
(2013) 09 RAJ CK 0090

In the Rajasthan High Court

Case No : Civil Writ Petition (PIL) No. 11953 of 2013

Anil Shekhawat

APPELLANT

Vs

State of Rajasthan and Others

RESPONDENT

Date of Decision : 24-09-2013

Acts Referred:

Citation : (2013) 09 RAJ CK 0090

Hon'ble Judges : Amitava Roy, C.J.;Veerendr Singh Siradhana, J

Bench : Division Bench

Advocate : Ajay Kumar Jain, for the Appellant; G.S. Bapna and Advocate General, Rajasthan Assisted by Mr. V. Garg, for the Respondent

Final Decision : Dismissed

Judgement

Amitava Roy, C.J.—Heard Mr. Ajay Kumar Jain, learned counsel for the petitioner and Mr. G.S. Bapna, learned Senior Advocate and Advocate General, Rajasthan assisted by Mr. V. Garg for the respondents. The instant petition seeking to initiate a public interest litigation, is directed against the decision of the State Government to release an amount of Rs. 2100/- for every family that had completed 100 days of employment under the Mahatma Gandhi National Rural Employment Guarantee Act (hereafter referred to as MNREGA) during the Financial Year 2012-13 and of providing sarees and blankets to the BPL families and other families, similarly placed, in terms of the budget provisions for the Financial Year 2013-14.

2. According to the petitioner, who is Chartered Accountant by profession and also Vice President of the State Unit of Samajwadi Party, these initiatives amount to corrupt practice of bribery defined u/s 123 of the Representation of People Act, 1953 (for short, hereafter referred to as "the Act") and have been undertaken to secure the political prospects of the party in power in the impending Assembly elections.

3. The petitioner, while underlining the significance of free and fair elections as

an the essence of democratic ethos, has referred to the National Rural Employment Guarantee Act, 2005, a legislation motivating the movement to actualize the right to work by providing at least 100 days" employment every year in the rural area to at least one able-bodied person in the rural poor household. Underlining that the purpose of the MNREGA Scheme thereunder is to generate employment and not of dolling out cash to the people, the government in power has been accused of the aforestated steps, pursuant to the budget declarations for the Financial Year 2013-14, to be a move to bribe the voters for their support in the ensuing elections. The petitioner has dismissed the provision of Rs. 2100/- as a measure to assist the persons concerned to generate self employment, to be wholly purported and unrealistic and directed only to advance the election prospects of the party in power. Vis-a-vis the decision to distribute sarees and blankets to the families of BPL and State BPL schemes, to be purchased from Khadi Bhandar, Bunker Sangh and Handloom Corporations, for which a provision of Rs. 300 crores has been made, he has alleged that the decision to release an amount of Rs. 1500/- in lieu thereof, is an apparent instance of offering gratification to the voters to gain political mileage. Referring to an identical step taken by the earlier government in the year 2008 and the intervention of this Court by way of interim measure in D.B. Civil Writ Petition (PIL) No. 10733/2008 (Mohan Lal Sharma Vs. State of Rajasthan & Anr.), the petitioner has sought annulment of these decisions contending that the same are grossly unconstitutional and against public interest.

4. The State-respondents in their reply have questioned the permissibility of the challenge by the petitioner contending that the provisions, based whereupon, the impugned decisions had been taken, were contained in the budget laid for the Financial Year 2013-14, which was duly deliberated upon and approved in the State Legislative Assembly attended as well by the M.L.A. of the Samajwadi Party, who did not oppose the same. The answering respondents, without prejudice to these, have asserted that the decision to release an amount of Rs. 2100/- to the persons contemplated in the order dated 28.3.2013 is not only to effectuate the relevant budget provision, but also to encourage self employment of the targeted weaker sections of the society, as desired by the State Government. As the sole objective is to encourage and motivate rural people towards self employment rather than depending upon the State employment, the answering respondents have repudiated the instant challenge to be detrimental to public interest. A compilation of the statistics demonstrating such payments as made, has also been appended to the reply. It has been contended as well that on an earlier occasions, incentive of Rs. 250/- to women workers, as reward under the NREGA Scheme for 100 days, had been provided and the scheme to that effect had been implemented in the years 2008-09, 2009-10 & 2010-11. Qua the impeachment of the decision to release an amount of Rs. 1500/- in lieu of sarees and blankets, the answering respondents have stated that at the time of implementation of the proposal to this effect, as made in the budget, difficulties in procuring such large number of sarees and blankets (40 lacs sarees

and 80 lacs blankets) were encountered on many fronts. The selected organizations, namely, Khadi Board, Handloom Corporation and Bunkar Sangh, were not found to have the capacity to produce and make available such huge supplies. It was therefore, suggested that an amount, as a substitute, be provided in cash, so that therewith the eligible families may purchase the sarees and blankets of their choice. Accordingly, according to the respondents, Rs. 1500/- each was disbursed to the eligible families. A compilation of the statistics of the amount so released has also been annexed to the reply.

5. Apart from contending against the alleged contravention of the Act, provisions of the Constitution and laws framed thereunder, the respondents have insisted that as has been held by the Hon'ble Apex court in Civil Appeal No. 5130/2013 (S. Subramaniam Balaji Vs. The Government of Tamil Nadu & Ors. dt/- 5.7.2013), a Court ought not issue a direction for the purpose of laying down new norm for characterizing any practice as corrupt practice, other than what has been provided in the statutory enactments. Reference has also been made to the decision of a coordinate Bench of this Court in D.B. Civil Writ Petition (PIL) No. 3738/2012 (Mushtaq Ali & Ors. Vs. Union of India & Ors. dt/- 20.9.2012) holding that cash transfer ensures that complete benefits reach the beneficiaries. Contending that a model government ought to be committed to provide the basic human needs of clothes, food and shelter, the respondents have also referred to a scheme of the State Government to provide food at nominal rates, whereunder wheat is provided at Rs. 1/- per kg to about 38.83 lacs families.

