

## **Gurdev Singh, Patiala vs Baldev Singh, M.L.A., Patiala on 27 October, 1978**

**Equivalent citations: AIR1979SC731, (1979)3SCC598, 1978(10)UJ904(SC), AIR 1979 SUPREME COURT 731, 1978 UJ (SC) 904, 1979 (11) LAWYER 69, 1979 (3) SCC 598, (1979) 1 SCWR 204**

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**Bench: Y.V. Chandrachud, A.D. Koshal, P.S. Kailasam**

### **JUDGMENT**

P.S. Kailasam, J.

1. This appeal is preferred by Gurdev Singh, unsuccessful candidate in election to the Punjab Assembly from Shauntrana reserve constituency which was held in 1977 under Section 116A of the Representation of the People Act, 1951 against the judgment of the Punjab High Court dismissing the election petition.

2. The election to the Punjab Assembly from the Shauntrana reserve constituency was held in June, 1977. The polling took place on 12.6.1977. The appellant Gurdev Singh secured 22422 votes and the returned candidate Beldev Singh, the respondent, secured 22557 votes getting a majority of 137 votes and was declared elected. The election was challenged mainly on the ground that the respondent hired vehicles for carrying voters from their respective villages to the polling booths for casting their votes which is a corrupt practice, under Section 123(5) of the Representation of the People Act, 1951. The other grounds on which the election was challenged were that the respondent procured help of Sukhdev Singh, PW 13, who is a gazetted officer of the State of Punjab for the furtherance of his election prospects. It was also stated that the petitioners's polling agent Sher Singh PW 19, was not allowed to enter the polling booth No. 7 situate at village Buzerak by Sukhdev Singh who was acting as a Presiding Officer of the said polling booth. It was further alleged that 50 votes were short-received by the Returning Officer from this polling booth, which were not accounted for and many votes were improperly received' and many voters were disallowed to cast their votes. All the allegation were denied by the respondent. Several issues were framed by the learned Judge who tried the election petition. He decided all the issues against the petitioner and dismissed the petition.

3. In the appeal before us. Mr. Tarkunde, the learned Counsel for the appellant-petitioner confined himself to the second issue raised before the learned Judge. Issue No. 2 is as follows:

Whether the respondent procured vehicles for free conveyance of the electors to the polling booths and back?

The allegation regarding this issue is contained in paragraph 7 of the petition which reads as follows:

On 11.6.77 at noon time Baldev Singh, 'respondent' came to the office of the Truck Operators' Union, Patran, with the assistance of Harpal Singh. He hired truck No. PUP 1879 owned by Harbans Singh Randhawa resident of Patran, Truck No. PUP 9635 owned by Mewa Singh of Patran, truck No. 3331 owned by PNP Hardial Singh of Patran, and truck No. PUV No. 2749 owned by jagir Singh and Zora Singh resident of village Nial. These trucks were hired to carry voter from their villages free of charge to cast their votes at the polling stations meant for those villages on 12.6.1977. The fare was fixed @ Rs. 100/- per each truck The details regarding various trucks used at the various polling booths with the names of the witnesses that travelled in the trucks were also furnished. The allegation were denied by the respondent who stated that the names given in the petition are strong supporters of Akali Dal and the names are given for the basis to lead false evidence. The learned Judge rejected the evidence produced by the petitioner, mainly on the ground that even though the petitioner saw the voters being carried by the respondent's supporters to polling station he did not make any written complaint about this matter to the Returning Officer. The learned Judge also pointed out that the petitioner had on an earlier occasion contested the election to the Punjab Assembly and could be fixed with the knowledge of legal position that hiring of vehicles for carrying voters to the polling booth by the candidates constitutes a corrupt practice. If in fact the respondent had hired and used any trucks for carrying the voters to the polling stations the learned Judge observed, he would certainly have lodged complaint with the concerned presiding officer and the returning officer of the constituency. It is pointed out by the learned Judge that the petitioner did lodge a complaint about the conduct of PW 13 before the Sub Divisional Magistrate, Samana who held an inquiry the result of which went against him. In such circumstances, the petitioner would not have failed to make a complaint about the use of hired vehicles for carrying voters by the respondent. The learned Judge proceeded to consider the evidence of the witnesses that spoke about the hiring of the vehicles by the respondent and rejected it on the ground that they are interested and unacceptable.

