

(1960) 01 AHC CK 0011
In the Allahabad High Court
Case No : First Appeal No. 252 of 1959

Braj Bhushan and Another

APPELLANT

Vs

Baja Anand Brahma Shah and Others

RESPONDENT

Date of Decision : 11-01-1960

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 10 Rule 2
Representation of the People Act, 1951 — Section 100, 123, 123(1), 123(5), 83

Citation : AIR 1961 All 356

Hon'ble Judges : S.N. Sahai, J;M.C. Desai, J

Bench : Division Bench

Advocate : S.C. Kharey, K.K. Bajpai, Jitendra Kumar and U.K. Misra, for the Appellant; K.L. Misra, Advocate-General, for the Respondent

Final Decision : Dismissed

Judgement

S.N. Sahai, J.—This is an appeal u/s 116-A of the Representation of People Act of 1951 (hereinafter called the Act) against the order of an election tribunal dismissing an election petition filed by the appellants.

2. This petition arose out of an election held on the 9th March, 1957, for the U. P. Vidhan Sabha from No. 182 Robertsganj Vidhan Sabha Constituency in the district of Mirzapur. The constituency was a double-member constituency; one seat in the constituency was reserved for a member of the Scheduled Caste and the other seat was a general one. Respondent No. 1, Raja Anand Brahma Shah was a candidate for the general seat, while the respondent No. 2, Sobhnath was a candidate for the reserved seat.

Both the respondents were seeking election on Jan Sangh tickets and they were allowed the symbol of "Deepak" in that election, though the Raja professes to have been an independent candidate. The third respondent, Sri Sumer Prasad was a scheduled caste candidate for the reserve seat. The appellant, Sri Brijbhushan Lal Misra was a candidate for the general seat, while the other appellant Ram Swarup was one for the reserved seat; both of them were

candidates set up by the Congress Party.

3. The polling took place on the 9th March 1957 and the results were declared on the 14th March, 1957. The respondents Raja Anand Brahma Shah and Sri Sobhnath were declared duly elected. The appellants preferred an election petition and sent it to the Election Commissioner within the time allowed by law. The Election Commissioner appointed Sri G. D. Sahgal, District Judge of Allahabad as an election tribunal and referred the election petition to him for trial. The main prayer contained in the election petition, is that the election of the respondents Nos. 1 and 2 be declared void.

4. Numerous grounds for setting aside the election were put forward in the election petition and they were all denied by the respondents Nos. 1 and 2 who alone contested the petition. The pleadings gave rise to as many as seven issues. All the Issues were decided against the appellants and their petition was dismissed by the election tribunal by its judgment dated the 30th June, 1959.

5. Learned counsel for the appellants has not challenged the findings of the election tribunal on issues Nos. 2, 3, 5(b), 6 and 7. He has challenged the findings on issues Nos. 1, 4 and 5(a) only.

6. As all the issues pressed relate to the allegations of corrupt practices made against respondent No. 1, before dealing with those allegations I shall first dispose of the contention of the learned counsel for the respondents (sic) that the tribunal took an erroneous view of the "onus probandi in holding that the burden of proving such allegations was similar to that of the prosecution in the criminal cases i.e. the matter requiring proof should be established beyond any reasonable doubt and in the case of doubt the benefit should go to the respondent.

7. Two opinions do not appear to be possible in respect of the standard of proof that is required for establishing a charge for a major corrupt practice. It has been laid down over and over again that a major corrupt practice is more or less of the nature of a criminal charge and strict proof is needed to bring home the charge. The Election Reports are full of such cases. It is not necessary to refer to all of them. By way of an instance reference may be made to the case of Sri Ram v. Mohammad Taqi Hadi 8 ELR 139 (El. Tri., Bareilly) where it was said,

"Though the procedure to be followed in the trial of election petitions is that laid down in C.P.C., the standard of proof required to prove corrupt practice is the same as in criminal cases. Suspicion however strong is not sufficient to prove such a charge. The evidence whether it is direct or circumstantial must be conclusive and if there is any doubt, the returned candidate should be given the benefit of that doubt".

