

Kultar Singh vs Mukhtiar Singh on 17 April, 1964

Equivalent citations: 1965 AIR 141, 1964 SCR (7) 790, AIR 1965 SUPREME COURT 141

Author: P.B. Gajendragadkar

Bench: P.B. Gajendragadkar, K.N. Wanchoo, M. Hidayatullah, K.C. Das Gupta, N. Rajagopala Ayyangar

PETITIONER:

KULTAR SINGH

Vs.

RESPONDENT:

MUKHTIAR SINGH

DATE OF JUDGMENT:

17/04/1964

BENCH:

GAJENDRAGADKAR, P.B. (CJ)

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GAJENDRAGADKAR, P.B. (CJ)

WANCHOO, K.N.

HIDAYATULLAH, M.

GUPTA, K.C. DAS

AYYANGAR, N. RAJAGOPALA

CITATION:

1965 AIR 141 1964 SCR (7) 790

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RF 1965 SC 669 (13)

R 1970 SC 522 (35)

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R 1971 SC1262 (18)

RF 1975 SC 290 (26)

RF 1975 SC1612 (15)

RF 1975 SC1788 (30)

R 1980 SC 354 (6,10)

R 1985 SC 236 (46)

ACT:

Representation of the People Act, 1951 (43 of 1951) S. 123(3)- Election Petition-Allegation of publication and distribution of posters containing an appeal to voters to vote on the ground of religion-If amounts to corrupt practice-Word "Panth". used in the Pamphlet-Meaning of -

HEADNOTE:

The respondent challenged the appellant's election before the Tribunal alleging that it was void inasmuch as for the purpose of securing votes the appellant had appealed to his religion and had thereby committed a corrupt practice. He had addressed seven election meetings and in those meetings he and his supporters had asked the voters to vote for him as he was the proper representative of the Sikh Panth, and so, he would be able to protect the Sikh religion and the Sikh language. It was further alleged that at five of the seven election meetings organised by him, the printed posters (Exts. p. 1 to p. 10) had been distributed by him and they contained an appeal to the voter-- , to vote for him on the ground of his religion. The appellant denied both these allegations. He disputed the respondent's case that at these meetings any appeal to religion was made. In regard to the posters, he denied that he had anything to do with the said posters, except one Ext. p. 9 and pleaded that the said poster was innocent and its publication and distribution would not attract the provisions of s. 123(3) of the Act. Both these questions were answered by the Tribunal in favour of the respondent. On appeal, the High Court reversed the conclusion of the Tribunal on the first question. In regard to the posters, it held that all the ten posters had been distributed by him, but, in its opinion, except Ext. p. 10, none of the others offended the provisions of s. 123(3) of the Act. In regard to poster Ext. p. 10, however, it agreed with the conclusion of the Tribunal and held that the said poster contained an appeal to the votes to vote for the appellant on the ground of his religion, and so, by publishing and distributing it at his election meetings, he had committed a corrupt practice under s. 123(3) of the Act. In this Court the appellant contended that the view taken by the Election Tribunal and the High Court was based on a misconstruction of the impugned pamphlet.

Held: In considering the question as to whether a particular appeal made by a candidate falls within the mischief of s. 123(3) of the Act, courts should not be astute to read into the words used in the appeal anything more than can be attributed to them on its fair and reasonable construction. The view taken by the High Court and the Tribunal was inconsistent with a fair and reasonable construction of the impugned poster. In fact, the High Court did not consider the different places in the poster where the word "Panth" had been used and no attempt was made to co-relate these sentences and to enquire whether the meaning attributed by the High Court

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to the word "Panth" was justified in regard to all the

sentences in which that word occurred.

The significance of the reference to the Punjabi Suba in the impugned poster arises from the fact that it gives clue to the meaning which the Poster intended to assign to the word "Panth". Therefore, the word "Panth" in this poster did not mean Sikh religion and so, it would not be possible to accept the view that by distributing this poster, the appellant had appealed to voters to vote for him because of his religion.

