

PETITIONER:
MULLAPUDI VENKATA KRISHNA RAO

Vs.

RESPONDENT:
VEDULASURYANARAYANA

DATE OF JUDGMENT 16/03/1993

BENCH:
BHARUCHA S.P. (J)
BENCH:
BHARUCHA S.P. (J)
KULDIP SINGH (J)
KASLIWAL, N.M. (J)

CITATION:
1994 AIR 1627 1993 SCR (2) 346
1993 SCC Supl. (3) 504 JT 1993 Supl. 100
1993 SCALE (2) 170

ACT:
Representation of the People Act 1951:
Section 123(3)--Corrupt practice--Religious symbol--Use
of--Charge against elected candidate--Establishing
of--Standard of proof required in such cases.

HEADNOTE:
The appellant's election to the Legislative Assembly was challenged by the Respondent in his election petition before the High Court. It was contended by the election petitioner that the respondent had used a religious symbol for the furtherance of his election prospects which was a corrupt practice under Section 123(3) of the Representation of the People Act, 1951. The High Court declared the election of the successful candidate to be void and set it aside. The successful candidate preferred the present appeal. On the question whether the use of a religious symbol in the election of Respondent amounted to corrupt practice u/s 123(3) of the Representation of the People Act, 1951, this court,

HELD:1.1. There is no doubt that the offending poster is a religious symbol. The depiction of anyone in the attire of Lord Krishna blowing a 'shanku' and quoting the words from the Bhagavad Gita addressed by Lord Krishna to Arjuna that his incarnation would be born upon the earth in age after age to restore dharma is not only to a Hindu by religion but to every Indian symbolic of the Hindu religion. The use by a candidate of such a symbol coupled with the printing upon it of words derogatory of a rival political party must lead to the conclusion that the religious symbol was used with a view to prejudicially affect the election of the candidate of the rival political party. [350G-H]

1.2. But there is no evidence to show that the offending poster was printed by or at the behest of the successful candidate. The successful 346

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candidate himself in his evidence denied that he had the offending posters printed or pasted. The averment in the election petition that the offending posters were pasted by followers, supporters and party men of the successful

candidate is not established. [351B-D]

1.3.The evidence on record does not establish that the offending posters were used at the election by the successful candidate or his election agent or with their consent. [352D]

1.4.The standard of proof in an election petition is rigorous, having regard to the quasi-criminal nature of the proceeding. The charge laid against the successful candidate under section 123(3) has not been established on the basis of the evidence on record. [351G]

JUDGMENT:

CIVIL APPELLATE JURISDICTION: Civil Appeal No. 3719 of 1991. From the Judgment and Order dated 3.9.1991 of the Andhra Pradesh High Court in Election Petition No. 22 of 1990.

P.P. Rao, D. Prakash Reddy and A.V.V. Nair for the Appellant.

C. Sitaramaiah, B. Rajeshwar Rao, Vimal Dave, Mrs. Rani Chhabra (NP) for the Respondent.

The Judgment of the Court was delivered by

BHARUCHA, J. This is an appeal under the provisions of the Representation of the People Act, 1951, against the judgment and order of the High Court of Andhra Pradesh whereby the election of the appellant before us to the Andhra Pradesh Legislative Assembly from the Tanuku Assembly constituency was declared void and set aside in view of the finding that he had committed the corrupt practice proscribed by section 123(3) of the Act.

Section 123(3), inter alia, states that "the appeal by a candidate or his agent or by any other person with the consent of a candidate or his election agent to vote or refrain from voting for any person on the ground of his religion..... or the use of or appeal to

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religious symbols for the furtherance of the prospects of the election of that candidate or for prejudicially affecting the election of any other candidate is a corrupt practice".