8. In the Case of Harish Chandra Bajpai Vs. Triloki Singh, at p. 456, the Supreme Court observed as follows :

"It should not be forgotten that charges of corrupt practices are quasi-criminal in

character, and that the allegations relating thereto must be sufficiently clear and precise to bring home the charges to the candidates".

9. In the case of Raghunath Misra Vs. Kishore Chandra Deo Bhanj and Others, at p. 271 Justice Rao, who delivered the judgment observed:

"Proof of bribery in an election proceeding should be of the standard required in criminal proceedings".

The same view was taken in the case of Gokulananda Praharaj Vs. Jogesh Chandra Rout and Another, , in which it held that:

"Now as to the standard of proof required for judging the evidence by the parties, it has been held in a long array of cases, both under the old and new law, that in the case of allegations of corrupt practices the burden of proof is on the petitioner. It never shifts and the standard of proof to discharge this burden is the same as in criminal cases, that is, the matter requiring proof should be established beyond any reasonable doubt and that! in case of doubt the benefit should go to the respondent. Though an election petition has to be tried in accordance with the procedure applicable to civil suits, the standard of proof required in respect of corrupt practices alleged in the petition is the standard applicable to criminal cases, that is to say, corrupt practices must be proved beyond any reasonable doubt".

10. In my opinion the tribunal was justified in coming to the conclusion that the standard of proof required in respect of corrupt practices alleged in, the petition is the standard applicable to criminal cases i.e. corrupt practices must be proved beyond any reasonable doubt

11. The first issue which was pressed before us was issue No. 1 which runs as follows :

"Whether Baijnath Sahu, Fateh Bahadur Singh and Bhola Nath engaged on the 8th March 1957-with the consent of respondent No. 1 or his election agent, the ekkas and rickshaws the driver of which are described in Schedule A of the petition (and have also been described in the statement made under Order X) for the purposes of conveying voters to and from the Robertsganj polling station?

Was any payment made to them by way of hire or otherwise for that purpose?

Did these persons mentioned in Schedule A ply the ekkas and rickshaws on hire?"

12. This issue was framed with reference to the pleadings contained in paragraph 6 (A) of the petition which is as follows:-

"The respondent No. 1, his agent and his election workers with his consent or with the consent of his election agent have committed the corrupt practice of hiring on payment of ekkas and rickshaws for conveying the electors to and from Robertsganj polling station on the polling day i.e. 9th March, 1957.

Baijnath Prasad Sahu, Fateh Bahadur Singh and Bholanath were actively

canvassing for respondent No. 1. Sri Baijnath Prasad Sahu was also the polling agent of the respondent in the Robertsganj polling station. These persons with the consent of respondent No. 1 and his election agent engaged on the 8th March, 1957, several ekkas and rickshaws on hire for the purpose of conveying voters to and from the Robertsganj polling station. They paid about Rs. 78/- to the various ekka and rickshaw drivers, a list of their names is attached to the petition and forms part of it. It is marked annexure A."

13. This paragraph of the petition was amended on the 16th December, 1958, by giving the date of the hiring as 5th March, 1957. In annexure A the names of seven ekka drivers and seven rickshaw pullers were mentioned without either their parentage or their residence. This omission was supplied on the 29th December, 1958, by the petitioners by statement under Order X, Rule 2, C. P. C. In that statement the petitioner along with their counsel, Sri S. N, Misra said:-

"The ekkas and rickshaws of the drivers referred to in annexure A of the petition were all engaged in Robertsganj, the particulars of the ekka drivers and the rickshaw pullers, so as to be sufficient to fix their identity are as follows:-Ekka drivers.