In construing the impugned poster, the High Court did not take into account the oral evidence. It is true that oral evidence would not be of any material assistance in construing the words in the pamphlet; but, the word "Panth" used in six places in the pamphlet could be properly interpreted only to mean the Akali Dal party and it was in that context that the statements made by the witnesses as to the name by which the Akali Dal Party was known in popular minds, might have some relevance.

Sardul Singh Caveeshar v. Hukam Singh, (1953) VI, E.L.R. 316 and Baba Gurdit Singh v. Sardar Partap Singh Kairon, Indian Election Cases by Doabia, Vol. 1, p. 92, referred to.

Political issues which form the subject-matter of controversies at election meetings may indirectly and incidentally introduce consideration of language or religion, but in deciding the question as to whether corrupt practice had been committed under s. 123(3) care must be taken to consider the impugned speech or appeal carefully and always in the light of the relevant political controversy. Therefore, the High Court was in error in coming to the conclusion that the impugned poster Ext. P. 10 attracted the provision of s. 123(3) of the Act.

Jagdev Singh Sidhanti v. Partap Singh Daulte, A.I.R. 1965 S.C. 183.

JUDGMENT:

CIVIL APPELLATE JURISDICTION: Civil Appeal No. 298 of 1964. Appeal from the judgment and order dated May 31, 1963, of the Punjab High Court in F.A.O. No. 5-E of 1962. M.C. Setalvad, and B. P. Maheshwari, for the appellant. Bawa Shiv Charan Singh, Hardev Singh and Y. Kumar, for the respondent.

April 17, 1964. The judgment of the Court was delivered by GAJENDRAGADKAR, C. J.-The short question of law which arises in this appeal by special leave is whether by publishing and distributing a poster (Ext. p. 10) in furtherance of his election, the appellant, Kultar Singh has committed a corrupt practice under section 123(3) of the Representation of the People Act, 1951 (No. 43 of 1951) (hereinafter called 'the Act'). The Election Tribunal which tried the election petition filed by the respondent Mukhtiar Singh challenging the validity of the appellant's election, as well as the High Court of Punjab which heard the appellant's appeal against the decision of the Election Tribunal

have answered this question against the appellant. Accordingly, the election of the appellant has been declared to be void. Mr. Setalvad for the appellant contends that the view taken by the Election Tribunal and the High Court is based on a misconstruction of the impugned pamphlet. The appellant was elected to the Punjab Legislative Assembly from the Dharamkot Constituency and he defeated his nearest rival, the respondent, by a margin of nearly 8,000 votes. The appellant had stood for election on the Akali Dal ticket, while the respondent had been officially adopted by the Congress Party. After the election of the appellant was declared, the respondent filed an election petition alleging that the appellant's election was void inasmuch as for the purpose of securing votes, he had appealed to his religion and had thereby committed a corrupt practice. It appears that the election petition had also alleged that the appellant had appealed to his language and community, but with that part of the case we are no longer concerned in the present appeal, because the petition has not succeeded in that behalf. According to the respondent, the appellant had addressed seven election meetings held in different places and on different dates and at those meetings, he and his supporters had made speeches asking the voters to vote for the appellant as he was the proper representative of the Sikh Panth, whereas the respondent represented the Hindu-ridden Party, and so, the appellant would be able to protect the Sikh religion and the Sikh language. The petition further alleged that at five of the seven election meetings organised by the appellant, the printed posters (Ext. p.I to p. 10) had been distributed by the appellant and these posters contained an appeal to the voters to vote for the appellant on the ground of his religion.

The appellant denied both these allegations. He admitted that election meetings were held on his behalf and were addressed by him and his supporters, but he disputed the respondent's case that at these meetings any appeal to religion was made. In regard to the posters, the appellant denied that he had anything to do with the said posters, except one Ext. p. 9 and he pleaded that the said poster was innocent and its publication and distribution would not attract the provisions of s. 123(3) of the Act.

