

CASE NO.:
Appeal (civil) 8315 of 2003

PETITIONER:
Harmohinder Singh Pradhan

RESPONDENT:
Ranjeet Singh Talwandi & Ors

DATE OF JUDGMENT: 28/04/2005

BENCH:
CJI R.C. Lahoti, G.P. Mathur & P.K. Balasubramanyan

JUDGMENT:
J U D G M E N T

R.C. Lahoti, CJI

This appeal under Section 116A of the Representation of the People Act, 1951 (hereinafter 'the Act' for short) puts in issue an order passed by the designated Election Judge of the High Court, whereby an election petition filed by the appellant has been directed to be dismissed at the threshold as disclosing no cause of action.

The sole ground on which the election of respondent No. 1 was sought to be challenged and set aside, is that the respondent No.1 had committed the corrupt practice within the meaning of sub-Section (3) of Section 123 of the Act, which reads as under:

"123. Corrupt practices \027 The following shall be deemed to be corrupt practices for the purposes of this Act:-

xxx

xxx

(3) 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, race, caste, community or language or the use of, or appeal to religious symbols or the use of, or appeal to, national symbols, such as the national flag or the national emblem, for the furtherance of the prospects of the election of that candidate or for prejudicially affecting the election of any candidate:

[Provided that no symbol allotted under this Act to a candidate shall be deemed to be a religious symbol or a national symbol for the purposes of this clause.]"

The said corrupt practice is said to have been committed by respondent No. 1 in the public meetings held on 1.2.2002, 3.2.2002, 8.2.2002 and 9.2.2002. The relevant part of the averments made in this regard in the election petition are extracted and reproduced hereunder:

"Jathedar Jagdev Singh Talwandi, had specifically named all the religious leaders including

Sant Mahesh Muni ji, Borewale, Sant Balbir Singh, Lamman Jattapura, Sant Zora Singh, Badni Kalan, Nanaksar thath, Sant Niranjan Singh Ji Vaid, Sant Avtar Singh, Badni Kalan, Sant Bir Singh, Madoke, Member, SGPC, Sant Atma Singh, Dhurkot, Member, SGPC and Sant Bharpoor Singh Barmi Wale. He had called upon the people to cast their votes in furtherance to the wishes of their respective leaders and to keep their symbols high by letting his son \026 Sh. Ranjeet Singh Talwandi, to win from 54 \026 Raikot Assembly Constituency. Jathedar Jagdev Singh Talwandi himself was the president of SGPC, the supreme body of the Sikhs thus committing corrupt practice under Section 123(3).

That thereafter, the above appeal was got published by respondent No. 1 in Daily Ajit, a Punjabi newspaper published from Jalandhar in the issue dated 12.2.2002, photocopy of which is attached as Annexure P-2. A translated copy of the said appeal is attached herewith as Annexure P-2. The above appeal was issued by various religious leaders under their symbols, to the public and particularly to their followers for casting their votes in favour of the respondent No. 1 and is corrupt practice under Section 123(3)."

"That Jathedar Jagdev Singh Talwandi, the father of respondent No. 1 along with the respondent No. 1, in several public meetings held on 8.2.2002 and 9.2.2002, announced that all the religious leaders of the area have appealed to the public to cast their votes in favour of respondent No. 1 and as such, the people should vote in accordance with the wishes of the said leaders, under whose religion/symbols, the said people are followers."

According to the election petitioner (appellant herein), such appeals for casting votes amount to corrupt practice under Section 123(3) of the Act. These appeals made at the public meetings were followed by publication in daily newspapers carrying on with them the names of the religious leaders making the appeal.

English translation of the appeals published in Gurumukhi respectively in the newspapers dated 5.2.2002 and 12.2.2002 have been filed, which read as under:

"APPEAL

Appeal is made to the intellectual voters of Raikot Assembly Constituency to vote and elect the candidate of Shiromani Akali Dal\026BJP\026BSP S. RANJEET SINGH TALWANDI son of the former President, Shiromani Gurudwara Prabandhak Committee-Jathedar Jagdev Singh Talwandi for all round development of the area and spearheading the religious works."

"APPEAL

CAST YOUR PRECIOUS VOTE AND ELECT S.
RANJEET SINGH TALWANDI THE EDUCATED,
HONEST, GUARDIAN OF RIGHTS AND TRUTH AND

PEOPLE FRIENDLY CANDIDATE OF SHIROMANI
AKALI DAL (BADAL), BJP-BSP FROM RAIKOT
ASSEMBLY CONSTITUENCY."

Below the two appeals, names of certain religious heads,
to whom the appeals are attributed, have also been published.

