Sheopat Singh vs Harish Chandra And Anr. on 22 August, 1958

Equivalent citations: AIR1960SC1217, AIR 1960 SUPREME COURT 1217

Bench: P.B. Gajendragadkar, A.K. Sarkar

JUDGMENT

T.L. Venkatarama Aiyar, J.

1. This appeal arises out of a petition filed by the first respondent, Harish Chandra, under Section 81 of the Representation of the People Act, 1951, hereafter referred to as the Act, for setting aside the election of the appellant to the Legislative Assembly of the State of Rajasthan from the Hanumangarh Constituency, in the General Election which was held in February and March 1957. Two candidates contested the seat, the appellant and one Ramchandra Chowdhury. The appellant polled 18,530 votes and Ramchandra Chowdhury 17,136 votes. The appellant was accordingly declared elected on March 18, 1957. On April 29, 1957 the first respondent who is a voter in the Constituency filed the petition, out of which the present appeal arises, alleging therein that the appellant had committed a number of corrupt practices in the conduct of the election, and praying that his election might accordingly be declared void. The appellant denied the allegations in the petition.

2. Though before the Election Tribunal and in the High Court the controversy ranged over several charges, before us it is limited to only one of them, and that was thus stated in para 3(d) of the petition:

> "That the respondent committed corrupt practice by procuring and using mechanical vehicles for the transport of voters to and from the polling stations, details whereof are given in Schedule C appended to this petition."

In that Schedule, eleven instances were given. Issue No. V, which was framed with reference to this question is as follows :

> "Did the respondent procure and use mechanical vehicles detailed in Schedules C and E for the transport of voters to and from the polling stations?"

The Election Tribunal held that one of these instances was lacking in definiteness, and by order dated September 3, 1957 directed it to be struck out. Evidence was adduced by both parties on the other ten instances set out in Schedule C. The Tribunal first addressed itself to one of them, viz., the transport of voters from the village Lambi Dhab to Bholanwali polling station on March 1, 1957 in jeeps Nos. 849 and 935, and held on a consideration of the evidence that these jeeps had been used

for transporting voters and that they had been procured by the appellant. On that finding, and without discussing the evidence relating to the other instances, the Tribunal held that the charge against the appellant had been established.

3. Against this order, the appellant preferred an appeal under Section 116-A of the Act to the High Court of Rajasthan, and that was heard by a Bench consisting of the Chief Justice and Jagat Narayan, J. Dealing with this issue, the learned Judges observed that the order of the Tribunal dated September 3, 1957, striking out one of the instances was not proper, because if it was vague and indefinite, the petitioner should have been called upon to give further particulars and that the order striking it out, without giving an opportunity to the petitioner to do so was not justified. Then they proceeded to discuss the other ten instances on which evidence had been recorded, & held that in seven out of them it had been established that mechanically propelled vehicles had been used for transporting voters to the polling booths. The learned Judges further held that as regards the polling which took place at Bolanwali, jeeps had been procured by the appellant himself. With reference to other instances, they held that though it had been proved that mechanically propelled vehicles had been used, there was no direct evidence to prove that the appellant had procured them. This is how they state their conclusions :

> "We thus find that seven instances out of the 11 the particulars of which were given in Schedule C have been proved. They relate to 1-3-57, 3-3-57, 5-3-57, 7-3-57 and 9-3-57 and 7 different polling stations. There is no direct evidence to show that the vehicles used were procured by the appellant himself except in one instance relating to Bholanwali Polling Station where jeeps Nos. 835 and 849 were used. These jeeps were admittedly procured by the appellant himself. Most of the vehicles used in the other instances belonged to persons who worked for the appellant during this election. Balwant Singh and Birbaldass out of them were his polling agents who acted as such with the express consent of the appellant. Others like Ramdutt and Chunilal were his canvassers who must be taken to have acted as agents in connection with the election with the implied consent of the candidate." The learned Judges then proceeded to consider whether, on these facts, the election of the appellant was liable to be set aside. They observed :
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> "The question which arises for consideration is whether it can be said in the circumstances of the present case that the corrupt practice in question has been committed by the returned candidate or by any person with the consent of the returned candidate as required under Section 100(1)(b) of the Act."

And they expressed their conclusion in these terms :

> "From the numerous instances in which voters were carried in mechanically propelled vehicles by the agents of the appellant some of whom were quite close to him, we are of the opinion that the appellant could not have been unaware of this transport of his voters by mechanically propelled vehicles and did nothing to stop it. We accordingly infer that they were so carried with his implied consent."

