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T. N. ANGAMI

v.

SMT. RAVOLUEU

February 2, 1971

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[G. K. MITTER AND A. N. RAY, JJ.]

*Representation of the People Act, 1951—Corrupt Practice—Hospitality and courtesy cannot be equated with corrupt practice—Chief Minister redressing grievances of people cannot be said to offer inducement for getting votes.*

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The appellant was elected to the Nagaland legislative assembly. He was at the time of his election Chief Minister of the State. The respondent challenged the election of the appellant on the grounds : (i) the appellant incurred or authorised the incurring of expenditure beyond the prescribed limit in contravention of s. 77 of the Act and thereby committed corrupt practice within the meaning of s. 123(6) of the Act, (ii) he offered inducements to the electors by giving feasts and entertaining them and (iii) he distributed bundles of Corrugated iron Sheets to a Women's Society, with the object of inducing the members thereof to vote for him. The High Court held that the appellant committed corrupt practice within the meaning of s. 123(6) and set aside his election. The other corrupt practices were held not proved. Allowing the appeal and dismissing the election petition,

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HELD : (i) The High Court was in error in holding on the evidence that expenditure beyond the prescribed limit was incurred or authorised by the appellant.[663 F]

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(ii) There was no evidence to indicate that the appellant or any person with his consent or knowledge induced any of the voters to vote for him by offering them food. On the contrary the evidence on both sides indicated that it was customary practice in Nagaland to offer hospitality to the people who visit their house. It would not be correct to equate ordinary hospitality or courtesy with corrupt practice.

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(iii) There was no corrupt motive in the distribution of bundles of iron sheets. The Society asked for corrugated iron sheets for a public cause. The appellant was the Chief Minister at the time of the election and it would not be unnatural for people to make requests to the Chief Minister for a public cause. It would also be reasonable to expect that the Chief Minister would try to redress the grievances of the people. [665 B]

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CIVIL APPELLATE JURISDICTION : Civil Appeal No. 1125 of 1970.

Appeal under s. 116-A of the Representation of the People Act, 1951 from the Judgment and order dated March 1970 of the Assam and Nagaland High Court in Election Petition No. 2 of 1969.

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*S. V. Gupte, S. K. Ghose, Advocate-General, Nagaland, Naunit Lal, A. R. Barthakar, R. C. Chowdhury and B. K. Dass, for the appellant.*

*D. P. Singh, A. K. Gupta, V. J. Francis and S. P. Singh*, for the respondent. A

The Judgment of the Court was delivered by

**Ray, J.** This is an appeal from the judgment dated 26 March 1970 of the Assam and Nagaland High Court declaring the election of the appellant void under section 100(1)(b) of the Representation of the People Act (hereinafter referred to as the Act) and further declaring the appellant to have committed a corrupt practice within the meaning of section 123(6) of the Act for incurring or authorising expenditure in contravention of section 77 of the Act. B

The gist of the finding of the High Court is that the appellant showed in his return a sum of Rs. 900/- as election expenses after claiming a refund of Rs. 100/- but the appellant is found to have incurred or authorised expenditure of a further amount of Rs. 154.15 which the appellant did not include in his return and thereby the appellant exceeded the permissible limit of Rs. 1000/- by Rs. 54.15. C

The finding of the High Court is that the appellant incurred or authorised the expenditure of Rs. 90/- for what is described as pink identity cards and secondly incurred or authorised the expenditure of Rs. 22.65 in respect of purchase of forms and election handbooks and thirdly incurred or authorised the expenditure of Rs. 42.50 on 18 trunk calls between 15 January, 1969 and 11 February, 1969 aggregating Rs. 154.15 which sum was not included in the return of election expenses. D

The appellant was at the time of the election Chief Minister of the State of Nagaland. The appellant and the respondent were two candidates at the General Election in the year 1969 to the Nagaland Legislative Assembly from No. 6 Western Angami Constituency. The polling took place on 6, 8 and 10 February, 1969 and counting of votes took place on 12 February, 1969. The appellant polled 1933 votes. The respondent polled 935 votes. On 12 February, 1969 the result of the election was declared and the appellant having secured the majority of valid votes was declared to be elected. E

The respondent in the election petition alleged that the appellant included in his return as election expenses the sum of Rs. 75/- paid by him to Kohima Printing Press on 17 January, 1969 for printing blue identity cards but the appellant did not include in the said return a sum of Rs. 90/- by him to Kohima Printing Press on 29 January, 1969 for printing a set of pink identity cards issued by him. The appellant in his written statement denied that he spent Rs. 90/- for the purpose of printing identity cards that were F

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**A** used by him in any way in his election. The appellant stated that he spent Rs. 75/- only for printing the identity cards which were used in the election and the same has been properly accounted for in his statement for his election expenses.

