

PETITIONER:
NARBADA PRASAD

Vs.

RESPONDENT:
CHHAGAN LAL AND ORS.

DATE OF JUDGMENT:
30/07/1968

BENCH:
HIDAYATULLAH, M. (CJ)
BENCH:
HIDAYATULLAH, M. (CJ)
GROVER, A.N.

CITATION:
1969 AIR 395 1969 SCR (1) 499
CITATOR INFO :
R 1969 SC 734 (11)
E 1969 SC 851 (33)
RF 1972 SC 580 (21)
F 1974 SC 66 (55)
F 1974 SC 951 (6)
R 1979 SC1148 (4)
D 1985 SC 89 (9)
F 1988 SC1796 (8)

ACT:

Representation of the People Act (43 of 1951), ss. 33(5), 116-A and 123---Compliance with s. 33(5), what is--Threatening voters that they voted for rival candidate they would be committing the sin of gohatya--If election offence--Assessment of evidence by this Court under s. 116A.

HEADNOTE:

The election of the appellant to the Madhya Pradesh Legislative Assembly from Khategaon constituency was challenged on two grounds: (1) That the nomination paper of one of the contesting candidates was wrongly rejected by the Returning Officer; and (2) that there was a violation of s. 123 of the Representation of the People Act, 1951, in that the appellant and his election agent made speeches, wherein they stated, that Congress had not abolished cow slaughter in India and-that to vote for the Congress therefore was to commit the sin of gohatya. The trial Judge of the High Court allowed the petition on both the grounds. In appeal to this Court under s. 116-A the Act,

HELD: (1) The candidate whose nomination paper was rejected was not registered as a voter in the Electoral Roll relating to Khategaon constituency but to a different constituency. Under s. 33(5) of the Act, he had to produce before the Returning Officer at the time of scrutiny, a copy of the Electoral Roll of that constituency, or of the relevant part thereof, or a certified copy of the relevant entry in such Roll, or should have filed any of those documents earlier with his nomination paper. He did not do any of these but instead, filed with his nomination paper a certificate giving only a gist of an entry from the Electoral Roll of the other constituency, and that too from an officer who was not proved to have the authority

to issue a certified copy of the Electoral Roll. The provisions of the section were thus not complied with and the Court had no power to dispense with the requirement. Therefore, the rejection of the nomination paper of the candidate, by the Returning Officer, was justified and the trial Judge erred in holding that it was wrongly rejected [501 F-H; 502 A-E]

(2) By stating that if the voters voted for congress they would be committing the sin of gohatya, the appellant and his agent attempted to induce the voters to believe that they would become objects of divine displeasure or spiritual censure and thus committed an election offence under s. 123 of the Act. [506 G; 507 B]

Since the witnesses who spoke about the speeches were believed by the trial Judge not on the probabilities of the case, but, on his observation of their demeanour this Court would be slow to depart from the trial Judge's assessment of the evidence. According to that evidence, the voters were reminded that they would be committing the sin of gohatya. Since the cow is venerated in this Country and it is also believed that gohatya is one of the cardinal sins, such a reminder would be equivalent to reminding them that they would be objects of divine displeasure of spiritual censure. The case therefore fell within s. 123(2)(ii) and the

trial Judge was right in holding that the election of the returned candidate should be set aside. [505 D-E; 506 H]

JUDGMENT:

CIVIL APPELLATE JURISDICTION: Civil Appeal No. 2 of 1968.

Appeal under section 116-A of the Representation of the People Act 1951 from the judgment and order dated November 30, 1967 of the Madhya Pradesh High Court, Indore Bench in Election Petition No. 5 of 1967.

S.V. Gupte, R.K. Vijayavargiya and S.S. Khanduja, for the appellant.

V.K. Sanghi, G.L. Sanghi and/1. G. Ratnaparkhi, for respondent No. 1.

The Judgment of the Court was delivered by

Hidayatullah, C.J. This is an appeal against the judgment, November 30, 1967, of a learned Single Judge of the High Court of Madhya Pradesh at Indore setting aside the election of the appellant to the Khategaon Legislative Assembly Constituency No. 259. The facts on which the petition was based and the judgment of the High Court has been rested, may now be stated.

