
(1974) 09 PAT CK 0020
In the Patna High Court
Case No : Election Petition No. 30 of 1972

Parmatma Singh	Vs	APPELLANT
Sri Ram Lakhan Singh Yadav and Others		RESPONDENT

Date of Decision : 26-09-1974

Acts Referred:

Representation of the People Act, 1951 — Section 123(2), 83(1)

Citation : AIR 1975 Patna 267

Hon'ble Judges : C.N. Tewary, J

Bench : Single Bench

Advocate : Gorakh Nath Singh, D. Prasad Sharma, Bhupendra Kumar, Akhilesh Kr. Sharma and Ramanugrah Prasad Singh, for the Appellant; Kanhaiya Prasad Verma, C.B. Belwariar and K.K. Prasad, for the Respondent

Final Decision : Allowed

Judgement

C.N. Tewary, J.—The question for consideration is whether a witness (Viz. Nawal Kishore Singh, P. W. 3 in the instant case) should be allowed to give specific evidence that he was prevented by force from casting vote at the booth when his name does not appear in the election petition or in the schedule of the election petition as one of the voters, who are said to have been prevented by force from casting vote. In the election petition it has been alleged that respondent No. 1 committed corrupt practices and one of the corrupt practices said to have been committed by respondent No. 1 or his men is that the voters were prevented from casting vote. Paragraph A of Schedule VI of the election petition contains the list of eight villages whose entire voters are said to have been prevented from going to their booths and from casting vote. The village at Nawal Kishore Singh (P. W. 3), who is a resident of village Devi Asthan Chiraivatanr, is not one of those villages. Thus even the name of the village of this witness is not mentioned in paragraph A of the schedule of the election petition. Paragraph B of Schedule VI of the election petition contains names of the voters, who were prevented from casting their votes. There are nine such voters. Nawal Kishore

Singh (P. W. 3) is not one of those voters. Thus there is nothing in the election petition or in its schedule to show that Nawal Kishore Singh (P. W. 3) was one of the voters who are said to have been prevented from casting vote.

2. Learned counsel appearing on behalf of the election petitioner submits that in Schedule IV of the election petition, which contains the details of the booths said to have been captured by respondent No. 1 and his men booth No. 100 where Nawal Kishore Singh (P. W. 3) had to cast vote is mentioned. The place where booth No. 100 was located is not stated in Schedule IV. What it shows is that one of booths was booth No. 100 and 836 votes were to be cast there and 700 votes were actually polled. This is the only information that is contained in Schedule IV regarding booth No. 100. Even if it be assumed that Nawal Kishore Singh (P. W. 3) had to cast his vote at booth No. 100, it cannot be inferred from these details given in Schedule IV that Nawal Kishore Singh (P. W- 3) had been prevented from going to booth No. 100 or had been prevented from casting his vote at booth No. 100.

3. Thus the question that arises for consideration is whether the election petitioner can legally be permitted to examine voters whose names are not given in the election petition as voters said to have been prevented by force from casting vote to say that they were prevented by respondent No. 1 or his men from casting vote. The learned counsel for the election petitioner submits that in the election petition names of only some of the voters, who were prevented from casting votes have been given by way of illustration and therefore, the election petitioner can examine any number of voters in addition to the voters, whose names are mentioned in the election petition, to say that they were prevented from casting vote. The learned counsel appearing on behalf of respondent No. 1 submits that if voters not named in the election petition are also allowed to be examined on behalf of the election petitioner to say that they were prevented from casting votes, this will cause great prejudice to respondent No. 1 and he will be handicapped in his defence.

4. Section 123 of the Representation of the People Act (hereinafter referred to as "the Act") describes corrupt practices for the purposes of the Act- According to Sub-section (2) of Section 123 of the Act the following shall be deemed to be a corrupt practice--

"Undue influence, that is to say any direct or indirect interference or attempt to interfere on the part of the candidate or his agent, or of any other person with the consent of the candidate or his election agent, with the free exercise of any electoral right."

Section 83 of the Act lays down inter alia--

"(1) An election petition--

(a) shall contain a concise statement of the material facts on which the petitioner relies;

(b) shall set forth full particulars of any corrupt practice that the petitioner alleges, including as full a statement as possible of the names of the parties alleged to have committed such corrupt practice and the date and place of the commission of each such practice; and

(c)

5. In an unreported case *Chandre-shwar Narain Prasad Sinha v. Basu Prasad*, Chairman, Election Tribunal. Patna, M. J. C. No. 36 of 1954 (Pat) decided on 12-4-1955, relied upon by the learned counsel for respondent No. 1. S. K. Das. C. J. while considering what the words "material facts" occurring in Clause (a) of Sub-section (1) of Section 83 of the Act mean observed--

"It is obvious that the expression "material facts" with regard to such allegations must include the names of the persons who committed the fraud as also the names of the persons who were the subject of the fraud. In other words, it was necessary to ensure a fair and effectual trial of the election petition that the names of the persons who carried the voters in the motor trucks as also the names of the persons who were so carried should be mentioned; so also the names of the persons who gave the bribes as also the names of the persons who accepted the bribes."

