

CASE NO.:  
Appeal (civil) 6908 of 2003

PETITIONER:  
Mahendra Singh

RESPONDENT:  
Gulab

DATE OF JUDGMENT: 10/05/2005

BENCH:  
CJI R.C. LAHOTI, G.P. MATHUR & P.K. BALASUBRAMANYAN

JUDGMENT:  
J U D G M E N T

P.K. BALASUBRAMANYAN, J.

This is an appeal under Section 116A of the Representation of the People Act, 1951 (hereinafter referred to as 'the Act'). The appellant was the petitioner in the election petition filed before the High Court. The appellant and the respondent contested from 94 \026 Erandol Assembly Constituency in Maharashtra in the general elections held on 5.9.1999. The respondent was declared elected. The appellant, so to say, was the runner up. The appellant filed the election petition before the High Court of Bombay, Aurangabad Bench, under Section 80 of the Act seeking a declaration that the election of the respondent was vitiated since the respondent was guilty of corrupt practices as defined in Section 123 (4) of the Act. Various statements said to have been made by the respondent during the election campaign were put forward as amounting to corrupt practices, before the High Court. The respondent denied some of the statements, pleaded that none of them amounted to corrupt practice within the meaning of the Act and that there was not even adequate pleading of corrupt practices so as to justify the election petition even going to trial. The High Court rejected the preliminary objection raised by the respondent and proceeded to try the election petition. The High Court found that the appellant has not established the corrupt practices imputed to the respondent and has not been able to successfully challenge the election of the respondent. Thus, the election petition was dismissed. It is this dismissal that is challenged in this appeal.

2. Though as noticed above, various statements allegedly made by the respondent or his supporters were put forward as constituting corrupt practices, before us, only four instances and statements were urged as constituting corrupt practice. The first was, the statement made by one Subhash Deorao Patil to the effect that the appellant had taken money while voting for the Rajya Sabha elections. The said allegation was made by Subhash Deorao Patil in the presence of the respondent and it was urged that it must be taken to have been made with the consent of the respondent. The other three statements were attributed to the respondent himself and according to the appellant the respondent had alleged that the appellant had distributed money to voters for securing their votes; that the appellant was drunkard and that he had indulged in unfair practices to pass his examinations in his earlier days. These statements were false to the knowledge of the respondent and they related to the personal character of the appellant and these statements were reasonably calculated to prejudice the prospects of the appellant's selection. It may be stated that the Court which tried the election petition, came to the conclusion that the appellant had not established his case based on these aspects and dismissed the election petition. Learned counsel for the appellant attacked the findings of the trial court and learned counsel for the respondent defended the findings

and sought dismissal of the appeal.

3. Section 123 of the Act describes what are corrupt practices. Sub-section (4) thereof says that the publication by a candidate or his agent or by any other person with the consent of a candidate or his election agent, of any statement or fact which is false, and which he either believes to be false or does not believe to be true, in relation to the personal character or conduct of any candidate, or in relation to the candidature, or withdrawal of any candidate, being a statement reasonably calculated to prejudice the prospects of the election of that candidate, amounts to a corrupt practice. In the light of this position, we shall now deal with the effect of the four statements, one attributed to a supporter of the respondent and the other three to the respondent himself.

i. The statement attributed to Subhash Deorao Patil

In the election petition it was averred that Subhash Deorao Patil who was a leader of the Bhartiya Janata Party (BJP), spoke at an election meeting held on 31.8.1999 at the instance of the respondent, a Shivsena candidate, at Village Salva, Taluka Dhargaon, District Jalgaon. The meeting was attended by approximately 2500 voters. It is alleged that Subhash Deorao Patil made a speech lasting 3 to 4 minutes. The respondent, the winning candidate, came to the dais while Subhash Deorao Patil was in the midst of his speech. After the respondent had taken his seat on the dais, Subhash Deorao Patil made the following statement:

"Money, when he remained with alliance in Zila Parishad, he took money, Money. This is very important thing. I am telling the citizens who are going. Money from the elections to Rajya Sabha is there. He has taken money for voting as a voter. This money belongs to us. It is ours. He has not earned it from home."