4. The learned Judges next proceeded to discuss a question of law, which was raised by the appellant. That question may thus be stated : Under Section 100, as it was originally enacted, it was sufficient to invalidate an election that the returned candidate had connived at the commission of any corrupt practice. But by Amendment Act, XXVII of 1956 the word "consent" had been substituted for the word "connivance" in Section 100 of the Act. Therefore, it was not sufficient to show that the candidate had knowledge of the corrupt practice committed by his agents. It must be further established that he consented to the commission of such act. The argument was that, at the most, the evidence showed that the appellant might have had knowledge of the corrupt practice committed by his agents, but there was no evidence to show that he consented to it, and therefore, in law, as it now stands, the election should not be set aside. The learned Judges after examining this contention at some length came to the conclusion that the amendment of the Act had introduced no change in the law, that the word "consent" had a wider connotation than "connivance" and that it would include connivance and other matters as well, and after expressing their opinion on the question of law as above, they proceeded to restate their findings in the following terms:

> "From the numerous instances of corrupt practice by agents which have been proved in this case, we have inferred that voters were carried by mechanically propelled vehicles with the implied consent of the appellant."

As a result of this finding, the order of the Election Tribunal was affirmed. The appellant then applied under Article 133(1)(c) for leave to appeal to this Court, and the same was granted by the learned Judges, because they considered that the question whether there had been a change in the law by reason of the amendment made by Act XXVII of 1956 was one of general importance. That is how the appeal came before us.

5. Now, it appears to us that on the findings given by the learned Judges, the question as to whether the substitution of the word "consent" in place of "connivance" has brought about any change in the law does not really arise for determination. The learned Judges firstly find that the appellant had knowledge of the commission of corrupt practices by his agents and workers. If that was all that was found, it might have been open to argument whether that would be sufficient to invalidate the election under Section 100 (1) (b) of the Act, as it now stands. But the learned Judges further proceed to infer from the facts that the appellant must have consented to the commission of corrupt practices by his agents. If that finding is to stand, a discussion whether the word "consent" is stricter than the word "connivance" and whether the amendment has changed the law will be wholly academical. Realising these difficulties, Mr. Sharma who argued the case for the appellant contended that what the learned Judges had really found was that the appellant had knowledge of the commission of corrupt practices, and not that he gave his consent to them. It was argued that the learned Judges had held that "consent" and "connivance" did not mean different things, and in view of that expression of opinion, their finding that there had been consent by the appellant did not amount to anything more than that he had knowledge of the acts, and that, in that view, it would be necessary to decide whether there has been change in the law by reason of the amendment. We are unable to agree with this contention. As already stated, the learned Judges first find as a fact that the appellant had knowledge of the commission of corrupt practices by his men, and then they proceed to infer consent of the appellant to the same from various circumstances. In other words, according

to the learned Judges, there was much more than knowledge on the part of the appellant. There was his consent to the commission of corrupt practices by his agents and his workers.

6. It was next argued by Mr. Sharma that the learned Judges were in error in inferring consent on the part of the appellant from the mere fact that he had knowledge of the acts. He argued that consent to an act implied that it was given before it was done, but that knowledge of an act can only mean that it was after the act was done and that therefore knowledge cannot in itself be equated with consent. There would have been force in this argument if all that was established was a stray act or even a number of them committed on one day. But here, the acts were numerous and extended over a number of days. On March 1, 1957 at Bholanwali it had been found that jeeps procured by the appellant had been used to transport voters to the Bholanwali polling booths. One of them was in charge of his father, Hariram and another, his worker Bahadur Singh. It is difficult to imagine that after getting knowledge of this on March 1, 1957, as he must have got, the appellant would not have prohibited the commission of such acts in future, if he did not intend to approve of them. But, as a fact, we find that such acts were repeated regularly on the polling on the 3rd, 5th, 7th and 9th March, and to some of them his own agents were parties. From the above facts, it is not an unreasonable inference to draw that all the above acts were committed not haphazard but by design, and that the appellant must have consented to them. That is an inference which the learned Judges were entitled to draw, and being one of fact, this Court will not disturb it. In our opinion, that inference was a perfectly reasonable one to come to, and we accept it.

7. In the result, the appeal fails, and is dismissed with costs.