

Dev Raj Anand vs Bhagwandas And Anr. on 20 October, 1970

Equivalent citations: AIR1971SC241, (1970)3SCC316, AIR 1971 SUPREME COURT 241

Author: A.N. Grover

Bench: A.N. Grover, J.C. Shah, K.S. Hegde

JUDGMENT

A.N. Grover, J.

1. This is an appeal from a judgment of the Punjab & Haryana High Court dismissing a petition filed by the appellant challenging the election of respondent No. 1 Bhagwandas to the Haryana Legislative Assembly from the Ambala Cantonment constituency.

2. The last date for filing the nomination papers was April 17, 1968 in the mid-term election which was held from the aforesaid constituency. The scrutiny of nomination papers took place on April 18, 1968. The polling took place on May 14, 1968 and the result was declared on the following day. Respondent No. 1 who belonged to the Jan Sangh Party got 13,009 votes whereas the appellant, who belonged to the Congress Party, polled 11,606 votes. There were certain other candidates also but it is unnecessary to make any mention about them or about the number of votes obtained by them.

3. The election of respondent No. 1 was challenged mainly on grounds of corrupt practices of bribery, undue influence, treating of voters, free conveyance of voters to and from the polling station, publication of posters making a religious appeal to the electorate by respondent No. 1 and the filing of a false return of election expenses by him. These allegations were denied by respondent No. 1. A number of issues were framed and a good deal of evidence was led by both sides.

4. We shall deal only with the determination of the questions which have been agitated before us. The first matter which has been argued before us arises out of issue No. 1(i). It related to the commission of the corrupt practice of bribery by respondent No. 1, approaching Sant Singh Sethi on May 8, 1968 with a view to getting his support and later paying Rs. 501/- on May 12, 1968 to Punjabi Gurdwara as detailed in para 6 of the petition. It was alleged, inter alia, that after Sant Singh Sethi had been approached for securing the support of Sikh voters and after payment of Rs. 501/- had been made on May 12, 1968 Akhand Path was held in the Gurudwara. The Bhog of the Akhand Path took place on May 12, 1968 in the presence of respondent No. 1. It was announced in the congregation by Kuldip Singh, a member of the Gurudwara Executive Committee, that the Akhand Path had been performed for the purpose of wishing success to respondent No. 1 and securing the support of Sikh voters for his election which he was contesting from the Ambala Cantonment

constituency. The following portion from the petition may be reproduced in original:

It was also announced there that he had donated a sum of Rs. 501/- for the building funds and for this Akhand Path. The appeal was made to the congregation to see that the respondent No. 1 was successful in the election. The appeal was also made to the congregation to cast their votes in favour of the respondent No. 1 and to ask their friends and relatives to vote for the respondent No. 1. After this announcement, Ardas was recited and there also mention was made in the congregation regarding the donation of Rs. 501/- for the Gurudwara building and for the Akhand Path and other prayers were made for the success of respondent No. 1. It was further said in the Ardas that Guru Maharaj may persuade the sikh voters to vote for the respondent No. 1.

5. In his written statement respondent No. 1 denied having made any donation of Rs. 501/- to the Gurudwara or of approaching Sant Sangh Sethi for support of Sikh voters as alleged. All that was admitted was that the Akhand Path was held at the instance of respondent No. 1 in the normal way the Bhog of which took place on May 12, 1968. It was denied that Kuldeep Singh made any announcement of the nature alleged or that it had been made with the consent or at the request of respondent No. 1.

6. Sant Singh Sethi appeared as P. W. 61. According to him respondent No. 1 had come to him on May 8, 1968 and had requested him to help him in the election. Respondent No. 1 was advised by him to have an Akhand Path performed in the Gurudwara and contribute something for its construction. Respondent No. 1 having consented Sethi asked Giani Jaswant Singh to get Akhand Path performed. At the time of Bhog on the morning of May 12, 1968 the said Jaswant Singh, after the Ardas had been recited, announced that a donation of Rs. 501/- had been made by respondent No. 1. Jaswant Singh further said that just as Guru Teg Bahadur had assisted Makhan Shah in bringing his sinking ship ashore respondent No. 1 might be similarly helped. Kuldeep Singh also addressed the audience in the same strain. Jaswant Singh who appeared as P. W. 1 was the Head Granthi of Punjabi Gurudwara. According to his deposition a sum of Rs. 501/- was paid by respondent No. 1 for the construction of the Gurudwara building at the time of the Akhand Path which was performed at his instance in the Gurudwara. He admitted that at the time of Ardas he invoked divine assistance in favour of respondent No. 1 whose plight was likened to the sinking ship of Makhan Shah which, as a result of the blessings of Guru Teg Bahadur, got safely landed on the coast. He denied that he had asked the persons at the congregation to vote for respondent No. 1.