The election petition after setting out the above, proceeded to say that this statement was made in the presence of the respondent and with his consent. The respondent in the speech he subsequently delivered, did not disassociate himself from the above statement and did not protest against it in any manner. According to the election petition, it was clearly stated that the petitioner had accepted money for voting for the candidates in the election to the Legislative Council. He was a sitting Member of the Legislative Assembly. The Members of the Legislative Assembly are also voters for the election to the Rajya Sabha. It was a clear statement that the appellant had accepted money for voting in those elections. The statements made by Subhash Deorao Patil with the consent of the respondent were clearly false and the maker of the statement as well as the respondent believed it to be false and never believed it to be true. The statement was in relation to the personal character or conduct of the appellant and it was a statement reasonably calculated to prejudice the prospects of election of the appellant. It cast a reflection on the appellant as a person who takes bribe for voting and for supporting alliance in Zila Parishad, Jalgaon. In support of this allegation, a certified copy of the video cassette of the speech delivered by Subhash Deorao Patil delivered in Marathi, along with the English translation was produced.

4. The respondent in his written statement denied that the meeting at Salva was attended by 2500 voters. He denied that Subhash Deorao Patil had addressed the meeting with the consent of the respondent. He pleaded that he was not present on the dais when Subhash Deorao Patil was addressing the meeting. The contents of the election petition in that regard and the statement attributed to Subhash Deorao Patil were denied. It was pleaded that the statements made by Subhash Deorao Patil were not with the consent of the respondent. The cassette produced in support of the election petition was not a certified copy of the video recording. The respondent was not guilty of any corrupt practice in that regard.

5. The trial Court had framed an omnibus issue as issue No.1 reading "Whether the petitioner proves that the respondent has committed corrupt practices under Section 123(4) of the Representation of the People Act,

1951 on the grounds mentioned in paragraph Nos. 5, 9, 13, 15, 17, 19, 21 and 23 of the petition?" It was subsequently split up into nine issues so as to enable the Court to specifically consider the allegations meeting-wise. The relevant issue regarding the allegation in paragraph 23 of the election petition with which we are concerned here, was considered as issue No.1/9. Though a number of witnesses were examined in support of the election petition, learned counsel for the appellant referred only to the deposition of the appellant examined as PW 1 in support of his submission. Of course, he also referred to the deposition of the respondent. It appears that no other witness was examined specifically in support of this allegation in the election petition. The High Court, after discussing the speech and the evidence, recorded a finding that this part of the speech attributed to Subhash Deorao Patil must be taken to be a statement regarding the personal character of the appellant. But the High Court found that there was neither pleading nor evidence that the speech delivered by Subhash Deorao Patil materially affected the election in question. It also found that the appellant has not discharged the onus cast on him, to prove that concerned statement was made by Subhash Deorao Patil with the consent of the respondent. As a fact, the High Court found that the respondent was no doubt occupying a seat in the dais at the moment the particular statement was made by Subhash Deorao Patil, but then, the respondent had arrived on to the scene while Subhash Deorao Patil was midway through his speech. There was, therefore, no sufficient material to infer that the respondent had consented to the above statement being made by Subhash Deorao Patil or that the respondent had induced Subhash Deorao Patil to make such an allegation. The Court found that though the respondent was a candidate of the BJP-Shivsena alliance, the fact remained that the respondent was a member of the Shivsena whereas Subhash Deorao Patil was a member of the BJP. According to the High Court, the appellant did not have the needed control over Subhash Deorao Patil. The High Court thereafter relied on the relevant decisions of this Court referred to in the judgment under appeal and came to the conclusion that the statement attributed could not be said to be a corrupt practice indulged in by the respondent. The High Court noticed that the respondent had delivered his speech after conclusion of the speech of Subhash Deorao Patil but had not specifically repudiated the statement. But even then, the Court held that there was no adequate material to find that this amounted a corrupt practice. The Court also did not enter a finding that the statement was a false statement made to the knowledge of the respondent or his agent. It noticed that there was not even a plea that the prospects of the appellant in the election was materially affected by the above statement.