On these pleadings, two broad questions arose for decision. The first question was whether the speeches alleged to have been made by the appellant and his supporters at the election meetings included appeals to the voters to vote for the appellant on the ground of his religion; and the second was whether the impugned posters Exts. p. I to p. 10 were published or distributed by the appellant at the election meetings, and if yes, whether any one or more of them contained an appeal to the voters on the ground of the appellant's religion. Both these questions were answered by the Tribunal in favour of the respondent. The High Court, however, has reversed the conclusion of the Tribunal on the first question: it has held that the evidence led by the respondent in support of his case that at the election meetings an appeal was made to the voters to support the candidature of the appellant on the ground of his religion, did not establish the respondent's case. In regard to the posters, the High Court has held that all the ten posters had been distributed by the appellant, but in its opinion, except Ext. p. 10, none of the others offended the provisions of s. 123(3). An argument was urged before the High Court by reference to the two posters in particular Exts. p. 9 and p. 10. The High Court rejected the respondent's case with regard to poster Ext. 9, because it held that it was not clear that the poster contained an appeal to the voters on the ground of the appellant's religion. In regard to, poster Ext. p. 10, however, the High Court agreed with the conclusion of the Tribunal and held that the said poster contained an appeal to the voters to vote for the appellant on the ground of his

religion, and so, by publishing and distributing it at his, election meetings, the appellant had committed a corrupt practice under s. 123(3) of the Act. That is how on this narrow ground. the decision of the Tribunal was confirmed by the High Court and that raises the question about the construction of the impugned poster Ext. P. 10.

Before dealing with this question, it is necessary to refer to the provisions of s. 123(3). Section 123 provides for different acts which constitute corrupt practices under the Act. Section 123(3) lays down, inter alia, that the appeal by a candidate or his agent or by any other person with the consent of a candidate or his election agent to vote or refrain from voting for any person on the ground of his religion, would amount to a corrupt practice. It is thus, plain that if it is shown that the impugned poster which the appellant is proved to have published and distributed at his election meetings contained an appeal to the voters of his constituency to vote for him on the ground of his religion that would amount to a corrupt practice under s. 123(3) of the Act and in that case, the election of the appellant would be void under s. 100(1)(d)(ii).

It is true that a corrupt practice under s. 123(3) can be committed by a candidate by appealing to the voters to vote for him on the ground of his religion even though his rival candidate may belong to the same religion. If, for instance, Sikh candidate were to appeal to the voters to vote for him because he was a Sikh and add that his rival candidate though a Sikh in name, was not true to the religious tenets of Sikhism or was a heretic and as such, outside the pale of the Sikh religion, that would amount to a corrupt practice under s. 123(3), and so, we cannot uphold the contention that s. 123(3) is inapplicable because both the appellant and the respondent are Sikhs. In fairness, we ought, however, to add that Mr Setalvad did not press this contention before us.

The corrupt practice as prescribed by s. 123(3) undoubtedly constitutes a, very healthy and salutary provision which is intended to serve the cause of secular democracy in this country. In order that the democratic process should thrive and succeed, it is of utmost importance that our elections to Parliament and the different legislative bodies must be free from the unhealthy influence of appeals to religion, race, caste, community, or language. If these considerations are allowed any sway in election campaigns, they would vitiate the secular atmosphere of democratic life, and so, s. 123(3) wisely provides a check on this undesirable development by providing that an appeal to any of these factors made in furtherance of the candidature of any candidate as therein prescribed would constitute a corrupt practice and would render the election of the said candidate void.

