Khwaja Mazhar Uddin vs Rama Shankar Amist And Ors. on 7 October, 1955

Equivalent citations: AIR1956ALL169, AIR 1956 ALLAHABAD 169

ORDER

Mehrotra, J.

1. The petitioner Sri Khwaja Mazharuddin and opposite party No. 1, Sri Rama Shankar Amist, were candidates for the Presidentship of the Municipal Board, Hamirpur, at the elections held in 1953. The. applicant secured 963 votes while the opposite party No. 1 obtained 956 votes, and the applicant was declared duly elected President of the Municipal Board. An election petition was filed by the opposite party No. 1 challenging the validity of the petitioner's election on a number of grounds alleging corrupt practice and false personation in the election.

The matter was referred to the District Judge, Jhansi, as the Election Tribunal, and the "District Judge, by his order dated 14-5-1955, declared the election invalid, and further declared a casual vacancy as having been created and directed the District Magistrate to proceed with fresh elections. A number of grounds were urged in the petition challenging the election of the petitioner. But the Election Tribunal has set aside the election on three grounds.

Firstly, the Tribunal has held that some time before the election the applicant had got repaired and whitewashed a temple which was situate on the land belonging, to him and had allowed the Hindu public to worship the idol installed in the temple. By so doing the applicant had influenced the Hindu voters to vote in his favour and had committed corrupt practice under Section 28, Municipalities Act. The Tribunal has secondly held that during the election period the applicant doubled his contribution to the Ramlila Committee and thereby influenced the Hindu public to vote in his favour.

Lastly, it was held by the Tribunal that in respect of two voters of Ward No. 1, namely No. 23, Putti son of Mahmud Khan, and No. 24, Bashir Mohammad son of Inayat Mohammad, the petitioner got others to vote for. them. The contention of the applicant is that the incidents on which the petitioner has been held to have committed corrupt practice do not amount to corrupt practice within the meaning of Section 28, and that there is no finding by the Tribunal of tine facts which would constitute corrupt practice under Section 28, Municipalities Act.

2. In order to appreciate the points urged by the petitioner it may be necessary, first, to refer to the finding arrived at by the Tribunal on these points. As regards the charge against the applicant that he induced the Hindu public to vote in his favour by allowing them to worship the idol installed in the temple situate in hie land, the finding of the Tribunal is as follows:

> "There is not the least doubt in my mind that respondent 1 had got the temple white washed and repaired and made a present of it to the Hindus of mohalla and others for the purpose of re-opening it and re-starting in it worship of the old idols. His work would have been commendable for the purposes of communal harmony and as an exhibition of his communal tolerance.
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> Objection to it in the present petition is that the particular temple was re-opened at the particular time for the purpose of gaining the sympathy and winning the votes of the Hindus at the election."

He has further found that the petitioner beforehim succeeded in proving that the respondent 1 had caused an old temple to be reopened for Hindus for idol worship during the election period; that "the petitioner has also succeeded in proving that the respondent 1 had substantially increased his subscription to the Hamirpur Ramlila fund for the purpose of influencing Hindu voters in the election. The above two items were indeed detrimental to the respondent 1 legally in view of the decision in the case referred to by me in discussing the evidence. Not only were the above acts ' tantamount to offering illegal gratification to the Hindu electors, they meant canvassing on grounds of community or religion. It is not necessary that the illegal canvassing should be on the ground of the candidate's own caste, community or religion. It may be on the ground of electors' caste, community, sect or religion which is different than that of the candidate."

It is very difficult to understand what the Tri bunal meant by saying that the applicant had made a present of the temple to the Hindus of the mohalla and others for the purposes of re opening it and re-starting in it worship of the idols. It was never the case of any temple that any gift had been made of the temple to the Hindu community. The question, therefore, of making a present to the Hindu community does not arise.

What the Tribunal really means is that the applicant repaired the temple which was lying on his plot of land and allowed the Hindu public to worship the idol installed therein. The question, therefore, to be considered would be whether this finding by itself amounts to a corrupt practice. . It is necessary to refer here to Clause (ii) of Section 28 which provides as follows :

> "28. A person shall be deemed to have committed corrupt practice who, directly or indirectly, by himself or by any other person
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> (i) .....
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> (ii) with a view to inducing any voter to give or to refrain from giving a vote in favour of any candidate, offers or gives any money, or valuable consideration or any place or employment, or holds out any promise of individual advantage or profit to any person."