6. Reliance has also been placed by the learned counsel for respondent No. 1 on the following observations made in the case *Chandrashekhar Singh Vs. Sarjoo Prasad Singh and Another*, --

"In my opinion, the contention put forward on behalf of the respondent is sound and that on behalf of the appellant is not tenable. The use of the word "including" in Clause (b) of Sub-section (1) of the Section 83 of the Act indicates that the names of the parties alleged to have committed the corrupt practice should be deemed to be one of the particulars required to be given but that does not mean that it exhausts the list of the names of the Parties to be given; it only explains and specifies some of them. u/s 123(2) it is provided that, if any candidate or his agent threatens any elector with have of any kind, he shall be deemed to have interfered with the free exercise of the electoral right. The particulars of corrupt practices necessarily include the names of the electors alleged to have been subjected to such corrupt practices. In my opinion, therefore, the election petition suffers from an incurable infirmity in this regard and the charge is bad on this ground alone."

7. Lastly, the learned counsel for respondent No. 1 has relied upon *Sinsheswar Prasad v. Kamalnath Tiwari* (1960) 21 Elec LR 121 (Pat). In that case the names of the person or persons who actually carried the voters on the trailer drawn by the tractor of the petitioner (respondent in the election petition) were not given, the date of the commission of the corrupt practice was also not given and the names of the villages from which the voters were brought to the polling station were further omitted. It was held that the petitioner's allegations relating to corrupt practice as mentioned in the election petition were not supported by the

supply of full particulars and the allegations could be struck off.

8. These decisions lend support to the argument of the learned counsel of respondent No. 1 that so far as the allegation that the voters were prevented by force from casting vote is concerned, a voter whose name does not appear in the election petition or in the schedule of the election petition as a person, who was prevented from casting vote, should not be allowed to give specific evidence that he was prevented from casting his vote. There is force in this contention. If persons not named in the election petition as voters said to have been prevented by force from casting votes are allowed to be examined by the election petitioner to give specific evidence that they were prevented by force from casting their votes, there would be no end of the matter and the election petitioner may examine hundreds of such witnesses resulting in great prejudice to respondent No. 1.

9. Learned counsel appearing on behalf of the election petitioner has referred to some decisions in support of his argument that the election petitioner may examine any number of such persons, whose names do not appear in the election petition or in the schedule of the election petition as the voters said to have been prevented by force from casting votes, to give specific evidence that they were prevented by force from casting votes. Of course, he submits that the election petitioner will examine only those witnesses whose names appear in the list of witnesses which was filed on his behalf on 15-9-1972. The election petition was filed on 26-4-1972. Even in the list of witnesses which was filed on 15-9-1972, it is not stated as to which of those persons are the voters, who were prevented by force from casting their votes.

10. The decision reported in (1954) 10 Elec LR 245 (Mad). (A. Srinivasan v. G. Vasantha Pai,) relied upon by the learned counsel for the election petitioner is not applicable to the facts of this case. In that case the election was by postal ballot and the voting by the method of proportional representation. The allegation in that case was that the returned candidate by characterising Mr. Vasantha Pai as a communist and carrying a propaganda to that effect exercised undue influence and intimidation on the voters so as to deprive them of freedom to vote. The grievance of the returned candidate was that the election petitioner had not specified the names of electors, who were said to have been called upon not to vote for the election petitioner. The election petitioner in his counter-affidavit stated inter alia, as follows :

"The applicants have not denied that there was such a propaganda or widespread belief that the petitioner was a communist. According to them, this was of the petitioner's own making and they were not instrumental for it. It now remains for me to prove that the respondents and their agents carried on such propaganda with a view to deflect my votes and obtain them for themselves."

In such circumstances, the contention that the election petitioner must have set out the names of the voters who were unduly influenced was rejected. This case

is clearly distinguishable. In the instant case, the respondent No. 1 has not admitted that the voters were prevented from casting votes. Secondly, in the instant case, the allegation is that the voters were prevented from casting vote by force; whereas in that case the allegation was that a propaganda was being made that the election petitioner was a communist. In that case the corrupt practice alleged to have been committed fell under Sub-section (5) (now Sub-section (4) of Section 123) of the Act; whereas in the instant case, the corrupt practice alleged to have been committed falls under Sub-section (2) of Section 123 of the Act.

