

Supreme Court of India

Karimji Rehmanji Chaipo vs A.T. Kundiwala on 23 January, 1969

Equivalent citations: 1969 I UJ 59 SC

Author: Sikri

Bench: Sikri, Bachawat, Hegde

JUDGMENT Sikri, J.

1. This appeal Under Section 116-A of the Representation of the People Act, 1951, is directed against the judgment and order of the High Court of Gujarat dismissing the election petition filed by the appellant against the election of respondent No. 1, Abdulrahim Tajjuji Kundiwala, to the Gujarat State Legislative Assembly from Jamalpur constituency. The appellant, a Congress candidate, was defeated by the first respondent, a Swatantra Party candidate, the appellant securing 13600 votes and the first respondent securing 14023 votes.

2. A. number of points were raised in the election petition.

Some of those points were not pressed before the High Court and were not the subject-matter of issues framed by the High Court. Although six issues were framed by the High Court on the allegations in the petition and two on the allegations in the Recriminatory Statement, we are now only concerned in the appeal with two issues, issues Nos. 1 and 5, as the learned counsel for the appellant has only pressed these issues before us : They read as follows :

"(1) Does the petitioner prove that P.S.I. Madhavsing Jalamsing Jhala, was on duty as Police Officer at the polling booth in Jamalpur Constituency on the date of election as alleged ?

Whether the said police officer in the presence of and within the hearing of respondent No. 1 continuously made propaganda and asked voters to vote in favour of the symbol of "Star" as alleged ?

(5) Does the petitioner prove that the respondent No..1 incurred expenses beyond the limit of Rs. 8000/- prescribed by Rule 90 of the Conduct of Election Rules read with Section 11 of the Representation of the People Act, 1951, as alleged ?

Under issue No. 5 only one item of Rs. 3233/17 p. has been debated. In brief, it is alleged that this expenditure was incurred or' authorised by respondent No. 1 and had not been entered in his account books or mentioned in the statement filed by him.

3. A few preliminary facts may be set out in order to appreciate the points raised before us. On January 13, .1967, a notification was issued calling upon the voters of this Constituency ;to elect a candidate; on February 21, 1967, polling took place in the : Constituency and the result was announced on February 23, 1967. On March 24, 1967, respondent No. 1 filed his statement of election expenses amounting to Rs. 5255/20 p. On April 7, 1967, the election petition was filed.

4. On issue No. 1 the case of the appellant is that P. S. I. Jhala was on duty at the Polling Booth at villages Mahajanvanda and Saiyadvada on February 21, 1967, and he canvassed voters to vote for respondent No. 1. The appellant produced five witnesses, Farid Jamalji Rolhvala. P. W. 5; Mohmad Shariff Kasamji Ravata-wala, P. W. 7; Police Inspector Ansari, P. W. 6; Deputy Superintendent Police Saiyad, P. W. 8; and Jamalbhai Suleman Kakkuwala, P. W. 9. The learned counsel has taken us through their evidence and we are unable to agree with him that the High Court has come to a wrong conclusion.

5. The evidence of P. W. 5, in brief, was that he went to the Polling Booth at Mahajanvanda at about 10.30 or 10.45 a.m. and joined the queue of voters; while he was in the queue he saw the first respondent and P. S. .1. Jhala there canvassing votes; he complained to P. S. I. Jhala who told him; "You attend to your own, affairs, go away from here"; he then went back to the queue but P. S. I. Jhala again carried on the propaganda and he again protested to P.S.I. Jhala who gave the same reply as before; he then left the Polling Booth and met Mohmad Shariff Kasamji Ravtawala, P.W. 7, to whom he narrated the entire incident; in the meantime Police Inspector, Ansari, P.W.6, came near the Polling Booth whereupon he narrated to him all that had happened; Ansari went up to Jhala and told him something and then told them that he had asked Jhala and the first respondent not to carry on propaganda in the manner in which they had been carrying on; in spite of the instructions given by Ansari, Jhahj.

continued to carry on the propaganda as before and thereupon Ansari told, him something again.

6. The High Court found various difficulties in accepting this version. First, Police Inspector Ansari had denied that Farid, P.W.5, had complained, to him. According to Police Inspector Ansari, it was Mohmad Shariff Raviawala who had complained to him at the time of his visit to Mahajanvanda polling Booth at about 10.30 a.m. Similarly, at about 11.30. a.m., when he again visited Mahajanvanda Polling Station, the complaint was by Mohmad Shariff and one boyish looking person. Secondly, according to police Inspector Ansari, Mohmad Shariff did not make any allegation against the first respondent and the only allegation made was against P.S.I. Jhala. Thirdly, it is a cognizable offence to canvass within a distance of 100 meters of the Polling Booth (vide Section 130 of the Act) and it would have been ordinarily expected that Farid, P.W.5, or Mohmad Shariff, P.W.7, would file a written complaint.