6. Learned counsel for the appellant relied on the decision in Chandrakanta Goyal v. Sohan Singh Jodh Singh Kohli, (1996) 1 SCC 378 and read to us paragraph 9 of that decision. He placed emphasize on the observation, "It is a different matter that the consent may be implied more readily from circumstances such as conduct of the candidate evident from his personal presence at that time and place without any protest."

He submitted that since Subhash Deorao Patil was not a leader of the BJP, the inference of consent was readily available in this case. Learned counsel for the respondent relying on the very same judgment pointed out that the circumstances clearly show that there was neither express or implied consent on the part of the respondent to the statement so made by Subhash Deorao Patil as it is established that the respondent himself arrived on the dais only when Subhash Deorao Patil was midway through his speech, though of course the particular statement was made after the respondent had seated himself on the dais. He pointed out that this was a case where a consent could not be implied, not only because of the reasons mentioned above but also because of the fact that Subhash Deorao Patil belonged to another party, though in alliance with the party of the respondent and it was not a case where consent could be readily inferred. It was a case where consent had to be established positively and there was

hardly any evidence on the basis of which such an inference could be drawn. He also pointed out that this was not part of any sustained campaign on the part of the respondent or his agents and it was a solitary statement attributed to the leader of a supporting party during the course of the entire election campaign and this also negated any presumption of consent. He also pointed out that there was no finding that the statement was false and made so knowingly. He further submitted that there is no pleading or evidence that the prospects of the election of the appellant was in any manner affected by the above sporadic statement attributed to Subhash Deorao Patil.

7. The burden to prove the corrupt practice is on the election petitioner, the appellant before us. Considering the materials made available and the arguments raised before us, it cannot be said that the High Court was in error in finding that the appellant has not established a corrupt practice as contemplated by Section 123 (4) of the Act by the making of the above statement by Subhash Deorao Patil. The statement is seen to be vague and not very precise. It is seen that it was a sporadic statement made by the leader of a party which was in alliance with the party of the returned candidate. The statement was one made by that leader during the course of his speech in a meeting for which the respondent, the returned candidate, arrived in the middle of that speech. There is no evidence attempted by the appellant to show that any of the listeners at the meeting formed an adverse impression about the appellant and the statement had caused harm to the prospects of the appellant at the hustings. In such a situation, it is not possible to disagree with the High Court, when it held that the appellant has failed to establish that the above statement made by the Subhash Deorao Patil can be taken to be a statement made with the consent of the respondent, the returned candidate, knowing it to be false and that it has affected the election prospects of the appellant. Thus, on the whole, this aspect urged by the learned counsel for the appellant is seen to be not acceptable to upset the finding of the High Court in that regard. We feel that there is no adequate pleading or evidence to find the respondent guilty of corrupt practice on this score.

8. The allegation regarding distributing of money to voters  
It was pleaded in the election petition that at a meeting on 1.9.1999 at village Bhavarkhede, the respondent made the following statement:

"They have now only one capital. Shopping with money has begun. You all know how motorcycles are going to the bungalow. Daily couple of people are being picked up on the motorcycle, pay money, administer oath and then send him out. How much will be paid per vote? Rs.500/-"

According to the appellant, this part of the speech delivered by the respondent amounted to an allegation of a personal character made with the knowledge that it was false and making of such an allegation amounted to corrupt practice within the meaning of Section 123(4) of the Act. This speech, said to have been made by the respondent, was the subject matter of issue No.1/7 in the trial court. The trial court took the view that the statement attributed could not be treated as a positive allegation aimed at the appellant. It found that the respondent had not named the appellant in the speech and had used the expression "they". In the circumstances, it was difficult to say that it was an accusation that the appellant was distributing money for votes. It was not a statement regarding personal character or conduct of the appellant and the statement was also ambiguous. In such a situation, especially when on a question of corrupt practice, proof beyond reasonable doubt was needed, the issue could not be found in favour of the appellant, the election petitioner.

