

Lalit Kishore Chaturvedi vs Jagdish Prasad Thada And Others on 16 February, 1990

Equivalent citations: AIR1990SC1731, JT1990(1)SC215, 1990(1)SCALE199, 1990SUPP(1)SCC248, 1990(1)UJ402(SC), 1990(1)WLN52, AIR 1990 SUPREME COURT 1731, 1990 UJ(SC) 1 402, (1990) IJR 295 (SC), (1990) 1 JT 215 (SC), 1990 SCC (SUPP) 248

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Bench: M.H. Kania, R.M. Sahai

ORDER

R.M. Sahai, J.

1. Election of appellant to the Rajasthan State Assembly from constituency Kota was invalidated by the High Court for being guilty of corrupt practice within the meaning of Sub-section (2) and (4) of Section 123 of Representation of People Act of 1951 (hereinafter referred to as the 'Act').
2. Basis for it was, only, a leaflet got printed by the appellant, the English translation of which is extracted below:

"Kachi Bastis shall be erased to the ground by bulldozers".

Threat by Shanti Dhariwal" Congress in its true colours. Posing as so-called benefactor of weak and downtrodden poor people, the Congress has come in its true colours.

Shanti Dhariwal threatened the Kachi Basti people in Anantpura on 1.3.1985. That "Kachi Bastiwalo you have to cast your vote to Congress in the Assembly elections also as in the Lok Sabha elections. In case Jagdish Thade loses then I shall get the Kachi Bastis bulldozed. I shall see your houses shall be razed to the ground."

You recognise their true faces. They are wolf in the skin of Jackals. They have started showing their blood soaked hands and blood thirsty jaws. The grip of Congress is tightening around your neck.

You have to ponder as to whether those give threats to raze your houses by bulldozers are entitled to get your vote.

Reply these Jackal threats by casting your vote on fifth March.

BJP with you in every struggle.

Vote for BJP".

3. Did it relate to personal character or conduct of the Congress candidate, the primary ingredient of Section 123(4) of the Act? If it was then, was it false? And false to the knowledge of appellant? Did it amount to undue influence resulting in interference with free exercise of electoral right under Section 123(2)? According to the High Court it did as words their "inke" and they "inhone" used in the leaflet referred to the personal conduct of the candidate, and not to the party. The High Court further found that looking to the margin by which the appellant succeeded, i.e. 579 votes, the statement made was reasonably calculated to prejudice prospect of the Congress candidate. Even first part of the leaflet, that is, the extract of the speech, purported to have been delivered by the Congress M.P. was held to be false as it could not be established that any meeting took place. Election was found invalid, also because of undue influence exercised by making false representation that if Congress candidate was elected the house shall be erased. Whether the High Court was justified in concluding that, the statement in leaflet was false even though Shri Dhariwal from whose speech the purported extract was got printed, and Smt. Premrata the other Speaker were not examined and the statement of the appellant and his witnesses, DW-7 and DW-8 were disbelieved on an erroneous application of ratio in *Surinder Singh v. Har Dayal Singh* as evidence led by the appellant was not for proving corrupt practice, need not be gone into if the claim of the appellant that on the pleadings in the Election petition filed under Section 83 read with Section 100 of the Act no triable issue arose is well founded, then the petition was liable to be dismissed under Order 7 Rule 11, CPC. It is liable to be dismissed, even now in appeal as is clear from ratio in *Hardwari Lal v. Karam Singh* if it is found that pleadings were insufficient or they were lacking immaterial particulars.

4. The submission that an election petition could be dismissed, apart from merit, only for one of the reasons mentioned in Section 86(1) is devoid of any substance. Dismissals visualised under Section 86(1) are for lack of verification or presentation of petition beyond time or for defect in joinder of parties or for non-deposit of security for costs. These are defects in frame or presentation of petition. On the other hand dismissal for failure to disclose cause of action under Order 7 Rule 11 of Civil Procedure Code is in course of trial. In *Azhar Hussain v. Rajiv Gandhi* 1986 (Supp) SCC 315, it was observed, 'that the fact that Section 83 does not find place in Section 86 of the Act does not mean that powers under C.P.C. cannot be exercised.'

5. Elections the mechanical guarantee of democracy and means to the end of the Government by public opinion responsive and responsible to the electorate is basically fought out on fair criticism. Resorting to corrupt practice in it is subversive of democratic process. Impact of it is deep and wide spread, therefore, statutory compulsion visualised by 83(i)(b) of the Act to set forth full particulars of such practice including names of persons, time and place, has been construed strictly and in absence of precise and specific pleading it has been held to render an Election petition infirm.