7. We agree with the criticism made by the learned Judge. . The evidence of Mohmad Shariff is similar. There is no allegation against respondent No. 1 and, as we have stated no written complaint was filed by Mohmad Shariff, Further, there is discrepancy between P.W.5 and P. W. 7 whether Ansari remained there all the time or only for half an hour. The High Court also noticed that no departmental action had been taken against P. S.I. Jhala. As a matter of fact, there was no mention in Ansari's diary about this complaint and the only action which seems to have been taken against Jhala was to send him to Polling Booth Saiyad Vada from 10.30 A.M. onwards .

8. The evidence of Police Inspector Ansari is really damaging to the case of the appellant. Apart from the fact already mentioned that it was Mohmad Shariff who complained to him, regarding the complaint of canvassing at Polling Booth Mahajanvanda, Ansari stated in cross-examination: "On

both the occasions that Mohmad Shariff met me at Mahajan Vanda, I had asked him to file a written complaint. Till to-day Mohma Shariff has not lodged a written complaint. After Mohmad Shariff complained to me for the first time, I had asked people waiting in the queue as to whether P. S. I. Jhala had carried on propaganda near the Polling Station. Nobody was willing to give such a statement. Even on the second occasion when Mohmad Shariff complained to me about the alleged activities of P. S. I. Jhala, I had made enquiry from people standing in the queue and at that time nobody had stated to me that P. S. I. Jhala was carrying on election propaganda near the booth."

He expressly stated that "on neither of the two occasions that Mohmad Snariff complained to me on Feb., 21, 1967, had he made any allegations against the first respondent."

9. The evidence of P.W. 9, Jamalbhai who was working as a Polling Agent of the appellant at Saiyadwada Polling Booth, as held by "the High Court, is not satisfactory. He does not involve the first respondent and he filed no written complaint. Police Inspector Ansari has stated that when he went to Saiyadwada, he asked this witness to give him a written complaint or to allow him to take down the complaint in writing, but the witness declined to -give a written compliant or to permit Police Inspector Ansari to reduce the complaint into writing.

10. We have gone through the evidence of these witnesses .

carefully and we are satisfied that the High Court came to the correct conclusion that it has not been proved that any canvassing was carried on by P.S.I. Jhala, and that, in any event, there is no ' proof that this was at the instance of respondent No. 1 or that ' respondent No. 1 was in ;any way responsible for this.

11. Coming to issue No. 5, there is no doubt that I.K. Radio Co. did some work in connection with the election campaign of respondent No.1 and they 'prepared a bill amounting to Rs. -32331 17p. This bill "was in respect of supply of electric tubes, wires and installation of "star" which is the symbol of Swatantra party. It is common ground that. Abdul Karim, brother of the appellant, approached I.K. Radio Co. and made arrangements for carrying on illumination work at the election office of the first respondent, and several other places. He told Keshavlal, a partner in I.K.

Radio Co., that instructions, far illuminations at other places would be communicated by telephone. Both oral and written instructions were given for this work. The written instructions were filed in the Court and some of these notes have been admitted to be in the handwriting of the first respondent himself. The cash book of ther firm shows that on February 10, 1967, Rs. 500/- were received in cash towards electrical work done for Abdul Karim Tajuji, and it further shows that on February 16, 1967, another Rs.500/- were received towards electrical work done for Abdul Karim Tajuji Later on, under the first entry the following words were written : "Received in advance from Gujarat Swatantra Party."

Under the entry dated February 15, 1967, the following words were" written later:

"For work done for Gujarat Swatantra Party."

P.W.2, Keshavlal, partner of the firm I.K. Radio Co., in his evidence states that both these sums of Rs. 500/- each were paid by Abdul Karim in the first respondent's factory. It is remarkable that at the time of preparing the bill the firm did not know in whose name to prepare it. The firm sent Mehtaji to find out and in accordance with the instructions received the bill was prepared in the name of Gujaraal Swatantra Party. As apart from Rs. 1000/- the rest of the bill had not been paid the firm demanded payment from Abdul Karim and on some occasions their representative talked to the first respondent on telephone. It is strange to say that "our employee had gone to the office at Nadiawad and inquired as to in whose name the bill should be made out because it is our usual practice to make such inquiries from our customers particularly when the bill is for a large amount." P.W. 2 admitted that "at the time when Abdul Karim gave us instructions in the first instance he had not told us in whose name we should make entries in our records or in whose name we should prepare the bill." It appears that even the amount of the bill is being disputed.

12. The High Court also considered the evidence of P.W.3, Umakant, who was working as Mehtaji with the firm. He merely proves the bill and the entries. Natwarlal, P.W.4, proves the receipt of Rs. 1000/- from Abdul Karim. He states that when Abdul Karim paid him the money he stated that he would give instructions as to in whose name the regular entries should be;

made.

13. In this state of evidence the High Court was right in holding that it cannot be said that the appellant has discharged the burden of establishing beyond reasonable doubt that it was the first respondent who had authorised Abdul Karim to give instructions regarding the work of illumination. Further we agree with, the High Court that it has not been established beyond reasonable doubt that the appellant had authorised Abdul Karim to give these instructions.

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