

A

ELVIN SANGMA

v.

PROJENGTION MOMIN & ANR.

November 21, 1974

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

B

Election—Distribution of dummy ballot papers, showing rival candidate's election symbol wrongly—If corrupt practice invalidating the election.

On three days before the election to the Meghalaya Assembly the appellant, who was the successful candidate, distributed dummy ballot papers in various places. The dummy ballot papers contained, as the election symbol of the first respondent, who was a rival candidate, a symbol different from that allotted to the first respondent by the Election Commission. The first respondent successfully challenged in the High Court the election of the appellant on the ground that he was guilty of a corrupt practice under s.123(4) of the Representation of the People Act, 1951.

C

Dismissing the appeal to this Court,

D

HELD: In a constituency consisting of more than 80% illiterate electors the consequences of such distribution of dummy ballot papers with wrong symbols would be, (a) the voters who went to the polling station would have been confused even if they did not go there with the intention of voting for the first respondent, (b) people who went there with the intention of voting for the first respondent might well have cast their votes either for the appellant or for the other candidates finding that the first respondent's symbol was not there, or (c) they might have gone away without voting. Therefore, the distribution must have prejudiced the prospects of the first respondent's election. In a case where a corrupt practice is alleged and proved it is not necessary to further show the exact number of votes which the first respondent lost or the appellant gained. The corrupt practice itself is enough to invalidate the election. [804G-805B]

E

CIVIL APPELLATE JURISDICTION: Civil Appeal No. 441 of 1973.

From the Judgment & Order dated the 12th February, 1973 of the Assam & Nagaland High Court in Election Petition No. 5 of 1972.

P. K. Chatterjee, A. Sharma and Rathin Das, for the appellant.

F

S. K. Hom Choudhury and S. K. Nandy, for respondent No. 1.

The Judgment of the Court was delivered by

G

ALAGIRISWAMI, J. In the election held to the Meghalaya Legislative Assembly from Songsak Constituency on 9th March 1972 the appellant was declared elected having received 819 votes as against 176 received by the 1st respondent and 98 votes received by the 2nd respondent. The appellant was a candidate set up by the All Party Hills Leaders Conference and the 1st respondent was supported by the Hill State People's Democratic Party (H.S.P.D.P.), though that party was not a recognised party. The symbol allotted to the 1st respondent by the Election Commission was "two leaves". The 1st respondent filed an election petition questioning the election of the appellant on the ground that he was guilty of a corrupt practice falling under section 123(4) of the Representation of the People Act, 1951. That election petition having been allowed and appellant's election set aside by the High Court of Assam, Nagaland, Meghalaya, Manipur and Tripura this appeal has been filed against the decision of the High Court.

H

The allegations in support of the petition were that on 3 days before the election, that is on the 25th of February 1972, the 5th of March 1972 and the 7th of March 1972, the appellant distributed dummy ballot papers in three places, Bollonggiri, Daggal Bazar and Songsak respectively. The dummy ballot papers marked as Ext. 4 in this case contained a "boat" as the election symbol of the 1st respondent instead of the "two leaves" allotted to him as the election symbol. The case of the respondent was that this was a false statement reasonably calculated to prejudice the prospects of his election. The appellant's case was that the dummy ballot papers were got printed by A. M. Sangma, the Secretary of the A.P.H.L.C., that he took the bundle of dummy ballot papers from Tura, the headquarters of the A.P.H.L.C. and when he was staying at the rest house in Bollonggiri he found out the mistake that had crept in the dummy ballot papers, that after consultation with the Chief Minister of Meghalaya, W.A. Sangma, who has been examined as R.W. 12, he issued a correction statement marked as Ext. E, that the dummy ballot papers were not distributed, that there was therefore no publication and that it was not calculated to prejudice the prospects of the 1st respondent's election. The High Court after a very close, careful and restrained appreciation of the evidence in this case has come to the conclusion that the dummy ballot papers were distributed by the appellant at Bollonggiri and Daggal Bazar and we have also come to the same conclusion.

As we agree with the learned Judge we do not think it necessary to refer in elaborate detail to the evidence. We shall refer to the evidence in broad outline and show that his conclusion is fully justified. With regard to the distribution of ballot papers like Ext. 4 in Bollonggiri on the 25th of February, the two witnesses who gave evidence are Willingson Sangma, P.W.8 and Jangnai Marak, P.W.4. According to them the appellant distributed the dummy ballot papers and they produced two ballot papers as having been handed over to them. They further stated that on enquiry as to how the dummy papers did not contain the "two leaves" symbol allotted to the 1st respondent the appellant stated that they were Government papers and the symbol allotted to the 1st respondent had been cancelled. The High Court has held, and rightly so, that the alleged statement of the appellant that they were Government papers cannot be admitted in evidence on the ground that it was not so pleaded in the election petition. We cannot also help feeling that in deposing that the appellant told them that they were Government papers and the symbol allotted to the 1st respondent had been cancelled P.Ws.8 and 4 are embellishing the story to make their evidence stronger. In the election petition itself it is stated that at Bollonggiri and Daggal Bazar the appellant had stated that the "two leaves" election symbol allotted to the 1st respondent was withdrawn by the Government and he was nowhere whereas in the evidence given there is no mention about the appellant having said that the petitioner was nowhere. While the election petition does not state that the dummy ballot papers were Government papers P.Ws. 4 and 8 say that the appellant stated that they were Government papers. We therefore conclude that it would be safe and reasonable to hold that the evidence of P.Ws. 8 and 4 cannot be accepted in so far as they add any-

A thing more than that the appellant distributed the dummy ballot papers. We shall presently mention why we think that the dummy ballot papers like Ext. 4 should have been distributed by the appellant.