7. The next witness was Captain Mehar Singh P. W. 2. All that he stated was that he had visited the Gurudwara on May 12, 1968 where Akhand Path had been performed at the instance of respondent No. 1. At the time of Bhog many persons were present including the office-bearers. Ardas was performed by Giani Jaswant Singh who mentioned that a sum of Rs. 501/- had been donated by respondent No. 1 and good wishes were expressed on his behalf. Jaswant Singh had also said that just as the Guru had wished for the success of Makhan Shah similarly hope was expressed for the success of respondent No. 1 in the election. Tara Chand P. W. 4 the cashier of the Gurudwara produced the relevant documents relating to the payment of Rs. 501/-. The learned judge was of the

view that on the evidence led by the parties the payment of Rs. 501/- on May 12, 1968 to the Gurdwara by respondent No. 1 had been proved. He saw no reason to disbelieve the evidence of Giani Jaswant Singh P. W. 1 nor did he express any positive opinion about P. W. 2 Captain Mehar Singh. As regards Sant Singh Sethi P. W. 61, the trend of the decision of the learned judge was against his reliability. It was also observed that he had been a supporter of the appellant and had issued a poster Exh. P. W. 29/1 containing an appeal to the Sikh community to vote for the appellant in the General Election of 1961 which had also been contested by him. The evidence led by respondent No. 1 in support of his version that he had made a donation of Rs. 51/- only was not accepted. After referring to certain decisions of this Court the learned judge held that notwithstanding the donation of Rs. 501/- no bargain had been proved between respondent No. 1 and the Sikh voters and therefore no corrupt practice had been established.

8. A great deal of stress has been laid before us on the evidence of Giani Jaswant Singh P. W. 1 which, as stated before, had been believed by the learned judge. It has been pointed out that a sum of Rs. 501/- had been paid in the presence of the congregation for the construction of the Gurdwara after the Ardas had been recited when the Bhog of Akhand Path took place on the morning of May 12, 1968. Emphasis has been laid on the following part of the statement of Jaswant Singh:

The theme of the Kirtan was that just as the Guru had helped Makhan Shah the same assistance may be rendered by the Panth to Bhagwan Dass Sehgal and prayers were offered for his success.

It has been argued on behalf of the appellant that while it may be meritorious to make a donation for charitable purposes but if that is made at the time or on the eve of the election it is open to the charge that its real object was to induce the electorate to vote in favour of the particular candidate (as observed in *S. Khader Sheriff v. Munnuswami Gounder*). It has also been pointed out that the word "Panth" meant, in the context, the Sikh community; thus an appeal had been made to the persons present in the congregation, who were mainly Sikh voters, to vote for respondent No. 1.

9. In our judgment the effect of the simile of the help given by the Guru to Makhan Shah must be ruled out of consideration. It found no mention in the pleadings in which the case was founded primarily on a bargain having been effected between respondent No. 1 and the Sikh voters, the payment of Rs. 501/- having been made as a part of such bargain. The evidence of Jaswant Singh was quite unequivocal on the point that he never asked the persons present at the congregation to vote for respondent No. 1 after he had announced the donation of Rs. 501/- having been made by him for the construction of the Gurdwara building. In view of the pleading the appellant is not entitled to invoke any principle other than the one contained in *Ghasi Ram v. Dal Singh* that the gist of the corrupt practice of bribery lay in attempting to do something for those opposed to the candidate with a view to changing their votes and as a bargain for votes. This principle was further elaborated in *Om Prabha Jain v. Abnash Chand* where it was observed with reference to the previous case:

It has been pointed out that a Minister in the discharge of his duties may be required to do some acts of administration including the granting of money for the uplift of certain communities and this action of the Minister is not to be construed against him unless it can be established that there was a bargain with the voters for getting assistance at the election.

