

(1972) 02 PAT CK 0005

In the Patna High Court

Case No : Civil Writ Jur. Case No. 1995 of 1970

Ambika Saran Singh

APPELLANT

Vs

The Election Commission of India and Another

RESPONDENT

Date of Decision : 07-02-1972

Acts Referred:

Constitution of India, 1950 — Article 226(1A)

Representation of the People Act, 1950 — Section 16

Representation of the People Act, 1951 — Section 100, 116, 11A, 8A, 99

Citation : AIR 1972 Patna 332 : (1972) 5 PLJR 338

Hon'ble Judges : Shiveshwar Prasad Sinha, J; Shambhu Prasad Singh, J

Bench : Division Bench

Advocate : K.L. Misra, Balabhadra Pd. Singh, Basudeva Prasad, Ravi Nandan Sahay, Radha Mohan Prasad, Birendra Prasad Sinha and Sudha Rani Jaiswal, for the Appellant; R.P. Katriar, S.K. Katriar, Braj Kishore Prasad, (No. 2), Ganga Prasad Roy and Yogesh Chandra Verma, for the Respondent

Final Decision : Partly Allowed

Judgement

Shambhu Prasad Singh, J.—The petitioner contested the Barbara Assembly Constituency No. 213 of the Bihar State Legislative Assembly in the general Election held on the 15th February, 1967, and was declared elected. One of the candidates, Mahadevanand Giri, who was added as respondent No. 2 to the present application at his own instance (Vide order No. 7 dated the 9th of August, 1971), filed an election petition before this Court challenging the election of the petitioner on various grounds including commission of certain corrupt practices by the petitioner, his agents and supporters. The case was numbered as election petition 3 of 1967. It was allowed by judgment dated the 27th of June, 1968, and the election of the petitioner was declared illegal and void. This Court accepted the evidence led on behalf of Mahadevanand Giri (i) that the petitioner, his election agent as well as other agents bribed Harijan voters, (ii) that the petitioner and his agents secured votes on basis of caste appeal and (iii) that Bhu-pendra Narain Singh, Sheo Bachan Singh and R. S. Prasad of the State

Commercial Taxes Department extended their helping hand to the petitioner and with his knowledge and consent canvassed for votes for him and tried to raise money for election fund and another Government servant Muni Lal, a probationary Deputy Magistrate, also assisted the petitioner at his (petitioner's) instance. The petitioner appealed to the Supreme Court. It was numbered as Civil Appeal 1516 of 1968 and was dismissed by judgment dated 2nd of February, 1969. The Supreme Court did not go into the question of bribery to the Harijan voters. It also did not accept the case of Mahadevanand Giri, that was the petitioner obtained or procured the services of Muni Lal in his election campaign. It accepted the finding of this Court in respect of Bhupendra Singh, Sheo Bachan Singh and R. S. Prasad. Dealing with the question of securing votes on the basis of caste appeal, it observed and found as follows:--

"But, even if we were to eliminate the witnesses who according to Mr. Verma would fall into his two categories they would number 84 and there would still remain 37 out of 71 witnesses, whose evidence would have to be considered untainted and unblemished and against which the appellant could not assign any reason for rejection. The evidence of those 37 witnesses can legitimately be said to corroborate the evidence of those 34 witnesses even if we were to treat them as interested witnesses. The result then is that if the High Court accepted that evidence as satisfactory and came to its finding, there would hardly be any justification for interfering with it. That evidence shows that the campaign on the basis of caste was carried on at numerous places, at some places by appellant himself and at some places by others in his presence and at others by several workers of the appellant including his election agent. It is impossible to think that the appellant was not aware of it and yet there was not even a whisper in his evidence or in that of any of his witnesses that he either disowned it or endeavoured to prevent it. The conclusion, therefore, is inevitable that it was done with his consent direct or implicit. The High Court consequently was right in its conclusion that the appellant was proved to have committed the corrupt practice falling u/s 123 (3)."