**B** Under section 123(6) of the Representation of the People Act the incurring or authorising of expenditure in contravention of section 77 is a corrupt practice for the purpose of the Act. Section 77 deals with account of election expenses and maximum thereof. The first sub-section states that every candidate at an election shall, either by himself or by his election agent, keep a separate and correct account of all expenditure in connection with the election

**C** incurred or authorised by him or by his election agent between the date of publication of the notification calling the election and the date of declaration of the result thereof both dates inclusive. The second sub-section states that the account shall contain such particulars, as may be prescribed. The third sub-section states that the total amount shall not exceed such amount as may be

**D** prescribed. The prescribed maximum for election expenses is the sum of Rs. 1,000 as will be found in Rule 90(2) of the Conduct of Election Rules. That is the sum prescribed for the State of Nagaland for State Assembly Election. For other States different amounts are prescribed as the maximum of election expenses for the State Assemblies.

**E** The relevant issue with regard to the alleged expenditure of Rs. 90 raises the question as to whether the appellant incurred or authorised the expenditure of the said amount. On behalf of the appellant the owner of the printing press Vipikeye gave evidence. He said that the appellant placed an order (Ex. 10) for 5000

**F** identity cards for election and he also said that Exhibit 11 the blue identity cards were printed in his press. The owner of the press further said that the appellant did not personally come to place the order but his party-men came and placed the order. The blue identity card was not found suitable and the owner of the printing press printed the pink identity card. The owner was paid

**G** Rs. 75 for printing 5000 blue identity cards. As for the pink cards the evidence of the owner of the printing press was that the order for the pink cards was placed on 29 January, 1969 "by the young man" of the appellant. The owner of the press supplied the pink cards numbering 6000 and he received the sum of Rs. 90 on 1 February, 1969 and one Pralie Peseyie paid that sum and took away the pink identity cards. Pralie Peseyie was said to be a man

**H** of the appellant. There was no written order for the printing job. The owner of the press specifically said that he did not receive Rs. 90 from the appellant.

The appellant in his oral evidence said that the blue identity card was ordered by him to be printed and he entrusted one of his worker to do it. On his return the appellant found that there was something wrong in the blue identity cards which contained the words 'Vote for T. N. Angami'. The appellant said that he became annoyed and asked the person entrusted with the printing of the identity cards to go immediately to the printing press and get the cards "reprinted correctly". After that "the man" brought the pink identity card but he did not tell anything about the payment of such printing work and that is how the appellant did not account for them. The appellant accounted for Rs. 75 as the cost of printing identity cards.

In cross-examination the appellant was asked whether he asked Pralie Peseyie to pay the cost of the blue identity card because of the appellant's annoyance. His answer was that he did not say anything specifically but Pralie Peseyie did something wrong and the latter felt shy and did not ask any money from the appellant. The appellant's evidence was that the press submitted the bill for the printing of the blue identity card and the payment was made by the appellant but he did not personally go and pay. In cross-examination the appellant was specifically asked whether the pink identity cards were produced before him with the bill. The appellant answered in the negative. The appellant was then asked whether before filing the return the appellant had asked from the press as to what the cost of the printing of the pink identity cards was. The appellant's answer was "I had not paid personally and the bill was not produced before me I did not enquire". The appellant was again asked whether the amount for printing pink identity cards was paid. His answer was that the amount was paid by Pralie Peseyie.

Pralie Peseyie gave evidence on behalf of the appellant and said that the appellant was "much annoyed" because Pralie Peseyie without the appellant's knowledge put the words "Please vote for T. N. Angami" on the blue identity cards and the appellant asked Pralie Peseyie to get the identity cards reprinted. Pralie Peseyie therefore placed order to get 6000 identity cards printed again. He said that he paid Rs. 90 from his own pocket as he felt that it was his responsibility to get the cards printed correctly. He also said that he never asked the appellant to re-imburse him for that amount of Rs. 90. In cross-examination he was asked whether he told the appellant that he paid Rs. 90. His answer was in the negative. Pralie Peseyie further said that the words "Please vote for T. N. Angami" were not on the sample that the appellant gave but the witness added those words without the knowledge of the appellant. The witness was asked a direct question as to what amount the witness spent for the appellant in the election and his

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A answer was "I paid Rs. 90 for the printing of the pink identity cards and no more".

The High Court held that the amount of Rs. 90 must have been paid to the press by Pralie Peseyie on behalf of the appellant and therefore the expenditure was incurred by the appellant as well as authorised by him in connection with his election.