We find no error in the view expressed by the learned judge that it had not been proved by satisfactory evidence that respondent No. 1 had made the donation by way of a bargain for procuring Sikh votes.

10. The next point which has been pressed on behalf of the appellant arises out of issue No. 1 (vii) which was based on the allegation that the corrupt practice of bribery had been committed by payment of Rs. 300/- to Captain Bhagat Singh and Barkat Singh on May 12, 1968 as alleged in para 6 (j) of the petition. The allegation in the aforesaid para related to Topkhana Bazar Gurdwara and was similar to what had been alleged in respect of the Gurdwara on the Idgah Road concerning the donation of Rs. 501/-. It was stated, inter alia, that the respondent No. 1 with the object of inducing Sikh voters who visited the Topkhana Gurdwara to vote for him paid a sum of Rs. 300/- on the morning of May 12, 1968 to Captain Bhagat Singh and Barkat Singh who were the office-bearers of the Committee managing that Gurdwara. The payment had been shown in the books of the Gurdwara and had been utilised for its benefit. It was claimed that on the receipt of the amount of Rs. 300/- an appeal was actually made on May 13, 1968 to the congregation in the Gurdwara to vote for respondent No. 1. Two witnesses were examined in support of the allegation made in para 6(j) of the petition. Kulwant Singh P. W. 29 who runs a factory for making scientific instruments stated that he used to go to the aforesaid Gurdwara in which katha was held on May 13, 1968. Respondent No. 1 came there and asked for votes. Captain Bhagat Singh, Secretary of the Managing Committee, made a speech in his favour. It was announced by Captain Bhagat Singh that respondent No. 1 had given a donation of Rs. 300/- for the Gurdwara and that the congregation should assist him in the election. This witness has not been believed by the learned judge. Although in the first instance Kulwant Singh denied that he had signed the poster Exh. P. W. 29/1 which contained an appeal to vote in favour of the appellant in the General Election of 1967 but he admitted, though in a half-hearted manner, that he was a signatory to the aforesaid poster. Bakshi Barkat Singh P. W. 64 was the Vice President of the Gurdwara and according to him respondent No. 1 came to him on May 12, 1968 and asked for his help in the election. Simultaneously the latter made a donation of Rs. 300/- for the Gurdwara fund for purchase of fans. It was arranged that some persons should be invited on the following day in the morning to the Gurdwara where respondent No. 1 himself addressed the gathering. It was announced that a donation of Rs. 300/- had been made by him. Captain Bhagat Singh and Bakshi Barkat Singh both laid emphasis on the services which had been rendered to the Gurdwara by respondent No. 1. This witness was also not believed by the learned judge as he was clearly interested in the appellant. There were other infirmities in his statement which were noticed and the learned judge considered that his statement did not inspire confidence. We have not been shown anything basically or inherently wrong in the appraisal of evidence by the learned judge relating to the allegation made in para 6 (j) of the petition. We would, therefore, affirm the conclusion arrived at by the High Court.

11. The next contention of the learned Counsel for the appellant relates to issue No. 1 (v) which was that the returned candidate had treated the voters by serving liquor to them as detailed in para 6 of the application dated September 10, 1968 containing the additional particulars. The better particulars which were furnished were, however, incorporated in the amended petition filed on September 20, 1968. In Clause (h) of para 6 of the amended petition it was stated that respondent No. 1 had offered gratification by providing liquor on an extensive scale to the voters for the purpose of securing their votes. Seven localities were mentioned where liquor was alleged to have been distributed between May 11 and 13, 1968 to voters whose names were given. Some of these persons were produced as witnesses.