2. After the judgment of the Supreme Court, the Election Commission of India, respondent No. 1 to the present application, on 3rd of March, 1969, issued letter Election Commission No. 116/Br/69 bringing to the notice of the Chief Electoral officers of all States and Union Territories that the petitioner had incurred disqualifications for being chosen as a Member of either Houses of Parliament or of the Legislative Assembly or legislative Council of a State and for voting at any election under Sections 8A and 11A(b) of the Representation of the People Act, 1951 (hereinafter) referred to as "the Act" for a period of six years with effect from the date of the Supreme Court's judgment. The petitioner then filed a petition before respondent No. 1 for withdrawal and cancellation of the said letter. It was numbered as petition 4 of 1969. By his order dated the 6th of September, 1969, the Chief Election Commissioner of India dismissed the petition holding that the said letter in respect of the petitioner could not be withdrawn or cancelled. The present application under Articles 226 and 227 of

the Constitution of India has been filed for quashing the said order of the Chief Election Commissioner and for prohibiting respondent No. 1 from enforcing the said order.

3. The petition challenges the said order of the Election Commission of India mainly on two grounds, viz. (1) that there was no order by the High Court u/s 99 of the Act and as such the petitioner could not be disqualified under Sections 8A and 11A(b) of the said Act, and (2) that even if the petitioner could be disqualified, the period of disqualification of six years ought to commence from the date of the judgment of the High Court and not from the date of the judgment of the Supreme Court.

4. A rule nisi was issued to respondent No. 1. It has entered appearance and shown cause by filing an affidavit /sworn by its Secretary, A.N. Sen). According to the affidavit the petitioner was not entitled to any writ on either of the grounds.

5. Mr. R. P. Katriar, appearing for respondent No. 1 took a preliminary objection that a writ under Article 226 of the Constitution of India was not maintainable before this Court as neither cause of action wholly nor in part arose within the territories over which this Court exercises jurisdiction. He pointed out to us in this connection that the petition for withdrawing and cancelling the letter dated the 3rd of March, 1969, was filed at New Delhi and the order which is sought to be quashed was also passed at New Delhi. Article 226(1A) runs as follows:--

"The power conferred by Clause (1) to issue directions, orders or writs to any Government authority or person may also be exercised by any High Court exercising jurisdiction in relation to the territories within which the cause of action, wholly or in part, arises for the exercise of such power, notwithstanding that the seat of such Government or authority or the residence of such person is not within those territories."

The expression "Cause of action" is not defined in the Constitution of India itself. It also finds place in the Code of Civil Procedure, 1908 and judicial pronouncements have assigned a meaning to it which is well known to the legal profession. It was conceded by Mr. Katriar that "cause of action" in Article 226 of the Constitution carries the same meaning. It is well established that cause of action is not only the last link of the chain which leads to the filing of a case. It means the bundle of facts which is necessary to be proved to entitle the plaintiff to a decree or order. On the facts already stated it cannot be doubted that some of them which ultimately led to the filing of the petition before respondent No. 1 took place in territories within the jurisdiction of this Court. Not only the petitioner contested the 1967 election in this State and the findings which are basis of the letter of respondent No. 1 disqualifying the petitioner were recorded here by this Court, the letter itself was admittedly issued to the Chief Electoral Officer of this State and as a result thereof the name of petitioner stands expunged from the electoral roll of the Barbara constituency of the legislative

Assembly of this State. It may be noted in this connection that Section 16 of the Representation of the People Act, 1950 also disqualifies a person for registration in an electoral roll if he is for the time being disqualified from voting under the provisions of any law relating to corrupt practices and other offences in connection with elections. In my opinion, therefore, part of the cause of action for the petition did arise within the territories over which this Court exercises jurisdiction and the petition cannot be rejected on the preliminary objection.

