
(1981) 12 MP CK 0003
In the Madhya Pradesh High Court
Case No : Election Petition No. 9 of 1980

Devilal

APPELLANT

Vs

Kinkar Narmadaprasad and Others

RESPONDENT

Date of Decision : 01-12-1981

Acts Referred:

Representation of the People Act, 1951 — Section 79, 82, 86

Citation : AIR 1982 MP 45

Hon'ble Judges : M.L. Malik, J

Bench : Single Bench

Advocate : A.M. Mathur and A.H. Khan, for the Appellant; K.G. Maheshwari, for the Respondent

Final Decision : Dismissed

Judgement

M.L. Malik, J.—The question for consideration in this election petition is whether non-joinder of Ramgir Goswami as a party to the petition, should entail its dismissal u/s 86 of the Representation of the People Act, 1951.

2. Admittedly Ramgir Goswami had filed his nomination paper on 1-5-1980 which the Returning Officer, after scrutiny, had accepted. Ramgir Goswami later withdrew his candidature. The allegations in the petition are that Ramgir Goswami began supporting the returned candidate and had committed certain corrupt practices. Ramgir Goswami has not been made a party to the petition.

3. It is settled law that the word "candidate" as defined in Section 79(b) of the Representation of the People Act includes a candidate who has withdrawn his candidature, and that he would be a necessary party to an election petition if allegations of corrupt practice are made against him. Section 82(b) of the Representation of the People Act requires that such a candidate must be made a party. Non-joinder entails dismissal of the petition u/s 86 of the Representation of the People Act. (See: Mohan Singh Vs. Bhanwarlal and Others, . Amin Lal Vs. Hunna Mal, , Har Swarup v. Brij Bhushan Saran (AIR 1967 SC 836) Mohan Raj

Vs. Surendra Kumar Taparia and Others, and Kashi Nath Vs. Smt. Kudsia Begum and Others, and Shri Udhav Singh Vs. Madhav Rao Scindia,).

4. The learned counsel for the petitioner fairly conceded that such was the construction placed by the Supreme Court while reading Ss. 79 (b), 82 (b) and 86 of the Representation of the People Act together. He, however, contends that paras 4 (1) (A), 4 (2), 4 (4) and 4 (5) of the petition, which refer to Ramgir Goswami as an associate of the returned candidate and for having made certain speeches, were not allegations of corrupt practices within the various clauses of Section 123 of the Act, strictly construed. To state the allegations parawise, it is said in para 4 (1) (a) that the returned candidate including Ramgir had addressed the ladies of Kannod and Khategaon who had assembled on "Vat-Savitri Day" at the Ghats of Narbada that Indira Congress would bring about forcible abortions and whosoever voted for Indira Congress, would incur the sin of Jiv-Hatya. The counsel for the petitioner argued that speeches were more in the nature of expressions of opinion rather than statement of fact. The speakers, the counsel said, conveyed to the electors that the family planning contemplated by Indira Congress was likely to include in its policy forcible abortions if the number of the children exceeded the maximum fixed. That was what they felt. That was their opinion. They did not mean as a fact that abortions would necessarily be compelled. The allegations, therefore would not come within Section 123(2) of the Act.

5. The learned counsel for the returned candidate argued on the other hand that the gravamen of the charge was the sin of "Jiv-Hatya" to one who voted for Indira Congress. What the speakers said was that the policy of abortion as a step towards family planning which the Indira Congress propagated, involved a sin of "Jiv-Hatya" and any one who voted for Indira Congress, thereby became an object of divine displeasure. The allegations were clearly of corrupt practice of undue influence covered by Section 123(2) of the Act. (The learned counsel relied on Narbada Prasad Vs. Chhaganlal and Others, Para 12).

6. I am inclined to agree with the respondent's counsel. The allegations in Para 4 (1) (A) are allegations of corrupt practice of undue influence squarely covered by Section 123(2) of the Representation of the People Act.

7. The allegations in para 4 (2) of the petition refer to speeches made to Adivasis, particularly to Gonds. What the speakers including Ramgir said to them was that they were Gonds who ate food cooked by themselves or by those belonging to their community, Indira Congress would force them to eat food cooked by Harijans and the result would be that they would be excommunicated.

8. The allegations clearly fall u/s 123(2) of the Representation of the People Act. The Gonds by such speeches, were likely to be unduly influenced in their electoral right for fear of social ostracism, excommunication or exclusion from caste.

9. The allegations in paras 4 (4) and 4 (5) are likewise corrupt practice covered

by Section 123(4) of the Act. False statements were made in relation to the personal character or conduct of the candidate. It was said, Subhadrabai was a woman of immoral character who kept illicit relations. The allegations were per se defamatory, said to have been made deliberately to prejudice the prospects of her election. The counsel for the petitioner argued that there were no specific averments made to the effect that the candidate making those statements believed them to be false or did not believe them to be true. This, the counsel said, was one of the essential ingredients of Section 123(4) and unless the petitioner made these averments in express terms, the mere falsity of the allegations would not fasten the guilt of corrupt practice on the candidate. (The counsel relied on Sheopat Singh Vs. Ram Pratap, .

10. The respondent's counsel in answer, argued that the allegations made in para 4 (5) of the petition had implicitly attributed knowledge of falsity of the statement to the maker thereof. What was said was that the maker had deliberately made a false statement to lower Subhadrabai in the estimation of the people as a woman of low virtue and this was deliberately done to prejudice her prospects in the election.

11. I agree with the respondent's counsel. The tenor of the allegations impute knowledge of falsity of the statement to the maker.

12. In the result, therefore, the allegations contained in paras 4 (1) (a), 4 (2), 4 (4) and 4 (5) are allegations of corrupt practices against Ramgir who should have been made a party to the election petition. Since he was not joined as a party, the petition must be dismissed u/s 86 of the Representation of the People Act. The petition is dismissed. Costs on the petitioner. Counsel's fee Rs. 500/-.