Averments so made have been denied in the written
statement. It has also been urged that what is alleged in the
election petition, does not amount to corrupt practice.

The learned designated Election Judge framed issues,
some of which were taken up for hearing as preliminary issues.
Arguments were advanced by the learned counsel for the parties
before the High Court on an assumption, if no evidence were
produced and the averments made in the election petition were
taken as correct, would it amount to corrupt practice?
Shri U.U. Lalit, the learned senior counsel for the appellant
has submitted that the High Court was not justified in dismissing
the election petition in limine and the petition should have been
set down for trial. On the other hand, Shri Jaspal Singh, the
learned senior counsel for respondent No. 1 has submitted that
the High Court is justified in dismissing the election petition as
disclosing no cause of action, inasmuch as the averments made
in the election petition even if substantiated, would not amount
to corrupt practice and any evidence beyond the material facts
averred in the election petition, would not be admitted.

The question arising for decision in this appeal is no more
res integra as the point is covered by several decided cases, the
most instructive one being Dr. Ramesh Yeshwant Prabhoo v.
Prabhakar Kashinath Kunte & Ors., (1996) 1 SCC 130. The
emphasis is laid on the word 'his' as it occurs in Section 123(3)
of the Act which word was not to be found in the original draft of
the provision as enacted but came to be inserted into the text of
the provision by the Act 40 of 1961. Reference has been made
to the Parliamentary debates and the reasons ascribed by the
then Law Minister for the amendment while moving the Bill in
the Parliament. The Court has then held that the word 'his'
used in sub-Section (3) of Section 123 of the Act must have
significance and it cannot be ignored or equated with the word
'any' to be brought within the net of sub-Section (3). The
religion forming the basis of the appeal to vote or refrain from
voting for any person, must be of that candidate for whom the
appeal to vote or refrain from voting is made. This is clear from
the plain language of sub-Section (3) and this is the only manner
in which the word 'his' used therein can be construed. When the
appeal is to vote on the ground of 'his' religion for the
furtherance of the prospects of the election of that candidate,
that appeal is made on the basis of the religion of the candidate
for whom votes are solicited. On the other hand, when the
appeal is to refrain from voting for any person on the ground of
'his' religion for prejudicially affecting the election of any
candidate, that appeal is based on the religion of the candidate
whose election is sought to be prejudicially affected. Thus, for
soliciting votes for a candidate, the appeal prohibited is that
which is made on the ground of religion of the candidate for
whom the votes are sought; and when the appeal is to refrain
from voting for any candidate, the prohibition is against an
appeal on the ground of the religion of that other candidate. The
first is a positive appeal and the second a negative appeal. Sub-
Section (3) clearly indicates the particular religion on the basis of
which an appeal to vote or refrain from voting for any person is
prohibited under sub-Section (3).

So is the view taken by this Court in Kanti Prasad Jayshanker Yagnik v. Purshottamdas Ranchhoddas Patel, (1969) 1 SCC 455.

In the case before us, the election petition nowhere mentions the religion of respondent No. 1. There is no averment made in the election petition that the said appeal was made in the name of the religion of respondent No. 1. It is not the case of the appellant in his election petition that there was any negative appeal made at any time by respondent No. 1 or on his behalf, that is to say, an appeal to voters to refrain from voting for the appellant on the ground of his religion.

There is yet another reason why the averments made in the election petition are deficient. The appeals are said to have been made by certain religious leaders. A distinction has to be drawn between an appeal simpliciter to vote or to refrain from voting made by religious leaders which may benefit any particular candidate and an appeal to vote or to refrain from voting on the ground of religion emanating from religious leaders and attributable to the candidate within the meaning of Section 123(3). The former is not vulnerable while the latter is. All that the election petition alleges is that certain religious leaders, held in reverence by the voters, issued an appeal to vote in favour of respondent No. 1. The appeals forming the gravamen of the charge of corrupt practice do not carry in it the element of an appeal to vote for any person on the ground of religion.

Necessary averment of facts constituting an appeal on the ground of 'his religion' to vote or to refrain from voting would be material facts within the meaning of Clause (a) of sub-Section (1) of Section 83 of the Act. If such material facts are missing, they cannot be supplied later on, after the expiry of period of limitation for filing the election petition and the plea being deficient, can be directed to be struck down under Order VI Rule 16 of the Code of Civil Procedure, 1908 and if such plea be the sole ground of filing an election petition, the petition itself can be rejected as not disclosing a cause of action under Clause (a) of Rule 11 of Order VII of the Code.

No fault can be found with the view taken by the learned designated Election Judge of the High Court. The appeal is devoid of any merit and is dismissed with costs.