6. Mr. K.L. Misra, appearing for the petitioner, challenged the impugned order on both the grounds stated earlier. In support of his contention that the petitioner could not be disqualified under Sections 8A and 11A(b) of the Act because there was no order u/s 99 of the Act, he firstly drew our attention to Sections 8A and 11A(b) themselves. Section 8A says that a person found guilty of a corrupt practice by an order u/s 99 shall be disqualified for a period of six years from the date on which that order takes effect, Section 11A(b) provides that "if any person, after the commencement of this Act, is found guilty of corrupt practice by an order u/s 99, he shall, for a period of six years from the date on which the order takes effect, be disqualified for voting at any election. On the basis of the language of these two sections Mr. Misra submitted that unless there is an order u/s 99 no person can be disqualified under Sections 8A or 11A(b). Section 99(1) (a) which is relevant for the purpose runs as follows:--

"At the time of making an order u/s 98 the High Court shall also make an order--

(a) where any charge is made in the petition of any corrupt practice having been committed at the election, recording--

(i) a finding whether any corrupt practice has or has not been proved to have been committed at the election, and the nature of corrupt practice; and

(ii) the names of all persons, if any, who have been proved at the trial to have been guilty of corrupt practice and the nature of that practice; Section 98 which is referred to in Section 99(1) reads as follows:---

"At the conclusion of the trial of an election petition the High Court shall make an order--

(a) dismissing the election petition; or

(b) declaring the election of all or any of the returned candidates to be void; or

(c) declaring the election of all or any of the returned candidates to be void and the petitioner or any other candidate to have been duly elected.

7. According to Mr. Misra, the Judgment of the Supreme Court, in which the judgment of this court has merged, is not an order u/s 99 of the Act on the basis of which the petitioner could be disqualified. In support of his aforesaid submission, he referred to various other sections of the Act. Section 80 lays down that no election be called in question except by an election petition presented in accordance with the provisions of part VI of the Act Section 80A

provides that the Court having jurisdiction to try an election petition shall be the High Court. Section 81 deals with presentation of petitions. According to it, an election petition calling in question an election may be presented on one or more of the grounds specified in subsection (1) of Section 100 and Section 101 of the Act. Section 100(1) specifies the ground for declaring election to be void. According to Clause (b) of the sub-section, any corrupt practice committed (i) by a returned candidate, (ii) his election agent, (iii) by any other person with the consent of the returned candidate or (iv) by any other person with the consent of his election agent, is a ground for declaring the election of the returned candidate to be void. According to Clause (d) (ii) of the sub-section any corrupt practice committed in the interests of the returned candidate by an agent other than his election agent it that has materially affected the result of the election in so far as it concerns a returned candidate is also a ground for declaring the election of the returned candidate to be void. Sub-section (2) of Section 100, however, lays down that if in the opinion of the High Court, a returned candidate has been guilty by an agent, other than his election agent, of any corrupt practice, but it is satisfied that no such corrupt practice was committed at the election by the candidate or his election agent and every such corrupt practice was committed contrary to the orders and without the consent of the candidate or his election agent and that the candidate and his election agent took all reasonable means for preventing the commission of corrupt parctices at the election and that in all other respects the election was free from any corrupt practice on the part of the candidate or any of his agents, it may decide that the election of the returned candidate is not void. Section 123 of the Act defines various corrupt practices. Clauses of this section relevant for the purposes of decision of this petition are (3) and (7), they run as follows:--

"(3) The appeal by a candidate or his agent or by any other person with the consent of a candidate or his election agent to vote or refrain from voting for any person on the ground of his religion, race, caste, community or language or the use of, or appeal to, national-symbols, such as the national flag or the national emblem, for the furtherance of the prospects of the election of that candidate or for prejudicially affecting the election of any candidate.

(7) The obtaining or procuring or abetting or attempting to obtain or procure by a candidate or his agent or, by any other persons with the consent of a candidate or his election agent; any assistance other than the giving of vote for the furtherance or the prospects of that candidate's election, from any person in the service of the Government and belonging to any of the following classes, namely:--

- (a) gazetted officers;
- (b) stipendiary judges and magistrates;
- (c) members of the armed forces of the Union;
- (d) members of the police forces;

(e) excise officers;

(f) revenue officers other than village revenue officers known as lambardars, mal-guzars, patels, deshmukha or by any other name, whose duty is to collect land revenue and who are remunerated by a share of or commission on the amount of land revenue collected by them but who do not discharge any police functions; and

(g) such other class of persons in the service of the Government as may be prescribed."