1. Bhoju Mian S/o, Rahat.
2. Bhola son of Gokul,
3. Hira Ahir S/o. Gokul,
4. Sukhoo S/o." Lalloo.
5. Hira Lal alias Hori Lal S/o. Sudhu,
6. Ghullam S/o. Nanhoo,
7. Bechan S/o. Doman, all residents of Robertsganj, Mirzapur. Rickshaw pullers.
1. Danger Chamar S/o. Chakhuri, R/o. Robertsganj, Mirzapur.
2. jagoo alias Janoo S/o. not known., R/o. Welleslyganj, Mirzapur,
3. Baithol Chamar S/o. Chakhuri R/o. Robertsganj, Mirzapur.
4. Harse S/o. not known R/o. Narghat, Mirzapur.
5. Moti Lal S/o. Sudho Mallah, R/o. Robertsganj, Mirzapur.
6. Lal Bahadur Kahar (parentage not known), R/O. V. Sahijan, P.O. Robertsganj, Pargana Barnar, Mirzapur.
7. Chunmi S/o. Dwarka, R/o. Robertsganj, Mirzapur...."

14. Learned counsel for the respondents has urged before us that as the full particulars regarding the corrupt practice were not supplied in accordance with the relevant provisions of the Act viz. Section 90(5), but were supplied by means of an examination of the appellants under Order X Rule 2, C. P. C. which,

according to him, was not permitted by the Act and the said particulars had to be ignored and the necessary averments regarding them in the petition were liable to be struck off for not being in conformity with the mandatory provisions of Section 83(a)(b) of the Act.

15. The powers of the Election Tribunal appointed under the Act are enumerated in Section 92 which reads as follows :

"92. Powers of the Tribunal :- The Tribunal shall have the powers which are vested in a Court under C. P. C., when trying a suit in respect of the following matters:-

- (a) discovery and inspection;
- (b) enforcing the attendance of witnesses and requiring the deposit of their expenses;
- (c) compelling the production of documents;
- (d) examining witnesses on oath;
- (e) granting adjournments;
- (f) reception of evidence taken on affidavit; and
- (g) issuing commissions for the examination of witnesses,

and may summon and examine suo motu any person whose evidence appears to it to be material; and shall be deemed to be a civil court within the meaning of Sections 480 and 482, Cr. P. C."

16. It will be noticed that this section does not include among the "powers of the tribunal" the power to examine a party under Order X Rule 2, C. P. C. If the intention was to permit the Tribunal to utilise those powers of the Code also there appears to be no reason why it should not have been specifically mentioned in the section. The learned counsel for the respondents, therefore, contended that when the tribunal examined the appellant under Order X Rule 2, C. P. C. in order to fill in the deficiency and lacuna in the election petition it really exceeded its powers.

17. Learned counsel for the petitioners, however, contended that Section 92 should not be read in isolation as standing by itself. The main section which provides for the procedure to be followed by the tribunal, while trying petitions is Section 90(1) of the Act which enjoins upon an election tribunal the duty to try every election petition "as nearly as may be, in accordance with the procedure applicable under the C. P. C. to the trial" of suits." In effect Section 90(1) made the whole of C. P. C. applicable to the trial of election petitions and with the other parts of the Code Order X Rule 2, also becomes applicable.

It is not easy to accept this argument. It ignores the important fact that Sub-section (1) of Section 90, as its opening words show, is subject to the provisions

of the Act and of any Rules made thereunder. One of such provisions is Sub-section (5) of Section 90, which lays down the procedure which an election tribunal has to follow when amendment Or amplification of any corrupt practice alleged in the petition is sought to be made. According to that subsection

"The tribunal may, upon such terms as to costs and otherwise as it may deem fit, allow the particulars of any corrupt practice alleged in the petition to be amended Or amplified in such manner as may in its opinion be necessary for ensuring a fair and effective trial of the petition but shall not allow any amendment of the petition which will have the effect of introducing particulars of a corrupt practice not previously alleged in the petition".

