

A HARMOHINDER SINGH PRADHAN
v.
RANJEET SINGH TALWANDI AND ORS.

APRIL 28, 2005

B [R.C. LAHOTI, CJ., G.P. MATHUR AND
P.K. BALASUBRAMANYAN, JJ.]

C *Representation of People Act, 1951—Sections 123(3), 83(1)(a)—Appeal made by Religious leaders to the public to vote in favour of their candidate—Election petition alleging corrupt practice—Maintainability of—On facts held: Making of such appeal would not amount to corrupt practice within the meaning of Section 123(3) since appeal to vote not made on the ground of religion of their candidate nor appeal to refrain from voting made on the ground of religion of the opposing candidate—Election petition not disclosing a cause of action—Hence not maintainable—Code of Civil Procedure, 1908—Order 7, Rule 11(a), Order 6, Rule 16.*

D *Words and Phrases—‘his’—Connotation of—In the context of Section 123(3) of Representation of Peoples Act, 1951.*

E The question which arose for consideration in the present appeal is whether an appeal made to the public by certain Religious leaders under their symbols to cast vote in favour of their candidate amounted to corrupt practice under Section 123(3) of Representation of People Act, 1951.

Dismissing the appeal, the Court

F HELD : 1.1. 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. The word ‘his’ used in sub-Section (3) of Section 123 of the Representation of People Act, 1951 is significant and cannot be ignored or equated with the word ‘any’ to be brought within the net of sub-Section (3). 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. The first is a positive appeal and the second a negative appeal. [957-B-D-E]

Dr. Ramesh Yeshwant Prabhoo v. Prabhakar Kashinath Kunte and Ors., [1996] 1 SCC 130 and *Kanti Prasad Jayshanker Yagnik v. Purshottamdas Ranchhoddas Patel*, [1969] 1 SCC 455, relied on.

1.2. 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 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.

[957-F-G]

2. 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) of the Act. 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.

[957-H; 958-B]

3. 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 C.P.C. [958-C-D]

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 8315 of 2001.

From the Judgment and Order dated 29.5.2003 of the Punjab and Haryana High Court in E.P. No. 7 of 2002.

A U.U. Lalit, Ashok Kumar Singh and Ms. S. Janani with him for the Appellant.

Jaspal Singh, Mrs. Jayshree Anand, Karunakar Mahalik and Ashwani Bhardwaj with him for the Respondents.

B The Judgment of the Court was delivered by

R.C. LAHOTI, CJ. 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.

C 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 :

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

xxx

xxx

E (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:

F [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.]”

G 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:

H “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 Niranjn 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 - Sh. Ranjeet Singh Talwandi, to win from 54 - 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

A Constituency to vote and elect the candidate of Shiromani Akali Dal-BJP - BSP 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.”

B “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.”

C

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

D 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.

E 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?

F 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.

G

H 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 Prabhuo v. Prabhakar Kashinath Kunte and 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*

- A 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
- B 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.

- C 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
- D 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.

- E 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.

D.G.

Appeal dismissed.