At the last General Election to the Madhya Pradesh Legislative Assembly from the Khategaon Constituency there were five contesting candidates. They were the appellant and respondents 2 to 5. The appellant received 9622 votes as against the second respondent who obtained 8030 votes. The other contesting candidates received fewer votes in comparison. The present election petition was filed, not by any of the defeated candidates, but by an elector to the Legislative Assembly Constituency. In the array of the respondents in the High Court one Ram Kishen s/o Lakshmi Narain Deswali was also joined because his nomination paper was rejected by the Returning Officer. A point was made about this rejection in the High Court and we shall come to it in due course.

The election petition was based on two broad facts. The first was that the nomination paper of Ram Kishen was wrongly rejected and the other fact comprised allegations of

corrupt practices on the part of the returned candidate and his election agent. These corrupt practices consisted of oral speeches connected with the Manifesto of the Jan Sangh relating to cow slaughter in India. During the course of the speeches, it was alleged the returned candidate, who belongs to the Jan Sangh and his election agent Ram Niwas Somani made speeches at 19 villages in which they referred to this election manifesto and claimed that the Congress had not abolished cow slaughter in India and on the other hand was promoting it and that the Jan Sangh would stop cow slaughter. They added to these statements, which might have been quite innocuous, two other statements, namely, that to vote for the Congress was to commit the sin of gohatya and that the Congress candidate

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Shrimati Manjulabai herself ate beef. There were other allegations regarding exhibition of posters which depicted the Congress as a butcher intent upon slaughtering a cow. This part of the case however, was not accepted in the High Court and we need not say anything about it. The petition therefore succeeded on the two grounds which we have mentioned, namely, that the nomination paper of Ram Kishen was wrongly rejected and that the corrupt practice attributed to the Jan Sangh candidate and his election agent was established.

In this appeal we are only required to consider these two points and we shall take them in the same order. In so far as the rejection of the nomination paper is concerned it may be pointed out that Ram Kishen s/o Lakshmi Narain Deswali was registered as a voter, not in the Electoral Roll relating to Khategaon Tehsil but in the Harda Tehsil. Along with this nomination paper Ram Kishen produced a certificate from the Tehsildar of Harda which reads as follows :--

"I certify that there is an entry of the name of Ram Kishan son of Laxmichand, village Dholgaon, at Anukaran No. Harda 217, Electoral roll of 1966, part of Anukaran No. 177, District Hoshangabad, Tehsil Harda, under the heading Ra-Ni-Ma, Serali, Serial No. 196, House No. 91/2, with particulars Ramkishan Laxmi Chand, male, aged 45 years.

16-1-1967

Sd/-

16-1-1967

Tehsildar Harda."

He did not produce the kind of evidence which section 33(5) of the Representation of the People Act, 1951, requires to be produced when a candidate is registered as a voter in some other constituency. Section 33(5) of the Representation of the People Act requires that where the candidate is an elector of a different constituency, a copy of the electoral roll of that constituency or of the relevant part thereof or a certified copy of the relevant entries in such roll shall, unless it has been filed along with the nomination paper, be produced before the returning officer at the time of scrutiny. The nomination paper of Ram Kishen was filed on February 20, 1967. The date of scrutiny was 21st of the same month. Ram Kishen had two alternatives before him. One was to produce any of the documents mentioned before the returning officer or to have filed it earlier with his nomination paper. He did neither. He produced a certificate from an officer who it is not proved to our satisfaction had the authority to issue a certified copy of the electoral roll. He also added an affidavit on his own part in which the gist of the entry was given. Indeed the certi-