On the 26th of February the 1st respondent filed a complaint Ext. 3 before the Returning Officer and along with the complaint he filed a dummy ballot paper Ext. 4. Ext. 4 could not have become available to him unless it had been distributed by the appellant. We are not prepared to accept the contention on behalf of the appellant that they should have been pilfered because no evidence to that effect was given. Nor are we able to accept his evidence and that of Constant Marak R.W. 8 as to how the mistake in the dummy ballot paper was found. It sounds too artificial. Admittedly the appellant had given a lift to P.Ws. 8 and 4 on his journey from Tura to Bollonggiri and as admittedly he had passed through villages included in his constituency during the course of that journey it is quite likely that he distributed those dummy ballot papers. Furthermore, according to the appellant he had distributed another pamphlet Ext. E after coming to realise that the dummy ballot paper was wrong. If dummy ballot papers were not distributed at all there was no need to distribute pamphlets like Ext. E. These pamphlets were printed on 29th February and taken delivery of on the 1st of March. The 1st respondent's case that these pamphlets were not distributed does not seem to be true because one of his witnesses, P.W.8, admits having seen such a pamphlet and another witness, P.W. 5, makes an half hearted admission of the same fact. We are, therefore, satisfied that pamphlets like Ext. E were in fact distributed by the appellant. That could have been done only to counteract the effect of the distribution of the dummy ballot papers. It is not the appellant's case that he distributed the dummy ballot papers at all. If so there was no need to distribute pamphlets like Ext. E. Quite possibly realising rather a little late the damage likely to be done to his case the appellant tried to repair the damage by the distribution of pamphlets like Ext. E.

As regards the distribution of dummy ballot papers in Duggal Bazar the evidence was that of P.Ws. 7, 9 and 10 who also produced the dummy ballot papers marked as Exts. 41, 42 and 43. According to them the appellant distributed these dummy ballot papers and said that the symbol of "two leaves" had been cancelled by the Government. This is said to have taken place on the 5th of March and on the 6th of March the 1st respondent filed a criminal complaint against the appellant and A. M. Sangma, R.W. 2, complaining about the publication of the dummy ballot papers. The importance of the publication on the 5th March is because if the distribution of the dummy ballot papers had been only on the 25th of February it might possibly be argued that he had not till then seen them and as soon as he realised the mistake he tried to undo the harm by distributing pamphlets like Ext. E. As Ext. E is said to have been distributed from 1st March onwards, the case of the *bona fide* mistake in the printing of the dummy ballot papers would not be sustained if their distribution on the 5th of March at Daggal Bazar is proved. Just as in the case of evidence of P.Ws. 8 and 4, we also think that the evidence of P.Ws. 7, 9 and 10 is exaggerated in so far as they say that appellant told them that the

1st respondent's symbol had been cancelled by the Government. The learned Judge of the High Court holds that the distribution of the dummy ballot papers in Daggal Bazar is proved because the appellant is unable to explain how P.Ws. 7, 9 and 10 were able to get dummy ballot papers like Exts. 41, 42 and 43. It cannot be urged that those ballot papers were those obtained when the appellant distributed them in Bollonggiri because the appellant's case is that he had not distributed them at all. The appellant produced 497 ballot papers and stated that 3 ballot papers were missing and he was producing the other 497. But as six ballot papers have been produced before the Court and marked as Exts. 4, 35, 41 to 43 and Ext. P.W. 6/1 it is not possible to accept this explanation. The question reduces itself to this : Were these 497 ballot papers produced by the appellant got printed later, as was the suggestion put to him, or did the 1st respondent get dummy ballot papers printed and produce them as the six exhibits marked by the Court? Such a suggestion was not put to him. We have already held that we cannot accept the explanation sought to be put forward on behalf of the appellant before the High Court that they must have been pilfered. It is, therefore, reasonable to conclude that the appellant should have distributed at least the six dummy ballot papers exhibited before the Court, if not more in which case the logical conclusion would be that the 497 dummy ballot papers produced before the Court were merely an attempt to cover up what the appellant had done and, to make it appear that no dummy ballot papers were distributed. In view of the fact that the 1st respondent had filed a complaint on the 26th of February before the Returning Officer and a criminal complaint on the 6th of March we would, in agreement with the High Court, hold that the distribution of the dummy ballot papers at Bollonggiri as well as Daggal Bazar is proved. If the distribution of the dummy ballot papers in Daggal Bazar is proved then there can be no question of the printing of the dummy ballot papers with the wrong symbol being due to a mistake but must be deliberate. The appellant might have distributed pamphlets like Ext. E realising at a later stage the mistake he had committed in distributing the wrong dummy ballot papers but that cannot help him. In a constituency admittedly consisting of more than 80 per cent illiterate electors the consequences of distribution of dummy ballot papers with wrong symbols can well be imagined. Voters who went to the polling stations would have been confused even if they did not go there with the intention of voting for the 1st respondent and people who went there with the intention of voting for the 1st respondent might well have cast their vote either to the appellant or to the other candidate finding that the 1st respondent's symbol was not there or they might have

A

B

C

D

E

F

G

H

A even gone back home without voting. In a case where a corrupt practice is alleged and proved it is not necessary further to show the exact number of votes which the 1st respondent lost or the appellant gained. The corrupt practice itself is enough to invalidate the election.

B There is a small matter to which reference may be made at this stage. The allegation in the election petition also was that the 1st respondent's name had been wrongly spelled in the dummy ballot papers distributed by the appellant. As admittedly the electorate is 80 per cent illiterate this is not likely to have any effect and no importance can be attached to it.

C In the result we uphold the decision of the High Court and dismiss this appeal, the costs of the 1st respondent to be paid by the appellant.

V. P. S.

Appeal dismissed.