8. It was not disputed by Mr. Misra, learned counsel for the petitioner, that the order u/s 98 and 99 may be composite one and if the order u/s 98 contains the necessary finding, as required by Section 99A(1) of the Act, and, in certain cases, if that finding also discloses the names of the persons who are found responsible for corrupt practice and nature of such corrupt practices is also indicated therein, the person found guilty of corrupt practice stands disqualified under Sections 8A and 11A(b) of the Act. He frankly conceded that in such cases no person could claim that he was not disqualified because no separate order u/s 99 of the Act had been passed. According to Mr. Misra, this could be true only where it is found that the candidate himself committed the corrupt practice or he directly consented to the commission of it. In cases where the consent of the candidate was merely implied, contended Mr. Misra, it was left to the discretion of the Court to decide whether the candidate ought to be disqualified or not and in such a case if there was no express order of the Court u/s 99 of the Act, the person could not be disqualified: As noticed earlier, according to Section 100 of the Act, corrupt practices which may be good ground for declaring an election to be void may be divided into five categories. It is obvious that in three of them, namely, (1) when corrupt practice is committed by the election agent of the returned candidate but without his consent, (2) when it is committed by any other person with the consent of the election agent, but without the consent of the candidate or (3) when it is committed in the interest of the returned candidate by an agent other than his election agent without the consent of the returned candidate or the election agent, the candidate himself cannot be named or deemed to have been named u/s 99 as guilty of corrupt practices. If the returned candidate himself commits the corrupt practice and it is so found, he is undoubtedly disqualified under Sections 8A and 11A(b) of the Act. The dispute between the parties, therefore, is whether when it is found that the corrupt practice has been committed by any other person with the consent of the returned candidate, he is to be disqualified as a matter of course under Sections 8A and 11A(b) of the Act or a specific order by the Court that the candidate be disqualified is necessary. As observed earlier, if the consent given by the candidate is proved to be direct one, in such case no express order necessary was conceded by learned counsel for the petitioner. Therefore, the questions which arise for decision in this case concerning this point are (1) Whether according to the finding of the Supreme Court it was not a case of commission of

corrupt practice by the petitioner or with his direct consent but a case of commission of corrupt practice with his implied consent only and (2) whether in cases of Implied consent a specific order u/s 99 expressly stating that the candidate be disqualified is necessary.

9. In my opinion, the judgment of the Supreme Court cannot be read to say that the petitioner was not guilty of personally committing corrupt practice or of its commission with his direct consent. The High Court have found that the petitioner was proved to have committed the corrupt practice falling u/s 123 (3). The Supreme Court in its judgment (in the paragraph which has been quoted at the end or paragraph 1 of this judgment) held "The High Court consequently was right in its conclusion that the appellant was proved to have committed the corrupt practice falling u/s 123 (3)". It was contended by learned counsel for respondent No. 1 that this shows that the Supreme Court confirmed the judgment of this court on this point. On the other hand, it was urged by learned counsel for the petitioner with reference to the sentence. "It is impossible to think that the appellant was not aware of it and yet there was not even a whisper in his evidence or in that of any of this witnesses that he either disowned it or endeavoured to prevent it. The conclusion, therefore, is inevitable that it was done with his con sent direct or implicit" in the very para graph in the judgment of the Supreme Court that the Supreme Court was not prepared to accept the evidence led on behalf of the Mahadevanand Giri which was accepted by the High Court that the petitioner himself commit ted corrupt practice or it was committed by others with his direct consent. That paragraph of the judgment of the Supreme Court deals with the contention advanced On petitioner's behalf that the evidence of some of the witnesses who were interested should not be accepted. As ob served in that very paragraph that evidence showed that campaign on the basis of caste was carried on at numerous places, at some places by appellant (petitioner be fore us) himself and at some places by others in his presence and at others by several workers of the appellant including his election agent and the Supreme Court observed "there would hardly be any justification for interfering with" the finding of the High Court accepting that evidence as satisfactory. The sentences relied on by learned counsel for the petitioner, in my opinion, merely emphasised absence of any evidence on the part of the petitioner that he disowned the caste appeal or endeavour ed to prevent it. The observation that caste appeal was made with the petitioner's consent direct or implicit must be read as referring only to the evidence relating to such appeal by others. The expression "implicit" appears to have been used in the said sentence only with reference to the evidence where such appeal was made in p etitioner's absence. I, therefore, do not and it possible to agree with the contention of learned counsel for the petitioner that the Supreme Court did not accept the finding of the High Court as to commission of corrupt practice by the petitioner himself or by others with his direct consent.