In considering the question as to whether the distribution of the impugned poster by the appellant constitutes corrupt practice under s. 123(3), there is one point which has to be borne in mind. The appellant had been adopted as its candidate by the Akali Dal Party. This Party is recognised as a political party by the Election Commission notwithstanding the fact that all of its members are only Sikhs. It is well-known that there are several parties in this country which subscribe to different political and economic ideologies, but the membership of them is either confined to, or predominantly held by, members of particular communities or religions. So long as, law does not prohibit the formation of such parties and in fact recognises them for the purpose of election and parliamentary life, it would be necessary to remember that an appeal made by candidates of such parties for votes may, if successful, lead to their election and in an indirect way, may conceivably be

influenced by considerations of religion, race, caste, community or language. This infirmity cannot perhaps be avoided so long as parties are allowed to function and are recognised, though their composition may be predominantly based on membership of particular communities or religion. That is why we think, in considering the question as to whether a particular appeal made by a candidate falls within the mischief of s. 123(3), courts should not be astute to read into the words used in the appeal anything more than can be attributed to them on its fair and reasonable construction.

That takes us to the question of construing the impugned poster. The principles which have to be applied in construing such a document are well-settled. The document must be read as a whole and its purport and effect determined in a fair, objective and reasonable manner. In reading such documents, it would be unrealistic to ignore the fact that when election meetings are held and appeals are made by candidates of opposing political parties, the atmosphere is usually surcharged with partisan feelings and emotions and the use of hyperboles or exaggerated language, or the adoption of metaphors, and the extravagance of expression in attacking one another, are all a part of the game, and so, when the question about the effect of speeches delivered or pamphlets distributed at election meetings is argued in the cold atmosphere of a judicial chamber, some allowance must be made and the impugned speeches or pamphlets must be construed in that light. In doing so, however, it would be unreasonable to ignore the question as to what the effect of the said speech or pamphlet would be on the mind of the ordinary voter who attends such meetings and reads the pamphlets or hears the speeches. It is in the light of these well-established principles that we must now turn to the impugned pamphlet.

Ext. p. 10 has been translated by the High Court. The correctness of this translation is not challenged by either party before us. It reads thus: -

"Dear resident Sikhs, We, who are living in Singapore, Malaya, and South East Asia, place this before you, most respectfully, that at this critical juncture it is your duty to keep high the honour of the Panth. This is not the time to criticise the weaknesses of the, leaders of the Panth; the need is that in the coming General Elections you should defeat the opponents of the Panth the same way as you did in the last Gurdwara Elections. Every Sikh vote should go to the representatives of the Akali Dal. and we hope that this prayer of ours from far off will be accepted by you and you will once again pre- serve the bonour of the Panth. Victory of the Panth will maintain the honour of the Panth. By maintaining such honour we will reach our final goal, that is Punjabi Suba".

The poster then ends thus:-

"We remain anxious to, keep the honour and prestige of the Panth ever high Yours,
Non-resident brothers"

The respondent's contention before the Tribunal and the High Court was that this appeal plainly and unambiguously invites the voters to vote for the appellant in order to preserve the honour and

prestige of the Panth and it was urged that in the context, the Panth meant the Sikh religion. Since the pamphlet clearly appeals to the voters to vote for the appellant and proceeds on the assumption that the election of the appellant would uphold the honour and prestige of the Sikh religion, that amounts to a corrupt practice, because the appeal is based on the ground of the appellant's religion. The courts below have accepted this contention. The word 'Panth' is one of Sanskrit origin and etymologically it means the path or the way. It must be conceded that by itself it has come to indicate the Sikh religion because it has been used by Sikhs to denote their religion and their denomination as the followers of that Panth. In that context, Panth may mean the Sikh religion and the followers of the Panth would be the persons who follow the path prescribed by the Sikh-gurus and as such, would signify the Sikh community. Panthic is an adjective which means, of the Panth or belonging to the Panth, and so, prima facie, the glory or prestige of the Panth may mean the glory or prestige of the Sikh religion.