6. An election petition filed under Section 81 is required by Section 83(1) to contain concise statement of the material facts on which petitioner relies. And Clause (b) further mandates a

petition to set forth particulars of any corrupt practice that the petitioner alleges including as full a statement as possible of the names of parties alleged to have committed such corrupt practice and the date of commission of each such practice. Importance of material facts and the distinction between material facts and particulars were brought out in *Manubhai Mondial Amersey v. Popat Lal Manilal Joshi and Ors.* Consequence of lack of such allegations of material facts were considered in *Sumani N. Balkrishna etc. v. George Fernandese and Ors.* In *Hardwari Lan's* it was held that 'an election petition has the effect of declaring an election void. It is serious remedy. It is, therefore, vital that the corrupt charge against the respondent should be a full and complete statement of material facts to defend the charges.' All these decisions were analysed in detail in *Azhar Hussain v. Rajiv Gandhi* 1986 (Supp) SCC 315 and it was held that the settled principle of law, as it emerged from numerous decisions of this Court in regard to the question as to what exactly was the content of expression 'material facts and particulars' which the election petitioner should incorporate in petition by virtue of Section 83(1): Material facts are facts which if established would give the petitioner the relief asked for. The test required to be answered is whether the Court could have given a direct verdict in favour of the election petitioner in case the returned candidate had not appeared to oppose the election petition on the basis of the facts pleaded in the petition.

7. Law being thus the pleadings in election petition may be set out to ascertain if they satisfied requirements of Section 123(4) as analysed in *Sheopat singh v. Ram Pratap* namely, if the leaflet was publication of any statement of fact that the fact mentioned in leaflet was false, that the appellant believed it to be false or did not believe it to be true, that the statement was in relation to personal character or conduct of the Congress candidate and the statement in leaflet was one reasonably calculated to prejudice the prospects of the Congress candidate. Relevant paragraphs of 3(i) and (j) of the petition are extracted below:

(i) "That the election of the Respondent No. 1 is also liable to be set aside on account of the following corrupt practice namely; the respondent No. 1 published the pamphlets (submitted herewith and marked as Annexures 4 & 5 and circulated the same in the Vidhan Sabha Nirwahan Kshetra, Kota (107) in which with a view to unduly influence the electors from exercising their electoral right in a free and fearless manner by making out false propaganda threatening them of dire consequence knowing fully well that such statements were absolutely false. By the second pamphlet, inducement to vote for the Respondent No. 1 was given offering certain facilities in case the Respondent No. 1 was voted and declared elected. Whereas, in the case petitioner is declared elected, would on the contrary impose undue harsh taxation and thereby inducing through mis- representation and false propaganda the electors not to cast their votes in favour of the petitioner and to cast their votes in favour of the Respondent No. 1. By these acts, the Respondent No. 1 along with his agents and party workers Shri Damodar Prasad published and circulated the aforesaid material threatening the electors with injury to the extent of demolition of their houses in case the respondent No. 1 was not declared elected. By these acts, the respondent No. 1 is guilty of corrupt practices as laid down under the Act rendering himself disqualified from being declared elected and rendering his election void on account of the same.

That, the respondent No. 1 on 3.3.1985 at about 5 p.m. at Khudlu, Ward No. 7, Civil Lines, Kota, addressed general public in a meeting stating that "If Congress comes in power, if Thada is elected house tax would be imposed, as Thada is in favour of imposition of house tax. There is no difference between Thada and Dhariwal, if Thada is voted, these two personalities of Kota would incur their wrath upon the poor persons and their hutments shall be razed to ground by bulldozers.' The respondent No. 1 through his speech influenced the voters not to cast their votes in favour of the petitioner. Before the said speech leaflets (Ann.4 & 5) were distributed by the election agent Shri Krishna Gopal Gupta and other agents of the respondent No. 1 to the knowledge of the respondent No. 1 himself. Almost the same type of speech was made by Shri Krishna Gopal Gupta, the election agent of the respondent No. 1. Similar such meetings were held by the respondent No. 1 and the election agent and other supporters on 3.3.1985 at 7 P.M. at Sanjay Nagar Bhimganjmandi, at 7 P.M. at Ganwade and at 8 P.M. at Distpura (Ward Civil Lines) on 4.3.85 at about 5 P.M. at Adarsh Nagar Kachi Basti, the respondent No. 1 again repeated that Shri Thada is a dangerous person, if he is elected, he would get all the Kachi Bastis demolished.