The respondent, a candidate of the Telugu Desam Party, secured the largest number of votes at the said election, which was held on 22nd November, 1989. The High Court found that during the election campaign posters depicting N.T. Rama Rao, the leader of the Telugu Desam Party, in the role of Lord Krishna, blowing a conch shell, had been used. The offending poster bore at the top a 'sloka' from the Bhagavad Gita, which said, roughly translated, that the Lord would be born upon this earth in age after age to establish dharma or righteousness. At its bottom the offending poster stated that the deceitful Congress, which had sold out the country, should be defeated. It was the contention of the election petitioner before the High Court, who was a voter in the Constituency, that the offending posters had been exhibited by or at the behest of the successful candidate. It was held by the High Court that it had no doubt that the offending poster was a religious symbol, its implication being that N.T. Rama Rao, who was an incarnation of Lord Krishna, exhorted voters to defeat the deceitful Congress. The High Court went on to consider whether the offending posters had been affixed by the successful candidate or his election agent or by any person with the consent of the successful candidate or his election agent. It came to the

conclusion that it was clear from the evidence "that the respondent or his agent or other persons with his consent have used religious symbol for the furtherance of the prospects of the respondent or for prejudicially affecting the election of the Congress I candidate'. Accordingly, the corrupt practice under section 123(3) was found to have been established. The High Court did not accept the case of the election petitioner in regard to the other corrupt practices that had been alleged. Upon the basis of the finding in regard to the corrupt practice under section 123(3), the High Court allowed the election petition, declared the election of the successful candidate to be void and set it aside.

As aforesaid, the successful candidate is in appeal.

The election petition alleged that the "respondent herein..... and, with his consent and connivance, his followers, supporters and his party men and election agent had resorted to large scale display of wall posters and paintings on the walls of the picture of Lord Krishna". The offending

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posters, which were described, had been pasted on walls at important places in all villages and towns throughout the Constituency and also on the sides of vans and vehicles used for canvassing. The election petition stated that particulars of some of the instances where, inter alia, the offending posters were exhibited were given in Schedule A thereto. Schedule A gave various addresses whereat the offending posters had been pasted. Photographs, would, it was stated, be produced in support of the allegation and four witnesses, would depose thereto, namely, Penicherla Rama Krishna Raju, Dukka Suri Appa Rao, Allabani Venkanna, Venne Subba Rao. The schedule also referred to "oil painting and posters" on the publicity vans at three locations, which would be established by photographs and by leading the evidence of Bollina Satvanarayana and Kudapa Akkanna.

In his written statement the successful candidate denied the allegations afore-stated.

The election petitioner filed documents along with the election petition, which included the affidavits of the four first named persons. The affidavit of Dukkanuri Appa Rao is representative of the three affidavits of those who are alleged to have pasted the offending posters. The fourth affidavit is of the photographer. The affidavit of Dukkanuri Appa Rao stated that the successful candidate had assigned to him the work of pasting wall posters and he had been paid Rs. 25 per day. Among these wall posters there were a few "photos showing Sri N.T. Rama Rao in the disguise of Lord Krishna Playing 'shanku'".

The election petitioner examined Dukkanuri Appa Rao and Venne Subba Rao before the High Court. He did not examine the third person who was alleged to have pasted the wall posters at the addresses mentioned in Schedule A to the petition. The examination-in-chief of Dukkanuri Appa Rao and Venne Subba Rao is almost identical. The cross examination of the former is more extensive. It is therefore that we refer to his evidence. Dukkanuri Appa Rao deposed that he was a labourer in Tanuku. He and two others had pasted wall posters on behalf of the successful candidate. They had affixed wall posters and door posters. The posters had been given to them about 15 days prior to the election when they had gone to the Telugu Desam Party election office. The successful candidate, his election agent and some others were present there. The successful

candidate had

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engaged Dukkanuri Appa Rao and two others to affix the posters on wages of Rs. 25 per head. They were given about 1500 wall posters and 5000 door posters. The wall posters depicted N.T. Rama Rao in the role of Lord Krishna. The wages had been paid daily. Dukkanuri Appa Rao had retained with himself one poster because he had liked it and he had given it to the election petitioner about three months before the date of his deposition. In cross examination Dukkanuri Appa Rao stated that he also did agricultural work. He was not a member of the Telugu Desam Party. He had not been called to the election office of that party either before or after the election. While he had been working near a coffee hotel somebody, whose name he did not know, had come and called him to the Telugu Desam Party office. The election petitioner had asked him in the Congress Party office whether he had any election posters. He had replied that he had one and gave it to the election petitioner. It was similar to the poster at Ex. A-2 (the offending poster). His affidavit had been taken by the election petitioner at Tanuku. After having made that affidavit the election petitioner had asked for the poster and he had given it to him.