The question which calls for our decision, however, is not what the word 'Panth' in the abstract may mean in the Punjab. The question which we have to answer is, what does the word "Panth" mean in the context of the pamphlet the distribution of which is alleged to constitute corrupt practice? It would be noticed that the word "Panth" occurs in six places in this pamphlet. First, reference is made to the honour of the Panth, then it is said that it is not the time to criticise the leaders of the Panth. In both these places, the word "Panth" may conceivably mean the Sikh religion. But when we go to the use of the word "Panth" in the next sentence, it becomes clear that the said word cannot possibly mean the Sikh religion. The relevant portion of the pamphlet says to the electors: you should defeat the opponents of the Panth the same way as you did in the last Gurdwara Elections. It is common ground that the Gurdwara Elections were fought between different parties of the Sikhs and the Akali Dal party triumphed at the said Elections. Therefore, there is no doubt whatever that in this sentence, the Panth cannot possibly mean the Sikh religion. The expression "the opponents of the Panth"

obviously means the opponents of the Akali Dal party and what the pamphlet purports to tell the electors is, just as at the last Gurdwara Elections the Akali Dal Party succeeded over its opponents, so should the Akali Dal Party triumph in the election in question. The next sentence makes it still clearer that the Panth and the Akali Dal Party are treated as synonymous in this portion because it says "every Sikh vote should go to the representatives of the Akali Dal", and that can be reconciled with the previous sentence only on the basis that in the minds of those who drafted the impugned poster, the Akali Dal Party and the Panth are the same. Then the poster says that the prayer made in the poster, if accepted, will once again preserve the honour of the Panth; the words "once again" take us back to the triumph which the Akali Dal Party achieved at the last Gurdwara Elections, and so, the Panth in this context must mean the Akali Dal Party; and in the end when the pamphlet refers to the victory of the Panth and the honour of the Panth, it must be taken to refer to the victory and honour of the Akali Dal Party. The last sentence is very significant. It says that by maintaining such honour, meaning the honour of the Panth which is the Akali Dal, we will reach our final goal, that is, the Punjabi Suba. It is not disputed that at these elections, the Akali Dal Party propagated for the creation of the Punjabi Suba

and the crux of the appeal made by the impugned poster is that if the voters returned the Akali Dal candidate, the honour and prestige of the Akali Dal would be maintained and the ideal of the Punjabi Suba attained. In the end, the poster also says that those who issued it were anxious to keep the honour and prestige of the Panth ever high.

We have carefully considered the view taken by the Punjab High Court and the Tribunal, but we are satisfied that the said view is inconsistent with a fair and reasonable construction of the impugned poster. In fact, the High Court does not appear to have considered the different places in the poster where the word "Panth" has been used and no attempt has been made to co-relate these sentences and to enquire whether the meaning attributed by the High Court to the word "Panth" is justified in regard to all the sentences in which that word occurs. It is an elementary rule of construction that the same word cannot have two different meanings in the same document, unless the context compels the adoption of such a course. After all, the impugned poster was issued in furtherance of the appellant's candidature at an election, and the plain object which it has placed before the voters is that the Punjabi Suba can be achieved if the appellant is elected; and that necessarily means that the appellant belongs to the Akali Dal Party and the Akali Dal Party is the strong supporter of the Punjabi Suba. In these proceedings, we are not concerned to consider the propriety, the reasonableness or the desirability of the claim for Punjabi Suba. That is a political issue and it is perfectly competent to political parties to hold bona fide divergent and conflicting views on such a political issue. The significance of the reference to the Punjabi Suba in the impugned poster arises from the fact that it gives a clue to the meaning which the poster intended to assign to the word "Panth". Therefore, we are satisfied that the word "Panth"

in this poster does not mean Sikh religion, and so, it would not be possible to accept the view that by distributing this poster, the appellant appealed to his voters to vote for him because of his religion.