6. In this pleaded backdrop, the learned counsel for the petitioner has urged that the financial benefits dolled out by the government in power is bribery within the meaning of Section 123 of the Act and is only a political gimmick on the eve of the elections. Reiterating that a petty sum of Rs. 2100/- to a family to generate self employment is wholly unrealistic and is only a camouflage, the learned counsel has urged that only because the petitioner is the Vice President of the State Unit of Samajwadi Party, he cannot be debarred from laying the instant challenge on the ground that the elected representative of the same party did not oppose the budget containing the provisions on the basis of which the impugned decisions had been taken. The learned counsel has further argued that the impugned orders also defy the mandate of Articles 154 & 166 of the Constitution of India, which obligates that any decision of the kind as taken ought to be expressed to be taken in the name of the Governor. The assailed decisions being motivated initiatives only to gain election prospects, these are wholly antithetical to the constitutional imperatives to the contrary and are thus, liable to be adjudged null and void, he insisted. He pleaded that an approach similar to the one taken by coordinate Bench of this Court in Mohan Lal Sharma (supra) ought to be taken in the instant case as well. Reliance was placed on the decision of the Apex Court in S. Subramaniam Balaji (supra) and that of the Privy Council in Ashok Kumar Jugnauth Vs. Raj Direvium Nagaya Ringadoo & Ors., 2008 Law Suit (UKPC) 36.

7. The learned Advocate General in reply has urged that as the elected representative of the Samajwadi Party in the State Assembly had associated himself, without any demur, with the discussion on the budget and final approval thereof, the petitioner is estopped from laying the instant impugnement. Referring to the excerpts of the budget speech bearing on the two issues involved, Mr. Bapna has argued that the impugned decisions in pursuance thereof, are wholly unassailable. As the initiatives are with the objective of assisting the needy under an well conceived welfare scheme, the plea of violation of any constitutional or legal dictum is wholly misconceived. He has also questioned the oppugnement of the decisions on the ground of delay. While stoutly repudiating that the initiatives amount to corrupt practice of bribery which is, even otherwise, only a ground for challenging the validity of an election once conducted, the learned Advocate General has with reference to Section 14 of the Act, argued that not only the manner of impugnement is untenable, it is pre-matured as well. He placed reliance, in endorsement of his contentions, on the decision of the Apex Court in Bhim Singh Vs. Union of India (UOI) and Others,

8. We have duly considered the pleaded facts, the documents on record as well as the arguments advanced.

9. The decisions impugned unmistakably are traceable to the provisions with regard thereto, as contained in the State budget for the Financial Year 2013-14 that had been deliberated upon and approved. The following excerpts would be relevant for ready reference:-

10. It is also not disputed that at the relevant time when the budget was discussed as a whole, the M.L.A. of the Samajwadi Party of which the petitioner is the Vice President of its State Unit was present, and that, he did not oppose either these provisions or the eventual approval thereof.

11. Be that as it may, noticeably, there is no rejoinder controverting the averments made in the reply of the State-respondents. To start with, in absence thereof as well as of any overwhelming material to the contrary, it would be wholly inferential to infer culpable motives of the government in power in taking the decisions, as alleged. On the face thereof, the initiatives taken per se cannot be criticized to be de hors any welfare element vis-a-vis. the targeted groups, which are admittedly the needy and have-nots, and require financial assistance for overall social upliftment. Only because the releases have been made in the year in which State elections are due, the same cannot repudiated to be acts of bribery, as envisaged in Section 123 of the Act to further the election prospects of the government or the ruling party in power. The perception that Rs. 2100/- is wholly pittance and wholly un-pragmatic qua the comprehension of self employment, and that, Rs. 1500/- in lieu of sarees and blankets is a veiled act of bribing the voters, to start with, is presumptive and more importantly in absence of any tangible material on record to demonstrate any well founded basis thereof, this Court is ill equipped and rather loathe to intervene. Having regard to the justification for substituting payment of Rs. 1500/- in lieu of sarees and

blankets, no adverse inference of deliberate financial enrichment by way of graft is permissible.

12. The decision of the Apex Court in *S. Subramaniam Balaji* (supra) was vis-a-vis. declaration for free gifts/freebies declared in the election manifesto of the political party involved and their Lordships held that such promises did not amount to corrupt practice as per Section 123 of the Act.

13. In *Bhim Singh* (supra) in response to the plea that the MPLAD Scheme leads to unfair advantage of sitting M.P.s as against their rivals, their Lordships dismissed the same, being bereft of any scientific analysis or empirical data. It was observed that if the M.P. utilizes the fund properly, it would result in his better performance, and that, if the same secure for him enhanced election prospects, it was not violative of any principle of free and fair elections. The remonstrance founded on Articles 154 & 166 of the Constitution of India, also does not weigh with us.

14. Upon hearing the learned (counsel for the parties and on a consideration of the materials on record, we are of the view that no constitutional or legal provision has been contravened by the impugned decisions, and thus, according to us, no judicial intervention is called for. The challenge lacks in merit and the petition is dismissed.