It must be stated here that no evidence was led by the election petitioner to show that the offending posters had been got printed by or on behalf of the successful candidate. Learned counsel for the election petitioner drew our attention to the cross-examination of the successful candidate wherein it had been stated that he had incurred the expenditure of Rs. 4,000 upon writing wall posters, painting and other publicity and had also paid Rs. 8,000 to a printer. These statements, however, were not followed up in further cross-examination. There is, therefore, no evidence to show that the offending posters were printed by or on behalf of the successful candidate.

There is no doubt in our mind that the offending poster is a religious symbol. The depiction of anyone, be it N.T. Rama Rao or any other person, in the attire of Lord Krishna blowing a 'shanku' and quoting the words from the Bhagavad Gita addressed by Lord Krishna to Arjuna that his incarnation would be born upon the earth in age after age to restore dharma is not only to a Hindu by religion but to every Indian symbolic of the Hindu religion. The use by a candidate of such a symbol coupled with the printing upon it of words derogatory of a rival political party must lead to the conclusion that the religious symbol was used with a view to prejudicially affect the election of the candidate of the rival political party.

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The question, therefore, is : is it established upon the record that the offending poster was used at the election by the successful candidate or his agent or by any other person with the consent of the successful candidate or his election agent. As has been stated, there is no evidence to show that the offending poster was printed by or at the behest of the successful candidate. The successful candidate himself in his evidence denied that he had had the offending posters printed or pasted. The evidence of Dukkanuri Appa Rao and Venne Subba Rao is, in our view, not satisfactory. In the first place, the averment in the election petition was that the offending posters had been pasted by the "respondent herein who is a Telugu Desam party candidate and with his consent and connivance his followers supporters and his party men and election agent..... Both Dukkanuri Appa Rao

and Venne Subba Rao stated in the witness-box that they were not members of the Telugu Desam Party. They were called to the Telugu Desam Party election office for the first time on the day on which they were engaged for a daily wage to paste the wall posters. The averment in the election petition that the offending posters were pasted by followers, supporters and party men of the successful candidate is, therefore, not established. If the evidence of Dukkanuri Appa Rao and Venne Subba Rao was true the election petition would have stated that the successful candidate and his election agent had engaged Dukkanuri Appa Rao and Venne Subba Rao on daily wages to affix the offending posters. Secondly, the offending posters were not put to Dukkanuri Appa Rao and Venne Subba Rao in examination in chief and were not identified by them as being the posters that they had pasted. Thirdly, neither of these two witnesses identified the places at which they had pasted the offending posters. It was not stated by them that they had pasted the posters at any of the addresses in Tanuku mentioned in Schedule A to the election petition. The evidence of Dukkanuri Appa Rao is suspect also because he claimed to have retained one offending poster which he gave to the petitioner; this is not borne out by the election petition or the affidavit made by him.

The standard of proof in an election petition is rigorous, having regard to the quasi-criminal nature of the proceeding. We are not satisfied that upon the evidence before us the charge laid against the successful candidate under section 123(3) has been established.

Learned counsel on behalf of the election petitioner drew our atten-

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tion to the statements made by the successful candidate's election agent in regard to a van used for canvassing. He stated that the van toured the Constituency. There were photographs of N.T. Rama Rao in his various film roles exhibited in the van. He said that exhibit A-13 was a photograph which showed "that a poster showing N.T. Rama Rao in the role of Krishna blowing a conch was affixed to publicity van but I have no personal knowledge about it". The statement that the election agent had no personal knowledge in this behalf was not probed in further cross-examination. It is also not established that the poster shown by the photograph exhibit A-13 was what we have called the offending poster in that it not only showed N.T. Rama Rao in the role of Lord Krishna blowing a conch but also contained the afore-mentioned 'sloka' from the Bhagavad Gita and the statement that the Congress was a deceitful party which should be defeated. So far as we can ascertain from the judgment under appeal, the offending posters were produced only at exhibits A-2 and A-18.

The evidence upon the record does not, to our mind, establish that the offending posters were used at the election by the successful candidate or his election agent or with their consent.

Having regard to our finding that the charge of corrupt practice under section 123(3) has not been established, we do not find it necessary to consider the argument that the election petition did not plead all necessary material facts and did not give all necessary particulars so that the election petition was liable to be dismissed in limine.

In the result the appeal is allowed and the election petition is dismissed. The respondent shall pay to the appellant costs quantified at Rs. 10,000.

G.N.

Appeal allowed.

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JUDIS