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ficate of the Tehsildar was based on the affidavit which was annexed to the certificate. There was no compliance with the provisions of s. 33(5) of the Representation of the People Act and there was no power in the court to dispense with this requirement. It is a well-understood rule of law that if a thing is to be done in a particular manner it must be done in that manner or not at all, Other modes of compliance are excluded. Even the certificate of the Tehsildar was not a certified or a true copy of the entry. It only gave the gist of the entry taken from the affidavit. It contains a mistake because the village "Dholgaon" is mentioned without the addition of the word 'Kalan'. It appears that there are two villages, Dholgaon Kalan and Dholgaon Khurd. The entry in the electoral roll clearly shows that it is Dhalgaon Kalan. In other words the certificate was inaccurate. The affidavit of Ram Kishen was also inaccurate inasmuch as it described the house as No. 91 whereas in Electoral Roll the house is given the number 91/2. We, however, do not go by these small inaccuracies because again the law is that which can be made certain is certain, but the fact is clear that the requirements of s. 33(5) had to be and were not complied with. The rejection of the nomination paper of Ram Kishen by the Returning Officer was thus justified. Ram Kishen explained that he was running about trying to get the other evidence and indeed he did arrive at 5 p.m. having earlier sent a telegram that he was coming with the required evidence. Unfortunately both the telegram and Ram Kishen arrived after the rejection of the nomination paper and therefore the Returning Officer could not recall what he had ordered. We are satisfied that the learned Single Judge erred in holding that the nomination paper of Ram Kishen was wrongly rejected. It was rightly rejected.

If the matter had rested there the appellant would have been entitled to succeed, but there remains still the question of corrupt practice. A great deal of argument was addressed to us on this subject and we were taken through the evidence of all the witnesses who have deposed to the corrupt practice on the part of the returned candidate and his election agent. We are satisfied that the reading of this evidence by the learned Judge, although some times strained, was clearly right and that the corrupt practice had been brought home to the candidate and his election agent. Without going too much into the details we shall scan that evidence once again to show that this fact stood duly proved.

Out of the 19 villages at which speeches were made the learned Judge selected two, for basing his conclusion and we shall therefore confine ourselves to evidence relating to those villages. They are Khategaon and Kannod. The speeches at Khategaon took place on the 11 th and at Kannod on the 16th February. It appears that February 11, was a day of many speeches. Earlier in the day the Congress held its own session to persuade the voters to

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vote for that party. The Chief Minister (D. P. Misra) addressed a gathering of about 2000 persons. The speeches made at that meeting need not be referred to here because they do not bear upon the present matter. The Jansangh then followed and held its own meeting. Many spoke at that meeting including the returned candidate, Narbada Prasad who also goes under the name of Kinkarji. The election petitioner examined in this connection three witnesses and also examined himself. These witnesses are Bulchand (P.W.

2), Babulal (P.W. 7) & Chandragopal (P.W. 15). The election petitioner is P.W. 17. It is argued by the learned counsel for the appellant that the testimony of PWs. 2, 7 and 15 should not have been accepted because there were many discrepancies in the versions of these witnesses as to what was said at the meeting. There are also some arguments regarding the credibility of each of these witnesses and we shall briefly refer to these two points now.

P.W. 2 Balchand stated that he had not gone specifically to the meeting but that the meeting was thrust upon him. He had gone on the 11th to the house of an ailing relative and was with him in the evening when the meeting took place. This meeting was held right opposite the residence of his relative and he was therefore in a position to hear what was said. He did say that he attended the meeting but he might well have being so close to it although his explanation of how he happened to be there is acceptable. He stated that Kinkarji was one of the speakers. Kinkarji complained of the division of Kashmir and also that the Congress 'had increased price level.' He stated further that to bring Hindu Raj, the voters must not vote for Congress but cast their votes for the Jansangh. He added:

"In the Congress Raj thousands of cows are cut every day. To vote to Congress is to take on your heads the sin of gohatya. Manjula Bai the Congress candidate herself eats cow-flesh. You' should go away from here after swearing to yourselves that you would not vote congress and bring on yourself the sin of gohatya."

It is convenient to compare what the other two witnesses said in this behalf P.W. 7's (Babulal) version was that Kinkarji "spoke of Kashmir, Pakistan and said that 'the Congress-walas' did not get sugar or grain for them". He concluded:

"The congress men get thousands of cows killed. Manjula Bai Wagle who stands on the congress ticket eats cow's flesh. It is necessary to bring the Hindu Raj and so give vote to the deepak and make it victorious. You better swear by the cow that you will not vote congress but vote Jan Sangh. If you do not vote Jan Sangh you will be getting the sin of cow killing."