11. Paragraph 14 of the judgment of the Supreme Court in the case of Ambika Sharan Sinsh v. Mahadeva Nand Giri, 1969 Doabia's Elec. Cases 166 (SC) has also been relied upon by learned counsel for the election petitioner. In para. 14 of the judgment their Lordships of the Supreme Court were considering the allegation of caste appeal to voters made on behalf of Ambika Sharan Singh. That corrupt practice also fell under Sub-section (3) of Section 123 of the Act. But as pointed out above, the allegation of corrupt practice in question in the instant case falls under Sub-section (2) of Section 123 of the Act Their Lordships of the Supreme Court observed thus--

"But where the alienation is that such canvassing was widespread and at several places it would be impracticable to call upon the election petitioner to give the names of persons alleged to have been approached with such an appeal and the actual words spoken to each of them. If such an appeal is made, for instance, at a meeting it would be difficult for a witness to name those to whom such an appeal is made. It is for this reason that Courts in England have made a distinction between bribery to voters and treating them..... The case of Chandrashekhar Singh Vs. Sarjoo Prasad Singh and Another, relied upon by Mr. Verma, is clearly distinguishable as the allegation there was of intimidation and assault of certain workers and voters who as a result of injuries inflicted on them had to be admitted in a hospital."

Thus their Lordships of the Supreme Court distinguished the cases in which the voters are intimidated and assaulted from the cases in which a mere caste appeal to voters is made. Thus the decision in that case is not applicable to the facts of the instant case in which the allegation is that the voters were prevented by force from going to the booths and from casting vote.

12. In the case of Janak Sinha v. Ram Kishore Das AIR 1972 SC 359, which has also been relied upon by learned counsel for the election petitioner, it was not the question for consideration whether the election petitioner should have mentioned in the election petition the names of the voters, who were prevented from casting vote. Learned counsel for the election petitioner, however, has relied on certain observations made by their Lordships of the Supreme Court in paragraphs 61 and 62 of the judgment. In para. 61 of that judgment, their Lordships observed :--

"Schedule I of the election petition gives particulars of undue influence committed by or on behalf of the appellant with his consent during the course of election. Column No. 1 gives the names of some of the persons who committed the corrupt practice; Column No. 2 gives the dates on which such corrupt practices were committed; Column No. 3 gives the places as well as the number of the polling booths where they were committed; and column No. 4 gives the names of some of the persons on whom undue influence was committed."

It is true that in Column No. 4 of Schedule I of the election petition names of some of the persons and not the names of all the persons on whom undue influence was committed were mentioned in that case, but there is nothing in the judgment of their Lordships to show that the election petitioner was allowed to examine any Person whose name was not mentioned in the election petition to say that he was prevented from casting vote. Therefore, that case is also clearly distinguishable.

13. Reliance has also been placed on observations of their Lordships of the Supreme Court in paragraph 5 of the judgment in Manphul Singh Vs. Surinder Singh, . In paragraph 5 their Lordships were considering the issue that fell under Clause (b) of Sub-section (1) of Section 83 of the Act The following observations of their Lordships in paragraph 5 of the judgment may be quoted:--

"Mr. Garg then went on to argue that where it is alleged that votes have been cast in the name of dead or absent persons it should be specifically stated who exactly voted in place of the dead or absent persons. In respect of his first objection it has to be pointed out that it may very often happen that a candidate has no Polling agents at all in various polling stations and polling booths. Very often the polling agent may not be a person belonging to that village so that he may not be able to challenge those voters then and there. Therefore, it is enough if he has made subsequent enquiries and come to know the facts and alleges them within the period of limitation provided in the Act. Whereas Section 83(1) (a) contemplates giving a concise statement of the material facts on which the petitioner relies, Mr. Garg's argument really amounts to saying that the petition should contain not only the material facts but also the evidence on which he relies to prove those material facts. This is directly contrary to the provisions of Order VI. Rule 2 of the Code of Civil Procedure."

Thus it would appear that in that case the question was whether the election petitioner should have mentioned the names of the persons, who had cast votes in place of dead voters. The decision of that case does not apply to issue that is for consideration in the instant case.

14. Thus on a careful consideration of the facts of this case and the decisions cited on behalf of both the parties, it must be held that the election petitioner must be allowed to examine any witness to give specific evidence that he was prevented by force from casting vote, if the name of that voter is not mentioned in election petition or in the schedule of the election petition as one of the voters

said to have been prevented by force from casting vote.

Interlocutory Application in election