12. Pursuant to a notification Exht. R. W. 2/1 the liquor vend shops in the State of Haryana from May 11 to 14, 1968 were closed presumably to stop the sale of liquor during the days of polling. The learned judge considered the evidence of Man Singh P. W. 17, Sukh Ram P. W. 18, Rup Chand P. W. 19, Shamlal P. W. 20, Faqir Chand P. W. 21, Inder Sain Chadha P. W. 23, Kanahya Ram P. W. 24, Ghisa Ram P. W. 25, Babu Lal P. W. 26 Ram Rakha P. W. 27, Paras Ram P. W. 28 and Ram Krishan P. W. 30. The evidence produced by respondent No. 1 was also discussed. The learned judge observed that the oral evidence of witnesses was hardly of much assistance in proving an allegation of the nature under consideration. According to him the witnesses for the appellant who had given evidence about the corrupt practice of bribery for being treated to liquor could not be relied upon implicitly particularly when persons had been produced from the localities by respondent No. 1 to testify that no liquor was distributed. The following portion of the judgment deserves to be reproduced in this connection:

The evidence in this case gives rise to a suspicion that the first respondent had distributed liquor but the failure of the petitioner to connect the liquor obtained from Faqir Chand's vend with the bottles actually distributed on 11th, 12th and 13th May, 1968, is a circumstance which goes against the allegation. The liquor vends in Haryana were closed from 11th to 14th May, 1968 and the positive evidence led on behalf of the petitioner shows, and it is indeed also stated in the petition itself, that liquor was widely distributed in the specified localities between 11th and 13th May, 1968. There is no evidence that the liquor purchased from Faqir Chand's vend had been stored anywhere for 2/3 days prior to its distribution.

The learned judge further observed that although on the material dates the liquor vends were closed yet the witnesses of the appellant had asserted that liquor was being widely distributed by respondent No. 1 during those dates. There was no evidence to show how such large quantities of liquor were procured and where they were stored prior to distribution.

13. Counsel for the appellant has pointed out that apart from Faqir Chand certain other liquor contractors had also been sought to be produced in the list of witnesses which was supplied on behalf of the appellant on October 3, 1968. The name of Ram Murti, Excise Contractor, Lalru had been included in the list for being summoned together with his books containing entries relating to the supply of liquor to respondent No. 1 from May 4, 1968 to May 14, 1968. There was yet a third

liquor contractor of the name of Om Prakash whose name was included in the list of witnesses to be summoned. The learned judge made an order on October 8, 1968 directing the summoning of Faqir Chand liquor contractor of R. A. Bazar, Ambala Cantt. As regards Om Prakash it was observed that in para 6(h) of the petition there was no allegation of any liquor having been supplied to respondent No. 1 from the liquor shop of Om Prakash at village Mohra. His production was disallowed. Although nothing was stated about summoning of Ram Murti in the order, summons of which a copy is to be found on the record appears to have been actually sent to him. On behalf of respondent No. 1 it has been submitted that this witness was given up. At any rate there is nothing to show that the appellant made any serious attempt to produce Ram Murti as a witness. We do not find any substance in the submission on behalf of the appellant that the evidence of Om Prakash and Ram Murti had been shut out without any justification. We are satisfied that sufficient grounds have not been made out for not accepting the conclusion of the learned judge that the appellant had failed to discharge the burden of proving the issue relating to treatment of voters by means of serving liquor as alleged in the election petition.

14. The only other point which remains for disposal relates to issue Nos. 6(a) and (b). This issue involves the publication of a poster by the Secretary of the Punjabi Gurdwara, Ambala Cantonment and it was alleged that it had been published at the instance or with the consent of respondent No. 1. It was common ground that if the poster Exht. P. W. 4/4 was published either on behalf of or with the consent of respondent No. 1 it would amount to commission of a corrupt practice of undue influence within the meaning of Section 123(2) of the Act. It is unnecessary to state its contents because, in our opinion, the learned judge was right in not accepting the evidence produced by the appellant relating to its publication at the instance or with the consent of respondent No. 1. The learned judge considered that the evidence produced by the appellant relating to the publication of the poster and its distribution was extremely unsatisfactory and he had no hesitation in rejecting it. We have not been shown any infirmity in the reasoning or conclusion of the learned judge with regard to the publication and distribution of this poster.

15. In the result the appeal fails and it is dismissed with costs.