8. What is striking is that there is no allegation that the leaflet purported to refer to personal character the respondent. Distinction between personal character and political character of a candidate has been (sic) out in *Ram Chandra v. Har Dayal* 1986 (2) SCR 121. It was held that adverse and undignified criticism does not (sic) within the meaning of corrupt practice under Section 123(4). Averments in paragraph (i) and (j) (sic) above, omitting legal expression, such as false and undue influence, were that the appellant (sic) the pamphlets published and circulated and in case the respondent was elected the house-tax should (sic) imposed and electors houses shall be erased to the ground. None of these could be said to reflect on (sic) character of the respondent. In *G.S. Balliram v. Vithalrao and Ors.*, the two pamphlets which referred to the candidate by name who was responsible for imposition of toll tax and during whose tenure (sic) taccavi could be paid to the cultivator without giving bribe, who protected interests of contractors (sic) neglected poor citizens were held not to relate to personal character or conduct of the candidate.

9. Similarly even though it was pleaded that the leaflets were false but there is no whisper if the appellant (sic) it to be false or did not believe it to be true. The petition is silent on the vital aspects if any (sic) took place on 1st March, 1985 and whether Congress M.P. participated in it. Merely pleading (sic) more statement of law than fact, without necessary factual foundation could not be said to give (sic) to any triable issue. Attempt was made to argue that even if the first part of speech was taken to be (sic) the second part using the words "inke" and "inhone" clearly referred to personal character of the candidate and that being false a triable issue arose. Assistance was sought from observations, shorn of (sic) context, in *Avi Singh Brar v. Tej Singh and Ors.* 198 (2) SCR 415 and *Manubhai Nandlal Amersey v. Popat Lal* (sic) Joshi in support of the submission that even without mention of name of candidate it may be (sic) that it related to him. True, but that is at later stage, stage when evidence is led in support (sic) the petition. What is germane in this petition is if the averments made in this petition prima facie (sic) any cause of action. Extract in first part of the leaflet is either correct or false. For either necessary (sic) are missing. If the first part is omitted then second does not make any sense. And to make it (sic) if the top of the leaflet is read with last part then it refers to congress party and not to candidate. If the first part, namely, the speech was correct then the second part becomes an opinion and (sic) a statement of fact as was held in *Kumaranand v.*

Brij Mohan Lal Sharma . In either case the (sic) were wholly vague and insufficient to raise any adjudicatory issue. Averments in paragraph (sic) relating to distribution and circulation did not remove the defect in pleadings under Section 123(4). (sic) the absence of denial of meeting on 1st March, 1985 and necessary averments about the knowledge (sic) appellant that the leaflet was false, which he believed to be false, or did not believe it to be true, the respondent could not have succeeded even if the appellant would not have put in appearance, therefore, (sic) is squarely covered by the principle laid down in Azhar Hussain's case 1986 (Supp) SCC 315. Mere allegations that the appellant got a leaflet published which was false or it was false to the knowledge of the appellant did (sic) meet the requirements of Section 83(1)(b). It was neither precise statement of fact nor furnishing of (sic) facts or particulars as far as possible. Even this much was not said that no meeting took place (sic) 1st March, 1985. No facts or circumstances were mentioned to give even the haziest picture for the (sic) of averment that the leaflet was false to the knowledge of the appellant or that he did not believe (sic) to be true.

10. Effort was made to distinguish Hardwari Lal's case 1972 (2) SCR 742 and Azhar Hussain's case 1986 (Supp) SCC 315 by urging that the leaflet or pamphlets were not produced in these cases whereas it was made annexure to the petition therefore it became a part of pleading under Section 83(2). May be, but it did not do away with mandatory requirements of Section 83(1)(b). Even assuming it to be so could the leaflet on its own without necessary averment in the petition raise any triable issue? As observed earlier it did not. If there was no pleading that the speech delivered by Shri Dhariwal was not made on 1st March then no evidence could be led on it And if that is omitted, then the second part irrespective of evidence could not be said to refer to personal character of the Congress candidate. In Azhar Hussain's case 1986 (Supp) SCC 315 a poster publisher painting rival candidate as supporter of Khalistan and in conspiracy with terrorists was found to be vague not because poster was not produced but because the petitioner failed to disclose names of relevant persons who were associated with its distribution etc.