10. In view of the finding recorded in the preceding paragraph, it may not be necessary to go into the general question whether in cases where it is not proved

that the candidate himself committed corrupt practice or it was committed with his direct consent but it is found that it was committed with his implied consent, a specific order u/s 99 of the Act disqualifying the candidate is necessary. But since the question was argued at some length, I would like to express my opinion on that question as well. According to Section 99(1)(a)(i), while making an order u/s 98, where any charge is made in the petition of any corrupt practice having committed at the election, the High Court is bound to record a finding whether any corrupt practice has or has not been proved to have been committed at the election and the nature of corrupt practice. This makes incumbent upon the High Court to go into the question of corrupt practice if it is alleged in the petition that it was committed. The High Court cannot say that since the election is set aside on other ground, it is not necessary to go into the question of corrupt practice. The expression "the nature of corrupt practice" in Clause (a) (i) of Sub-section (1) of Section 99 of the Act does not only mean whether the corrupt practice was bribery, undue influence, caste appeal or any other corrupt practice mentioned in Section 123 of the Act, but it also means whether it was personally committed by the candidate or his election agent or by others with or without the consent of the candidate or his election agent because from the language of Section 100 it is manifest that such a finding is also required to be given by the High Court if it declares an election to be void on the ground of corrupt practice. The word used in Section 100(1)(b) is only "consent". It does not make any distinction between direct or implied consent. It was not contended before us that the expression "consent" in Section 100(1)(b) does not mean implied consent. An election, therefore, can be declared to be void if a corrupt practice is committed by any person with the implied consent of the candidate. If an election is set aside on that ground and a finding to that effect is recorded, that amounts to an order u/s 99 of the Act and the consequences as envisaged by Sections 8A and 11A(b) of the Act and Section 16 of the Representation of the People Act, 1950, follow- In my opinion, therefore, Section 99 of the Act does not vest the High Court with discretion to say that in cases where a corrupt practice is not committed by the candidate himself or with his direct consent, but committed only with his implied consent, he cannot be disqualified under the aforesaid sections of the two Acts. It is the duty of every candidate to see that election is held free from corrupt practices and it cannot be said that the legislature intended that in cases of commission of corrupt practices with his implied consent he is not to be disqualified. Where a corrupt practice is committed contrary to the Orders and without the consent of the candidate, or his election agent or where they take all reasonable means for preventing the commission of corrupt practices at the election, the corrupt practice ceases to be ground for setting aside the election as stated in Sub-section (2) of Section 100 of the Act. But where it is found that corrupt practice was committed with the implied consent of the candidate, though not by him personally or with his direct consent, in my opinion, the candidate does incur the disqualifications mentioned in Sections 8A and 11A(b) of the Act and the Court is not left with any discretion to exonerate him. Therefore, there is no substance in the contention of learned counsel for the

petitioner that where the corrupt practice is not committed by the petitioner himself or with his direct consent, but committed only with his implied consent, in absence of an express order u/s 99 that the candidate is disqualified, provisions of Sections 8A and 11A(b) of the Act do not apply to him.