9. Learned counsel for the appellant relied on Sheopat Singh v. Ram Pratap, [1965 (1) SCR 175] in support of his contention that the statement indicated above is one relating to the personal character or conduct of the appellant. On going through the said decision, it is seen that their Lordships

have stated that it is a question of fact in each case, under what category a particular statement falls. Therefore, it is really a question of assessing the scope and the effect of the statement quoted above, in the circumstances of the case. As we have noticed in relation to the statement dealt with earlier, the appellant did not adduce enough evidence at least to make out how the statement attributed to the respondent was understood by the audience at the meeting. The statement is also not definite. No doubt, learned counsel for the appellant rightly pointed out that the respondent, when examined, has admitted that the residence of the appellant was known as the bungalow, which was the expression used in the quoted speech. But then, we find that the respondent has also stated that the house he was residing in, was also called a bungalow. Therefore, the so called admission of the respondent relied on by learned counsel for the appellant is not sufficient to justify interference with the finding of the trial Court that the above statement attributed to the respondent would not amount to a corrupt practice within the meaning of Section 123 (4) of the Act. On the whole, we find it not possible to disagree with that finding of the trial Court.

10. Allegation regarding drunkenness

The third allegation, according to the appellant, is that the respondent had characterized him as a drunkard and this amounts to character assassination especially since the respondent knew it to be false and the making of such a statement amounts to a corrupt practice. The issue in that behalf was dealt with by the trial Court as issue No. 1/8. The translation of that part of the speech read as follows :

"Hotel Surya was inaugurated by Mahendra Babu. He is answerable for this. If this man inaugurated the hotel, why did he? Open a beer bar at home, and criticize others. Both the brothers consume by common glass. Whole the town will confirm this. Jaiveer, as also Mahendra Babu."

The respondent denied that he had described the appellant as a drunkard. The trial Court found that the appellant had himself in a campaign meeting at Kasoda on 3.9.1999, suggested that the respondent was a visitor to bars. The statement at best was only a retaliation, while defending himself. Even if the statement could be treated as not true, the general allegation as above, would not amount to an allegation which could be treated as amounting to a corrupt practice especially these days when drinking alcohol as such is not taboo and in society, people generally consume alcohol. The High Court took the view that in the speech concerned, the respondent had only suggested in a manner, that the appellant has encouraged drinking by inaugurating a beer bar and that the appellant also consumes liquor. This was not, according to that Court, calculated to prejudice the election prospects of the appellant. Learned counsel for the appellant submitted that in a rural society \026 the constituency here, according to him, was rural \026 charging a person with drinking alcohol, itself brings that person down in the estimation of the people and it can and does prejudicially affect his election prospects. Learned counsel for the respondent submitted that there was no plea or evidence on this aspect on the side of the appellant. On a scrutiny of the evidence available in the light of the reasons given by the High Court, it is not possible to say that that Court was in error in holding that the appellant has not been able to establish this ground as well. It appears to us that the argument on behalf of the appellant, does not have the necessary factual foundation in the pleadings and evidence to support it. We are, therefore, constrained to reject this submission as well.

11. Allegation of unfair practice at examinations in college days.

The particular statement attributed to the respondent as relied upon by the appellant, was that in a speech made at Erandol, the respondent had stated:

"I have learnt that he has indulged into unfair practice at college examination and, therefore, he is raw in his studies."

On reading that sentence in the context of the speech made, it could not be said that it was any specific allegation against the appellant that

he had indulged in unfair practices in his examinations in his college days. On going through the statement as a whole, we are not satisfied that there is any justification in interfering with the conclusion of the trial court that the said allegation also does not amount to a corrupt practice. Learned counsel for the appellant also could not bring to our notice any material on the basis of which we could disagree with the conclusion arrived at by the trial court.

12. On an anxious consideration of all the four aspects thus urged before us in the light of the pleadings, the evidence and the findings recorded by the High Court, we are satisfied that no ground is made out for interference with the dismissal of the election petition filed by the appellant on the ground that he had failed to establish any corrupt practice by the respondent in terms of Section 123 (4) of the Act. Consequently, we confirm the decision of the High Court and dismiss this appeal. In the facts and circumstances of the case, we direct the parties to suffer their respective costs in this Court.