In this connection, it may be relevant to refer to the oral evidence led in this case. Kartar Singh has stated that since the last 30 years the other name of the Akali Party is Panthic Party. This witness had been actively helping the appellant in his election, and he added that at the said election, there was a common front of all the opposition parties against the Congress. These parties were Jan Sangh, Swatantra Party, Akali Party and others. Another witness Ajmer Singh admitted that Shiromani Akali Dal was a political party of the Sikhs. He also stated that excepting 1957 elections, for which there was settlement with the Congress, the Akali Dal had been fighting in all the elections. In 1957, the Akali candidates contested the election on the Congress ticket. In 1958, the Akali Dal started an agitation for getting Punjabi Suba because it thought that the Regional Formula had not been properly implemented by the Government. This evidence would show that the Akali Dal Party is also known as the Panthic Party and that one of the major issues on which it fought the Congress party at the election in question was the creation of a separate province which it calls the Punjabi Suba. In construing the impugned poster, the High Court does not appear to have taken into account this oral evidence. It is true that oral evidence would not be of any material assistance in

construing the words in pamphlet; but as we have just indicated, the word "Panth" used in six places in the pamphlet can be properly interpreted only to mean the Akali Dal Party and it is in that context that the statements made by the witnesses as to the name by which the Akali Dal Party is known in popular minds, may have some relevance.

It appears that a similar question has been considered by the Election Tribunals on two occasions in the past. In *Sardul Singh Caveeshar v. Hukam Singh and Ors.*(1) the Elec

tion Tribunal had to consider the denotation of the words "Panth" and "Panthic" candidate and it has observed that though the words "Panthic candidate" would literally signify a candidate of the Sikh Community, after the Akali Dal Party came to be known as the Panthic Party in the popular minds. the word "Panthic" candidate came to signify a candidate of the Akali Dal Party. It appears from this judgment that the Akali Dal Party called itself the Panthic Party even at the time when there were separate Sikh electorates, and that has (1) (1953) VI E.L.R., 316 at 326.

a significance of its own. When there were separate Sikh electorates, the candidates who fought against each other would all be Sikh and yet, the Akali Dal Party which set up its own ,candidates, described itself as a Panthic Party and its candidates as Panthic candidates, (vide *Baba Gurdit v. Sardar Partap Singh Kairon*)(1). These decisions tend to show that the Akali Dal Party is known as Panthic Party and its candidates as Panthic candidates, and that incidentally may be of some help to determine the true denotation of the word "Panth" used in the impugned poster in the present case. Unfortunately, these decisions also do not appear to have been placed before the High Court.

Before we part with this appeal, we may refer to a recent decision of this Court in *Jagdev Singh Sidhanti v. Pratap Singh Daulta and Ors.* (2). In that case, the election of the successful candidate was challenged on the ground that he had committed a corrupt practice under s.123(3) of the Act in that he had appealed to the voters to vote for him on the ground of his language, and the High Court had upheld that contention. In reversing the conclusion of the High Court, this Court pointed out that the reference to the language on which the challenge to the successful candidate's election was based, had to be considered in the context of the main controversy between the parties and that controversy was that the Haryana Lok Samiti which had sponsored the candidature of the successful candidate wanted to resist the imposition of Punjabi in the Haryana region and that was clearly a political issue. If in propagating its views on such a political issue, a candidate introduces an argument based on language, the context of the speech in which the consideration of language has been introduced must not be ignored, and that is how this Court held that the corrupt practice alleged against the successful candidate had not been established. Political issues which form the subject-matter of controversi,es at election meetings may indirectly and incidentally introduce considerations of language or religion, but in deciding the question as to whether corrupt practice has been committed under s.123(3), care must be taken to consider the impugned speech or appeal carefully and always in the light of the relevant political controversy. We are, therefore, satisfied that the High Court was in error in coming to the conclusion that the impugned poster Ext. P-10 attracted the provisions of s.123(3) of the Act.

The result is, the appeal is allowed, the decision of the High Court is set aside and the election petition filed by the respondent is dismissed with costs throughout. Appeal allowed-.

(1) Indian Election Cases by Doabia Vol. 1, p. 92. (2) A.I.R. 1963 S.C. 183.