The respondent in the election petition alleged that the appellant paid Rs. 90. The Representation of the People Act uses the words 'incurring' and 'authorising' the expenditure. The appellant denied that he paid Rs. 90. It was never suggested to the appellant that he had authorised the expenditure of Rs. 90. On the contrary, the positive evidence of the appellant is that he was annoyed with Pralie Peseyie for introducing the words 'Vote for T. N. Angami' on the blue identity cards and therefore the appellant wanted Pralie Peseyie to get the cards reprinted correctly. It is also the evidence of Pralie Peseyie that he did something wrong and he had to have it corrected. He therefore paid Rs. 90 out of his own pocket. The most significant feature in the evidence is that the bill for Rs. 90 was never produced or sent to the appellant whereas the bill for the blue identity cards was sent to the appellant. The manner in which the appellant reprimanded Pralie Peseyie for adding the words "Vote for T. N. Angami" would not necessarily involve an obligation to pay and authorise an expenditure for getting the cards reprinted correctly. If it were the fault of the press, the press would have to rectify the same. On the other hand, if the blame fell on Pralie Peseyie he would have to bear the brunt. The fact that the bill was not sent to the appellant shows that the fault was of the witness Pralie Peseyie. The oral evidence also points to that inescapable conclusion.

F The High Court was in error in holding on the evidence that the expenditure for Rs. 90 was incurred or authorised by the appellant. This finding is not supported by the evidence and on the contrary it is repelled by the evidence. We cannot help observing that both the appellant and Pralie Peseyie gave evidence in a very straightforward and truthful manner. They narrated the correct course of events. We accept their evidence and hold that the appellant neither incurred nor authorised the expenditure of Rs. 90 for the pink identity cards.

H It would, therefore, not be necessary for us to go into the question whether the sum of Rs. 41.50 for trunk calls and the sum of Rs. 22.65 for purchase of forms and hand-books were incurred or authorised by the appellant. Even if those two sums of money were added, the return would not be in violation of the maximum amount of Rs. 1000/-.

Counsel for the respondent contended that the findings of the High Court on allegations contained in paragraph 1(a), (f) and (j) of particulars of corrupt practice mentioned in paragraph 6 of the petition were incorrect and the High Court should have held that the appellant was guilty of corrupt practice. Paragraph 1(a) relates to a charge against the appellant of having paid Rs. 200 in cash to Dolhoutha Gaonbura of Zubra and one bag of sugar for entertainment of electors attending a function at Zubra on 25 January, 1969. Paragraph 1(f) alleges that on 27 January, 1969 a women's meeting was held at Daklane when it was announced that a procession would be taken out on 1 February, 1969. About 200 people mostly women formed a procession shouted slogans to vote for the appellant and the appellant asked them to vote for him and after the meeting a feast was held at the appellant's house at which drinks were served to the people. Paragraph 1(j) alleges that on 27 January, 1969 the appellant and his wife and some other persons came to the village Pedugei in connection with the election and held a meeting where the appellant and his wife promised 8 bundles of corrugated iron sheets for the women of Kiruphema with the object of inducing them to vote for the appellant and corrugated iron sheets were later on brought from Dimapur by a truck belonging to Mizielhoutho and divided amongst three groups of people. The appellant in the written statement denied the charges.

The respondent did not have personal knowledge of the feast alleged in paragraph 1(a) of the particulars but three witnesses were examined on behalf of the respondent. On behalf of the appellant there was the evidence of Dolhoutha and Shitovi Hesso. The High Court held that the three witnesses on behalf of the respondent were interested in the success of the respondent and the three witnesses attributed statements about feast and distribution of sugar to Dolhoutha who denied the same and said that the people of the village organised the feast with their money. The High Court correctly found that the quality of evidence on behalf of the respondent was such that no reliance could be placed upon it.

As to allegations of corrupt practice in paragraph 1(f) about the women's meeting the High Court held that there was no evidence to indicate that the respondent or any person induced the persons present to vote or offered them food and fruit. On the contrary, the High Court found that evidence of both sides indicated that it was customary practice in Nagaland to offer hospitality to the people who visit their house. It will not be correct to equate ordinary hospitality or courtesy with corrupt practice.

With regard to allegations mentioned in paragraph 1(j) and the distribution of bundles of corrugated iron sheets the High Court

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- A** held that the women's society asked for corrugated sheets for a public cause. The appellant was the Chief Minister at the time of the election. It would not be unnatural for people to make requests to the Chief Minister for a public cause. It would also be reasonable to expect that the Chief Minister would try to redress grievances of the people. There is no proof of corrupt motive.
- B** We agree with the High Court that there is no proof of corrupt practice alleged in paragraphs 1(a), (f) and (j) of the particulars dealt with above.

For these reasons we accept the appeal and hold that the appellant is not guilty of any violation of section 123(6) and section 77 of the Representation of the People Act. The judgment of the High Court is set aside. The charge of corrupt practice under section 123(6) is set aside. The order setting aside the election of the appellant and the declaration avoiding the election under section 100(1)(b) of the Act are both set aside. The election petition of the respondent is dismissed. The appellant will be entitled to costs.

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K.B.N.

*Appeal allowed.*