18. Section 90 (5) itself appears to refer to Section 83, according to which the particulars of the alleged corrupt practices are to be stated in the petition itself and have to be verified in the manner laid down in the C. P. C. for the verification of pleadings. Sub-section (5) of Section 90, in my opinion, clearly lays down the procedure which is to be followed where the particulars of any corrupt practice alleged in the petition require to be amended or amplified.

The specific provision being that the amplification which the petitioner wanted to make in respect of the allegation contained in the petition which lacked details ought to have been made under that provision, the tribunal had the requisite power then to permit the detail to be supplied. It was not open to it to have recourse to Order X, R, 2, C. P. C. for that purpose.

. The argument that the entire C. P. C. is applicable to the trial of election petition becomes untenable when it is borne in mind that the Supreme Court in *Inamati Mallappa Basappa Vs. Desai Basavaraj Ayyappa and Others*, held that Order XXIII Rule 1 was not applicable to the trial of election petitions. After taking the various provisions of the Act into consideration it held that:-

The effect of all these provisions really is to constitute a self-contained Code governing the trial of election petitions and it would appear that in spite of Section 90 (1) of the Act, the provisions of Order 23, Rule 1 C. P. C., would not be applicable to the trial of election petitions by the tribunals".

I am, consequently, of the opinion, that the tribunal was not justified in resorting to the provisions of Order X Rule 2 C. P. C. and in permitting the appellant to amplify the particulars of the corrupt practice forming the subject-matter of this issue in any manner other than that provided in Section 90(5) read with Section 83(1)(b) of the Act. My view on the point is in consonance with the decision of another Division Bench of this Court in *Udal v. Lal Bahadur*, Election First Appeal No. 460 of 1958 D/- 21-4-1959.

It follows, therefore, that the particulars of this corrupt practice which were supplied by the appellants in their statement under Order X Rule 2, C. P. C. cannot be regarded as forming part of the petition and they are therefore, liable to be completely excluded from consideration. The exclusion of those particulars

means that the relevant paragraphs of the petition dealing with the corrupt practice to which those particulars relate, are not in accordance with the mandatory provisions of Section 83(1)(b) of the Act and so are liable to be struck off. If that is done this issue must necessarily be decided against the appellants, for want of requisite information regarding the identity of the ekka drivers and rickshaw pullers mentioned in annexure A of the petition.

19. In view of what I have said above, it is not necessary for me to express any opinion whether the allegations made in paragraph 6-A of the petition amounted to a corrupt practice. But as the matter was argued at great length by both sides, I think I ought to record my finding whether the allegations made have been established and if so, whether they amounted to corrupt practice.

20. The constituency was not only a big one but was spread over an area of hundred miles long and eight miles broad in a hilly tract with more than one hundred fifty polling stations. It is significant that this allegation of hiring of conveyances for carrying voters to the polling station is confined only to the polling station Robertsganj. I may mention here that all the allegations of corrupt practice are made against Raja Anand Brahma Shah, respondent No. 1 only. No allegation of corrupt practice has been made against respondent No. 2, Sobhnath and the learned counsel for the appellants has frankly stated that although respondent No. 2 has been made a party to this petition he could not say anything against his election.

21. This issue relates to the corrupt practice covered by Sub-section (5) of Section 123 of the Representation of People Act. It consists of the hiring or procuring, whether on payment or otherwise, of any vehicle by a candidate or his agent, or by any other persons, with the consent of a candidate or his election agent. (After discussing evidence on this point the judgment proceeds)

22-43. The allegations, on behalf of the petitioners regarding the carrying of the voters are vague. In the petition no voter, who is alleged to have been carried by these rickshaw pullers or ekka drivers was mentioned by name. The evidence that was given in support of this plea -was also vague. These rickshaw pullers and ekka drivers did mention some persons. But as I have already stated above, the fact that they were carried by them remains unsubstantiated.