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The version of P.W. 15 (Chandergopal) was to this effect. When he went there Kinkarji was speaking and said:

"The congress party is a hatyara party. It gets thousands of cows and bulls killed. The candidate who stands against me in this election is Manjula Bai set up by the congress and she eats cow's flesh. I have been set up by the Jansangh for bringing the Hindu Rajya. To bring it please vote on my deepak mark."

A point is made by the learned counsel for the appellant that since P.W. 15 does not speak of the sin of gohatya, we should discount the evidence of the other two witnesses who have exaggerated the whole story. He also contends that even if the words were used about the sin of gohatya we should not give too much meaning to the word 'sin' which bears different shades of meanings and the strongest meaning need not necessarily be chosen. He also contends that this speech, even if it is accepted from the version of P.W.s 2 and 7 did not amount to the kind of corrupt practice which is made a ground for setting aside elections under s.

123(2)(ii).

Whether we should believe the witnesses or not involves how far we should enter into facts. No doubt, an appeal before this Court under section 116A is an appeal as of right and is open both on facts and law; still the practice of the courts has uniformly been to give the greatest assurance to the assessment of evidence made by the Judge who hears the witnesses and watches their demeanour and judges of their credibility in the first instance. In an appeal the burden is on the appellant to prove how the judgment under appeal is wrong. To establish this he must do something more than merely ask for a re-assessment of the evidence. He must show wherein the assessment has gone wrong. Where the court of first instance relies upon probabilities alone, the appellate court may be in as good position as the court of trial in judging of the probabilities; but where the court of trial relies upon its own sense of the credibility of a witness the appellate court is certainly at a disadvantage, because it has not before it the witness but the dead record of the deposition as recorded. If it was a question only of the probabilities of the case, we would have undoubtedly gone into the matter more closely. The matter has however been put before us strictly on the ground of credibility of the witnesses and it is there we feel that the appellate court is at a disadvantage. This has been laid down both by this Court and the Privy Council in cases which are quite familiar and need not be quoted.

Applying these tests, we go once again into the submissions of the learned counsel for the appellant to see how far he has been

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able to prove to our satisfaction that the appraisal of the evidence of these witnesses is such that we must reject the conclusion of the learned High Court Judge and substitute for it another conclusion. It is said about P.W. 2 (Balchand) that he claimed that he was not interested in the Congress but P.W. 11 Parasram stated that Balchand worked for the Congress. Learned counsel submits that here at the very start we have a lie from the witness and we should not therefore believe him. He further comments that P.W. 2. (Balchand) did not attend the meeting that he only heard what was being said at the meeting, that he was an unsummoned witness and did not go to Manjula Bai but went to Chaganlal the elector who had no connection with the election and thus has shown considerable interest in the success of the election petition. All these things were before the learned Judge who tried the case. In spite of them he has chosen to draw an inference from the testimony of these witnesses taken with the other material on the record. In this connection it is pertinent to point out that the learned Judge referred to the evidence of Tiwari P.W. 10 and Ramchandra Agrawal P.W. 13 (particularly the former) about whom he said that he was considerably impressed by the way in which he deposed and it appeared to him that that witness was speaking the truth. Where there is evidence which the Judge considers truthful not on the probabilities of the case but because the Judge on his observation of the manner in which the witness deposed, the appellate Court should be slow to depart from the conclusion of the trial Judge. In this case Kunjilal Tiwari P.W. 10 admitted that he was a member of the Jansangh. He further said that he did not approve of the methods of the Jansangh in making such speeches and had therefore come forward to depose truthfully as to what had happened. This witness no