So far as the charge of opening the temple is concerned, permitting it to be used by the Hindu public does not amount to giving any money or valuable consideration or any place or employment within

the meaning of Section 23 (ii). Mr. Dwivedi who appears for the opposite party contends that it may amount to giving a place. Perhaps the Tribunal had that in mind when it remarked that the applicant made a present of it to the Hindu community.

In - my mind, giving any place or making a gift of any property or place to any person with a view to induce the voters to vote for him necessarily implies the giving of the proprietary rights to the person concerned. The mere grant of a permission to the Hindu community to come and worship in a temple cannot amount to giving of a place. Under those circumstances, on the findings arrived at by the Tribunal, therefore, it cannot be said that the applicant committed any corrupt practice by repairing a temple and allowing the Hindu public to worship in it.

Apart from this the opposite party has not only to prove that the petitioner did something which was in the interest of Hindu public, but he has further to prove that such an act was done with a conscious design to induce the voters to give vote for him. The mere doing of an act which may be beneficial to a person or persons does not necessarily lead to the inference that there was a design to induce voters to vote for him. There must be some further circumstances placed before the Tribunal to prove corrupt practice as defined in Section 28, Sub-clause (ii) besides merely proving the fact that something beneficial was done by the returned candidate.

The Tribunal has further held that the act of the petitioner also amounts to a corrupt practice as defined in Section 28, Sub-clause (vi) which provides that canvassing on . the ground of caste, community, sect or religion amounts to corrupt practice. Merely giving certain benefit to a community does not necessarily mean that the applicant canvassed on the ground of caste, community, sect or religion.

If the applicant, after having done that benefit to a particular community, had gone to the Hindu voters and pointed out to them that he expects them to vote for him as he has done some good to their community, it may have been argued that it amounts to canvassing on the ground of caste, but the mere giving of benefit to a community cannot mean canvassing on the ground of caste, community, religion or sect. In my judgment, therefore, on the finding of the Tribunal itself on this point no corrupt practice has been established.

3. Coming to the question of payment of subscription to the Bamlila Committee, it is not a case where the applicant in a particular solitary year paid the contribution. He has been paying contribution in past also. The only allegation against him is that he doubled the contribution in the year 1953, and he had done the same once earlier in 1947 during the period of elections. Prom that the finding of the Tribunal is that the applicant has committed corrupt practice.

The Tribunal, has remarked in this connection that it is significant to note that the amount of subscription was definitely increased in the election years 1947 and 1953. He has further held that in the present case the increase in subscription in the election year 1953 could not have been with any other object In-view, and that except the election there was no other reason for increasing the subscription. He has further said :

> "Intention of the respondent i is quite clear although the allegation that he had specifically asked the management of Bamlila to think of obtaining the vote for him and to help him in being . elected as President of the Municipal Board may not have been substantiated. Thus the respondent 1 has consciously indulged in the corrupt practice of bribery in accordance with the principle enunciated in the case of 'Sarup Narain v. Durganarain Singh'."

The case which was set up by the opposite party in the petition was that the petitioner specifically asked the management of the Ramlila Committee to think of obtaining vote for the applicant and to help him in his election. That case has, however, been negatived by the Tribunal, and he has not accepted that the applicant asked the management of the Ramlila to help him in procuring votes. The only thing, therefore, which has been established' in the case is that during the period of election the applicant substantially increased his contribution.

The Tribunal itself does not seem to be clear in its mind as to what fact was necessary to find before an applicant could be accused of corrupt practice. What intention, found proved, would lead to an inference of corrupt practice was not clear in the mind of the Tribunal itself. He has taken certain observations made in 'Sarup Narain v. Durganarain Singh', as laying down a particular law on the subject and has come to the conclusion that that was the intention of the applicant on the principles enunciated in that case.