It has been urged on behalf of the petitioners that, in view of adult franchise it has to be presumed that those who went on those rickshaws and ekkas must have been voters. Of course, under the Constitution and under the Representation of the People Act, every adult Indian citizen is now an elector, but clearly the carrying of any elector or citizen of India cannot bring the respondents under the mischief of Section 123(1)(b) (sic) of the Act. The prohibition was against the carrying of an "elector" on a conveyance. The election referred to in the clause can only be an election of the constituency in question and not to an election of any other constituency.

In the present case, therefore, if there was any voter who was on the electoral

roll of the constituency from which the respondent No. 1 stood as a candidate and he had been carried in one of these conveyances it could be said that that facility had been provided to induce him to vote in a particular manner and that the giving of that convenience was not permitted by the law.

Voters who were not on the electoral rolls of this I constituency could be carried on any conveyance! without contravening any prohibition. The burden of proof in the present case, therefore, was on the appellants to show that the persons who were carried on rickshaws and ekkas on the 9th March, 1957, were electors in the constituency from which the respondent No. 1 was a candidate. That burden, in my opinion, the appellants have failed to discharge.

44. The petitioners have thus failed to prove that the rickshaws and ekkas that were hired on behalf of the Raja carried or were hired for the purpose of carrying any of the voters to and from Robertsganj polling station on the 9th March 1957. Even if it is assumed that they had been hired for that purpose, a fact which has not been established as neither Raja Anand Brahma Shah respondent No. 1 nor his election agent Bhagwan Prasad had given their consent for their employment for that purpose. Issue No. 1 was, therefore, rightly decided in favour of the respondents.

45. The next issue which is pressed before us is issue No. 4, which runs as follows:-

"Was the payment made to the persons mentioned in Annexure "D" to the petition, made by way of bribe, for the purposes of directly or indirectly inducing the voters to vote for respondent No. 1 or to refrain, them from voting for the petitioners, by respondent No. 1, his agent or his election workers with his consent or with the consent of his election agent, as detailed in Annexure "D"? Will the payment of the kind relied on by the petitioners constitute the corrupt practice of bribery at all?"

46. This issue arises as a result of the allegations made in paragraph 6-E of the petition; "That the respondent No. 1, his agents and his election workers with his consent and with the consent of his election agent offered bribes to a large number of persons on various dates during the election for the purpose of directly or indirectly inducing voters to vote for the respondent No. 1 or to refrain from voting for the petitioners. A list of some of such instances is attached to this petition and marked Annexure "D". The instances of bribes offered on behalf of respondent No. 1 are given in annexure "D",

(After mentioning these instances the judgment proceeds.) According to the petitioner the Distribution of sweets to the school children was with the express object of influencing the voters to vote for respondent No. 1, while payment of different sums of money mentioned above to different persons was also with the object of inducing them to vote for him. The presentation of certain wearing-apparels was also motivated by the same object. According to the petitioners these acts established the corrupt practice of bribery having been indulged in by

respondent No. 1.

47. The corrupt practice alleged is said to have been indulged in with the object directly or indirectly of inducing electors to vote at the election. In Section 123(1) (a) of the Act "bribery" is defined so as to include any gratification to any person whomsoever and in the Explanation the term "gratification" is explained by stating that it is not restricted to pecuniary gratifications or gratifications estimable in money and it includes all forms of employment or reward, but it does not include payment of any expenses bona fide incurred at, or for the purpose of, any election and duly entered in the account of election expenses referred to in section 78.

48. In the light of aforesaid section the allegations made by the petitioners and the evidence in support of them has to be examined. I propose first to take up items numbers 3, 4, 5 and 7. They are all of similar nature inasmuch as they consist of distribution of sweets among the children of four village schools. According to respondent no. 1 the amounts that were spent at these places were only those which were shown in the election expenses and not as alleged by the petitioners.