4. Mr. Tarkunde, the learned Counsel for the appellant, pointed out that in order to amount to a corrupt practice under Section 123(5) of the Representation of the People Act, 1951, it is necessary that there should be hiring or procuring, whether on payment or otherwise, of any vehicle by a candidate or his agent or by any other person with the consent of a candidate or his election agent, for the use of such vehicle for the free conveyance of any elector. It was submitted that though the petitioner had seen certain vehicles carrying voters at that time he did not have information that the respondents had hired vehicles and that they were used for free conveyance of the electors. This information he obtained only later & that is why he could not have made a complaint to the

Returning Officer at that time. On a reading of the evidence of the appellant, we are unable to accept this plea. The petitioner stated in his evidence that he was going round his constituency on the day of the polling and had seen voters being carried by the respondent's supporters to various polling stations. In the Chief Examination he did not explain that the failure to give a complaint was due to the fact that he was not aware that it was the respondent who had hired the trucks. In cross examination he admitted that he did not make any written complaint to the polling officer of any polling station nor did he make a written complaint to the SDM who was acting as Returning Officer of this constituency. He admitted that in fact he made one complaint to the Returning Officer about Bazurak polling station that the Presiding Officer Sukh Dev Singh had been canvassing the voters to vote for the respondent but even in that he did not mention that the voters were being carried in hired trucks. In cross examination the petitioner admitted that he did not make any complaint but did not come forward with the explanation that he was not aware of the fact that the respondent had hired the trucks. In the circumstances, we are unable to accept the explanation put forward by the learned Counsel for the petitioner at the Bar for the failure of the petitioner to complain to the Returning Officer about the hiring of vehicles.

5. The learned Counsel submitted that the High Court ought to have accepted the evidence let in by the petitioner regarding the hiring of the truck belonging to P.W. 11 Sukhjinder Singh. P.W. 11, Sukhjinder Singh, stated that he was engaged by the respondent and Harpal Singh President of the Truck Operators' Union for carrying the voters from Harchandpura to Nanhera and that he carried the voters from Harchandpura to Nanhera and after they had cast their votes brought them back to their respective villages. He did not charge anything from the voters whom he carried because he was paid the hire charges by the respondent. In cross-examination he stated that he maintained a log book but had not brought the same with him. He admitted that he did not enter this trip in the log book. The High Court has relied on the admission of the witness that he did not enter the trip in the log book. The other witnesses examined were P.Ws. 20, 21, 22 and 23 who spoke of their having travelled in the trucks driven by Sukhjinder Singh to the polling station Nan her a. The evidence of P.Ws. 20, 21, 22 and 23 is totally unconvincing. P.W. 20 stated that he and his co-villagers went to the polling station Nanhera in a truck which was being driven by a young lad of about 21 years who disclosed that he had been sent by the respondent to carry the voters. The witness did not identify P.W. 11. The statement that a young lad of 21 years disclosed to him that he had been sent by the respondent to carry to the voters is hearsay and cannot be acted upon. P.W. 21 stated that he went to the polling station in a truck driven by one Sukhjinder Singh and that he did not pay any fare for travelling in that truck which brought him back to his village after he had cast his vote. He stated that the truck driver told him that the respondent had paid the hiring charges for the truck. This witness admitted that he is a member of the Akali Jatha and that he was appointed as a counting agent by the petitioner. The evidence of this witness was rightly rejected by the learned Judge as being highly interested. Further, the evidence of this witness is sufficient to discredit the plea of the petitioner that he was not aware of the fact that the respondent had hired the trucks to carry the voters to the polling booths for he was the counting agent of the petitioner. If he had been carried in a truck and if he had known that the truck in which he travelled was hired by the respondent he would have certainly given the information to the petitioner. Equally unconvincing and unacceptable is the evidence of PW 22 and 23 as they are all found to be belonging to the Akali Party and therefore interested in the petitioner. The evidence regarding the hiring of other trucks is also of

a similar nature and the learned Counsel for the petitioner did not press for their acceptance.

6. We agree with the learned Judge that the evidence adduced by the petitioner is far from satisfactory and that it was totally failed in proving that the respondent had hired the trucks and carried the voters to the polling booths. The findings of the learned Judge on the other issues were not challenged before us. We have no hesitation in rejecting the appeal as being of no substance. The appeal is dismissed with costs.