11. Although much was argued on 123(2) but no specific pleading could be pointed out in this regard. No details of undue influence or direct or indirect interference by the appellant, or his agent, with his consent with free exercise of electoral right was raised. In fact guilt under Section 123(2) was attempted to be made on same pleading, namely, paragraph 3(i)(j). The ingredients of the two being different they were to be pleaded specifically and the details were to be furnished separately to give a clear picture of cause of action. Undue influence is an inference which arises on facts pleaded and proved. Mere averment that appellant exercised undue influence in absence of precise facts, namely, the nature of such influence, the persons on whom it was exercised and time and place of it the pleadings in paragraphs (i) and (j) fell short of the requirement in law. Allegations fishing and roving, as were pleaded in this case could not be said to be sufficient compliance of Section 83(1)(b).

12. Even assuming that triable issue arose, was the High Court justified in finding that the appellant was a guilt of corrupt practice? Claim of respondent that appellant addressed a meeting on 1st March, 1985 or influenced the voters or distributed leaflets as set out in paragraph (j) of the petition was disbelieved. It was further found that it did not relate to personal character or conduct of appellant, therefore, it could not furnish foundation for corrupt practice under Section 123(4). But annexure 5, the leaflet extracted earlier, was found to refer to conduct of the respondent And as

respondent was not cross-examined when he stated that the pamphlets were false it was obvious that the statement was false which appellant believed to be false. Without entering into if the contents of the pamphlet could be construed by oral evidence, and the words 'inke' or 'inhone' could be taken to refer to the respondent or not the pamphlet may be examined as it is. As stated, it is in two parts; extract from speech of Shri Dhariwal and inference founded on it. Truth or otherwise of the meeting held on 1st March, 1985, from which the extract was got printed was not denied in the petition. Shri Dhariwal was not examined, nor Smt Prem Lata, other Speaker, was produced. The respondent or his witnesses did not dispute when they appeared in the witness-box that no meeting of a Congress party took place on 1st March, 1985. Evidence of appellant that the extract was from the speech of Shri Dhariwal was disbelieved because the appellant stated that he made the speech while he was returning along with 5 or 6 workers at about 8.00 p.m. whereas his witness DW-7 stated that when the meeting was held the appellant was taking tea at his place. Although there is no contradiction in the two statements since DW-7 stated about taking of tea and presence of appellant at his house not when he left his house for attending the meeting but at 8.00 p.m. when meeting was held. Yet even if it is held that there was contradiction and appellant was not there it was insufficient to demolish the appellants version that meeting took place on 1st March, 1985. DW-7 is a resident of Anantpur where the meeting is stated to have taken place. He has been Municipal Councillor. He stated that he was present in meeting held on 1st March, 1985, at Anantpur at 8.00 p.m. He was not cross-examined on any of these aspects. No suggestion was put to him that in fact no meeting took place or he was not present. The finding of the High Court, therefore, that no meeting took place on 1st March cannot be upheld.

13. Even the High Court found it difficult to disbelieve the meeting but yet it found that the second part of the leaflet referred to personal character of the respondent and that being false a charge under Section 123(4) was made out. A reading of the leaflet leaves no room for doubt that the second part cannot survive in isolation. If the first part is omitted then the second, as stated earlier, does not make any sense and if the first part is correct and a speech, as extracted, was made by Shri Dhariwal then the later was an inference or opinion about the political character of the respondent and not his personal conduct or character. In *Ram Chandra Bhatia* 1986 (2) SCR 121 election was set aside by the High Court on a pamphlet which painted the rival candidate (sic) indulging in falsity. It was not approved by this Court and it was held 'law postulates that if a false statement (sic) made in regard to public or political character of the candidate it would not constitute a corrupt practice even if it is likely to prejudice to prospect of that candidates election. The public and political character of a candidate is open to public opinion or public criticism. If a false statement is made about the political views or his public conduct or character the elector could be able to judge the elections on the merits and could not be misled by any false allegations in that behalf. 'Therefore, if it is accepted that reference to 'true faces' in the leaflet or 'wolf in the skin of jackals' or 'showing their blood soaked hands', and 'blood thirsty jaws' was to Congress candidate then in the background of the speech delivered by Shri Dhariwal it could utmost be construed as an expression of opinion and not a statement of fact.

14. Therefore, from either aspect the petition was liable to be dismissed. It did not fulfil the requirements of Section 83(i)(b) and was liable to be dismissed under Order 7 Rule 11. Even otherwise the charge of corrupt practice could not be said to be established against appellant.

Consequently the appeal succeeds and (sic) allowed. The appellant shall be entitled to its cost.