As already pointed out all these items have been taken from the return of election expenses filed by respondent No. 1. It is admitted that none of those children were voters in this constituency. Further there is no allegation or assertion that their parents were voters. Some evidence has been produced on behalf of the petitioners that the respondent No. 1 asked the children to request their parents to vote for him. The allegation is not only hopelessly vague but the evidence produced in support of it is worse.

I have no hesitation in accepting the testimony of the Raja that whenever he visited these places it was his practice to give some money for distribution of sweets among the children of that place. A number of witnesses have been produced on behalf of the respondent No. 1 who have deposed that it was customary when respondent No. 1 visited these places that sweets were distributed among the children. This was but natural keeping in view the status of the respondent No. 1 and his position in the society of the locality.

The idea that this donation would increase his popularity and might result in some indirect propaganda for him may also have been there at the back of the respondent No. 1's mind. But it is not possible to accept the suggestion put forward on behalf of the appellants that these amounts were given with any sinister motive as bribe for securing votes. This action of his cannot be considered to be a corrupt practice. The evidence of Ram Swamp, Ram Raksha Singh, Ram Lagan, Ram Naresh and Kanhai is unworthy of credence and I have no hesitation in rejecting their testimony.

49. Learned counsel for the petitioners has strenuously urged before us that mere distribution of sweets to some children in the constituency when the election was imminent was by itself a corrupt practice. In support of his

contention he has relied upon the case of Borough of Kingston-Upon Hull, 6 O'M and H 372. In that case election at Kingston-Upon-Hull was set aside on account of distribution of sweets to school children as well as coal to poor people on the election day. Ridley J., observed as follows:-

"Now assume for the moment that a man forms a design which at the time is unobjectionable because no election is in prospect, for that is the point; yet if circumstances alter, and an election becomes imminent, he will go on with that design at his risk, and if he does so he will be liable to be found guilty of corrupt practices; that is to say that he has done a thing which must produce an effect on the election contrary to the intentions of the Act of Parliament,"

50. Whatever may be the position in England the term of Section 123(1)(a) of the Act makes it quite clear that it is the object of the Act which determines whether it amounts to "bribery" or not. It is, therefore, the motive which is behind the charity that should be taken into consideration in finding whether it is a "subtle form of bribery" or not. If the motive is corrupt and the object is to induce the voters to vote in a particular way then it is "bribery". The Court has thus to find out the motive which actuated the distribution of sweets in question. If it is with a benevolent motive then it cannot amount to "bribery".

51. Even in England in several election cases it has been stressed that elections to Parliament have never been "intended to dry up the fountains of charity". In order to show his public spirit, the candidate for election to Parliament is expected to render financial assistance to movements, such as child welfare, boy scouts and Girls guides, and to clubs, rendering assistance to the unemployed and Ex-soldiers. They are even expected to render some help to the poor and needy.

Cases have arisen in England too wherein it has been found difficult to find when charity has ended and bribery begun. One of the leading cases on the point is East Nottingham, 6 O'M and H 292 at p. 300. In that case it was found that the election agent of the candidate who has been returned has relieved the necessity of several poor people in the constituency during the period of election, and the candidate made a dear admission that it was meant to win popularity. The election was held to be valid.

52. In my opinion, the distribution of sweets to the children at the four villages who participated in the procession of the Raja and raised slogans on his behalf could not be said to be a case of "bribery" and as such it did not constitute any corrupt practice. It is obvious, that the object behind the distribution of sweets on behalf of the Raja was at the most to make himself popular in his constituency and that could not amount to any corrupt practice.

(After dealing with further evidence regarding corrupt practices the judgment concludes.)

53-67. After giving my anxious consideration to the facts and the circumstances

of the case I have Come to the unhesitating conclusion that the petitioners have failed to substantiate any one of the corrupt practices alleged to have been committed by respondent No. 1.

68. In the result, this appeal is dismissed. The respondents are entitled to their costs, which is assessed at rupees five hundred.

M.C. Desai, J.

69. I concur in the pro posed order.