doubt spoke' about Kannod but he lent assurance to the statements of P.W.2 (Balchand), P.W. 7 (Babulal) and P.W. 15 (Chandergopal) about Khategaon. The learned Judge although he examined the two, incidents separately, seemed to have viewed the entire propaganda of Kinkarji as integrated and has drawn the conclusion from both aspects of the case taken together. Therefore the case comes to this, that the witnesses who spoke about the speech at Khategaon were not unanimous as to the version of the speech, but that in our opinion is not a circumstance of vital importance, because. speeches were also made at Kannod in which the returned candidate made similar observation about the sin of gohatya. The witnesses here are P.W. 4. (Narsingh Dass), P.W. 8 (Mazharul Haq) and P.W. 10 (K. L. Tiwari). We shall now refer to what they stated. P.W 4 (Narsingh Das) stated that on February 16, 1967 there was a meeting in his village in front of Ramniwas Somani's house. This Somani was the election agent of the returned candidate. At this meeting both Somani and Kinkarji spoke. When he went there Kinkarji was speaking. This is the version which he gave of the speech.

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"The congress gets cows killed so you should not vote for congress, but you should put your stamp on the deepak our emblem. If you still vote for Congress you shall get the sin of killing a cow."

P.W. 8 (Mazharul Haq) also said that Kinkarji recited some slokas and when he came to the end of the speech he said:

"Congress gets cows killed. The congress candidate Manjula Bai Wagle eats cow's flesh. We have to bring Hindu Raj; put the seal on the deepak mark."

P.W. 10's (Kunji Lal Tiwari) version was that Kinkarji said that the Congress was getting the cows killed. Manjula Bai should not be given any votes. If she was voted for there would be a sin. He also spoke that the congressmen were doing blackmarketing.

It thus appears that at Kannod also there was a repetition of the same kind of speech which the other witnesses stated had been made at Khategaon. The question is do we believe these witnesses or not? In our judgment there is ample evidence in this case that there was a reference to cow slaughter and the campaign of the Jan Sangh that cow slaughter should be abolished in India. One cannot say that it is wrong to make such a propaganda. It would be perfectly legitimate for any party to promise that if it came into power it would abolish cow slaughter. That is not the gravamen of the charge. The gravamen of the charge is that it was added that if the voters voted for the Congress candidate, they would be guilty of the sin of gohatya and here the law of election steps in. Section 123 provides that it is an election offence of 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 when any such person, as is referred to therein, induces or attempts to induce a candidate or an elector to believe that he or any person in whom he is interested, will become or will be rendered an object of divine displeasure or spiritual censure.

The question is whether in stating that if they voted for the Congress or a Congress candidate,

they would be committing the sin of gohatya amounted to an attempt to induce the voters to believe that they would become or would be rendered an object of divine displeasure or spiritual censure. In our opinion a statement of this kind falls within this provision of the section. It is not necessary to enlarge upon the fact that cow is venerated in our country by the vast majority of the people and that they believe not only in its utility but its holiness. It is also believed that of the cardinal sins is that of gohatya. Therefore it is quite obvious that to remind the voters that they would be committing the sin of gohatya would be to remind them that they would be

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objects of divine displeasure or spiritual censure, Kinkarji went beyond the permitted limits of canvassing and exhortation when he added to the legitimate manifesto of his party this observation that by voting for the congress or the congress candidate the voters would be objects of divine displeasure or spiritual censure. In our opinion both spiritual censure and divine displeasure are implicit in the speeches as made. The case, therefore, falls clearly within s. 123 (2)(ii) of the Representation of the People Act, 1951.

It will be encumbering this judgment if we record the incidents which relate to the election agent, except to say that the election agent Somani made similar speeches and the fact has been well established by reliable evidence. We are accordingly satisfied that the returned candidate was guilty of corrupt practice and the High Court was right in holding that the election of the returned candidate should be avoided.

We may point out that there was a further statement that the congress candidate Manjula Bai ate beef. Manjula Bai did not appear in the witness-box to deny this. In fact she showed little interest in the election petition and is reported to have left the matter to the elector who filed this petition. No one on her behalf appeared to deny this fact and therefore we leave the matter there. We do not express any opinion that any corrupt practice in relation to that statement was committed either in fact or in law.

In the result the appeal must fail. It will be dismissed with costs.

V.P.E.

Appeal dismissed.

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