I have examined the case relied upon by the Tribunal. In that case the Tribunal relied on certain observations made in the English case of 'Plymouth', (1880) 3 O'M and H 107 (A), where it was observed :

> "It is obvious that what are palled charitable gifts may be nothing more than a specious and subtle form of bribery, a pretext adopted to veil the corrupt practice of gaining or securing the votes of the recipients. And if this is found to be an object of the donor, it matters not under what pretext, in what form, to what person, or through whose hands the gift may be bestowed or whether it has proved successful in gaining the desired object, or not.
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> On the other hand, a gift may purely be what it professes to be, the, the offspring of a purely benevolent impulse and if this be its character, it matters not whether the recipient makes a good or bad use of it, or what its effects may be upon him, A motive originally pure cannot become corrupt by reason of a misuse of what was intended to be a benefit. All we can say is that a charitable gift however injudicious it may be, is harmless in the eye of the law, whatever its effect may be upon the recipients and certainly, it is not bribery."

From this remark it is clear that the charitable gifts by themselves in order to amount to corrupt practice must be proved to have been given with an express design of inducing the voters to vote for the person who gives that charity. The courts have to find as a fact that the charitable gifts were made with the express design of corrupting the voters, of inducing them to vote for the candidate,

and in order to come to such a conclusion mere evidence to prove the making of gift is not sufficient.

Some other additional circumstances have got to be proved from which such an inference can legitimately be drawn. In the present case the petitioner before the Tribunal had attempted to. prove that the returned candidate asked the managing committee of Ramlila to help him to procure the votes. That circumstance has nob been proved in this case, and therefore the Tribunal was left only with the evidence of the fact that the subscription had been increased.

In the absence of any other circumstance this fact by itself cannot be regarded as relevant to establish corrupt practice. The Tribunal has accepted the principle laid down in the case of 'Sarup Narayan v. Durganarain Singh', and has come to a finding that the applicant has committed corrupt practice of bribery in accordance with the principle enunciated in that case. The Tribunal has quoted a passage from that judgment, but has curiously enough not considered the previous paragraph of that judgment in which it was laid down that "it appears from the evidence of Nek Ram that after the donation of Rs. 100/- was given to the Kanauj Ram Lila Committee it was announced that the gift was intended for securing votes for the respondent 1, as he had done meritorious work in the Council and had got a road constructed."

It was on a consideration of the entire evidence produced in the case that the Tribunal "in that case came to the conclusion that with the conscious design on the part of the returned candidate to induce voters to vote for him he had made the gift.

In the present case; as I have already pointed out, the only circumstance which the Tribunal has accepted to be proved is that the subscription was enhanced in the year, 1953. In my judgment, the Tribunal has committed manifest error of law in regarding this fact as establishing corrupt practice against the applicant.

4. The last ground on which the Tribunal has held the election of the petitioner void is the finding that false personation was committed in respect of two voters. The finding of the Tribunal as regards Putti is that "it is apparent that an adult woman had represented herself to be Punni and had voted in place of Putti's son Muhmud Khan by saying that Putti was wrongly recorded in place of Punni and Mahmud Khan was wrongly recorded in place of Khurshed Khan without any reference to any consideration of the age in the electoral roll. This was a clear case of personation."

He has further found that as the ballot papers issued to the woman calling herself Sm. Punni and Wahid Ullah Khan were found in the box of the respondent 1 before him (i.e., the petitioner) he could not escape the consequences of false personation caused to be effected in the case of Smt. Punni and Wahid Ullah Khan and the Improper correction made consequently in the electoral -roll. He further said--

> "It! is apparent that the voters who apparently voted had got their names entered surreptitiously in place of real voters already in existence on the roll by misrepresenting that those electors did not exist. This was a clear corrupt practice and amounted to the offence of -cheating under the Indian Penal Code."

Whether it amounted to an offence of cheating was not the question which the Tribunal had to consider. The Tribunal had only to consider whether the facts proved amounted to corrupt practice within the meaning of Section 28. Section 28, Sub-section (3) provides that a person shall be deemed to have committed corrupt practice who, directly or indirectly, by himself or by any other person gives or procures the giving of a vote in the name of a voter who is not the person giving such vote.

If a person votes for himself, the face that his name was brought in ' the voters' list incorrectly or surreptitiously would not render his voting corrupt practice under Section 28. The persons who actually voted in both these cases were persons whose names were either brought on the voters' list after corrections had been made or they, at any rate, went to the polling officer and pointed out to him that they were really the persons whose names had been entered in the voters' list and they were entitled to vote. It cannot be said that they voted for persons other than themselves, and consequently on the finding of the Tribunal itself no corrupt practice was committed in the case of these two voters.

5. I, therefore, allow this petition, and quash the order of the Election. Tribunal, setting aside the election of the petitioner, with costs.