11. I now take up for consideration the second contention of learned counsel for the petitioner, namely, that the period of six years should run from the date of the judgment of the High Court and not from that of the Supreme Court. Both Sections 8A and 11A(b) expressly say that the period of six years is to be counted from the date on which the order u/s 99 takes effect. The order u/s 99 is to be passed by the High Court and not by the Supreme Court. Section 107(1) of the Act runs as follows:--

"Subject to the provisions contained in Chapter IV-A relating to the stay of operation of an order of the High Court u/s 98 or Section 99, every such order shall take effect as soon as it is pronounced by the High Court."

Section 116B which is in Chapter IV-A of the Act by Sub-section (1) provides for a stay in appropriate cases by the High Court of the order made by it u/s 98 or 99 before an appeal is filed to the Supreme Court.

Sub-section (2) of this section lays down that after the appeal has been preferred, by the Supreme Court may in appropriate cases stay the operation of an order u/s 98 or 99, Sub-section (3) reads as hereunder:--

"When the operation of an order is stayed by the High Court or as the case may be, the Supreme Court, the order shall be deemed never to have taken effect under Sub-section (1) of Section 107; and a copy of the stay order shall immediately be sent by the High Court or, as the case may be the Supreme Court, to the Election Commission and the speaker or chairman, as the case may be, of the House of Parliament or of the State Legislature concerned."

Reading these provisions of the Act together, there can be no doubt that if there is no stay by the High Court or the Supreme Court of an order u/s 99, the order takes effect from the date it is passed by the High Court. In grounds (j) and (k) of the writ petition it was expressly stated that respondent No. 1 erred in law in disqualifying the petitioner from the date of the judgment of the Supreme Court. In the affidavit filed on behalf of respondent No. 1 it is not stated that the order of the High Court was stayed by the High Court or the Supreme Court u/s 116B of the Act. Paragraph 11 of the affidavit which deals with the aforesaid two grounds is as follows:--

"That the allegation mentioned in grounds (J) and (K) are denied. It is submitted that even assuming that the period of disqualification of 6 years ought to commence from the date of the judgment of the High Court, namely, 27th June, 1968 and not from the date of the judgment of the Supreme Court, namely, 4th February, 1969, even then the disqualification of the petitioner will expire only on and from 27th June, 1974." The averments in the above quoted paragraph of the

affidavit show that respondent No. 1 did not seriously contend that the period of disqualification in this case was not to be counted from the date of the order of the High Court. Even at the time of hearing of the petition no material was placed before us by respondent No. 1 to show that there was any stay of the order u/s 116B of the Act. Mr. Katriar, learned counsel for respondent No. 1, at one stage submitted that as the order of the High Court merged in the order of the Supreme Court, the period of disqualification would start running from the date of the judgment or order of the Supreme Court, but after carefully considering Ss. 107 and 116B of the Act had to concede that the period of disqualification u/s 8A and Section 11A(b) of the Act would start running from the date of the order of the High Court. He however, urged that as this point was not raised before respondent No. 1 in the petition filed for withdrawing and cancelling the letter the point should not be entertained by this court. The application does not only challenge the order of the Chief Election Commissioner of India but also the letter dated the 3rd March, 1969. When specific grounds have been taken in the petition challenging this part of the letter and the correctness of the grounds has not been and could not be seriously contested, in my opinion, it will not be in the ends of justice to defeat the petitioner on this technicality.

In my opinion, the petitioner is entitled to writ directing respondent No. 1 to correct the aforesaid mistake in the letter dated the 3rd of March, 1969.

12. In the result, the application is allowed in part, let a writ issue to respondent No. 1 directing it to correct letter No. 116/BR/1/69 dated the 3rd March, 1969, by substituting the words High Court "for the words Supreme Court in it. The prayer of the petitioner for cancelling the entire letter and quashing the order dated the 6th of September, 1969 of the Chief Election Commissioner of India is refused. In the circumstances, parties are directed to bear their own costs.

S.P. Sinha, J.

13. I agree.