shri D. P. Mishra was the agent of the respondent. The announcement of the grant of the increased dearness allowance at the meeting held on February 16, 1967 does not carry the matter any further. The charge under paragraph 5(v) is not established.

The charge under paragraph 6 is that the respondent or his agent distributed dummy ballot papers with the respondent's name and his election symbol of "Two bullocks with yoke on" and, also the appellant's name without his election symbol printed thereon, that those papers conveyed to the voters the impression that the appellant had withdrawn his candidature, that the appellant and his agents on the eve of the election told the voters that the appellant had withdrawn his candidature and that the respondent thereby committed the corrupt practice under s. 123(4). The evidence shows that dummy ballot papers as mentioned above were printed and distributed on behalf of the respondent. Such dummy ballot papers were in contravention of the instructions issued by the Election Commission of India. The appellant's name should not have

- A been printed in them. But it is impossible to say that the dummy ballot papers conveyed to the voters the impression that the appellant had withdrawn his candidature. On this issue the appellant examined P.W. 6, PW 7, PW 10, PW 23, PW 25, PW 27, PW 29, PW 30, PW 31 and PW 32 and the respondent examined RW 2, RW 3, RW 11 and RW 13. In agreement with the learned Judge
- B we do not accept the statement of the appellant's witnesses that on the eve of the election the respondent and his agents informed the voters that the appellant had withdrawn his candidature. The voters knew that there were two candidates in the field, viz., the appellant and the respondent. Even on February 16, 1967 Shri D. P. Mishra stated that the appellant was contesting the election.
- C The respondent carried on a vigorous election propaganda until February 18, 1967. If the respondent or his agent had informed the voters that the appellant had withdrawn his candidature it was not likely that such intensive propaganda would be carried on until that date. The charge under paragraph 6 is therefore not established.
- D The charge under paragraph 7(ii) was that Chaudhary Diwan Singh, the Station House Officer at Sohagpur, and a member of the police force in the service of the government, with the consent of the respondent actively canvassed for the respondent and that the respondent thereby committed corrupt practice under s. 123(7). To prove this charge the appellant examined PW 3, PW 4 and PW 9. Chaudhary Diwan Singh and the respondent denied the
- E charge. For the reasons given by the learned Judge, it is impossible to accept the testimony of PW 3, PW 4 and PW 9. Their evidence does not ring true. P.W. 3 never spoke to anybody that he was asked by Chaudhary Diwan Singh to vote for the respondent. It is not likely that Diwan Singh would approach P.W. 4. It is impossible to believe that P.W. 9 could overhear a conversation between Diwan Singh and the respondent when the respondent
- F is said to have asked Diwan Singh to canvass for him. The charge under paragraph 7(ii) is also not established.

In the result, the appeal is dismissed with costs.

Y.P.

Appeal dismissed.