

Supreme Court of India

Lalroukung vs Maokho Lal Thangjom on 9 January, 1969

Equivalent citations: 1969 (1) UJ 12 SC

Author: Shelat

Bench: Shelat, Vaidialingam

JUDGMENT Shelat, J.

1. This appeal is by the returned candidate against the order of the learned Judicial Commissioner, Manipur, declaring his election to the Legislative Assembly of the Union Territory of Manipur from Churachandpur constituency void and ordering re-poll.

2. In the General Elections held in 1967 Churachandpur constituency had a reserved seat for scheduled castes and tribes. There were altogether 7 candidates for that seat. Respondent 1 is a member of Gangto Tribe while the appellant belongs to Hmar Tribe, On March 8, 1967 the appellant was declared elected, he having received the highest votes, viz., 3558 votes as against 2654 votes obtained by the second best. Respondent 1 received only 2643 votes. Respondent 1 thereafter filed the present petition alleging therein several corrupt practices on the part of the appellant. These allegations were denied by the appellant in his written statement. The Judicial Commissioner on the rival pleadings raised a number of issues, some of which he decided in favour of the appellant. In this appeal we are concerned only with issues 2, 4, and 7. These issues were :

(2) "Whether the election of the 1st respondent (the appellant) was illegal and is liable to be set aside for corrupt practices and undue influence ?"

(4) Whether there was obstruction by the agents of the 1st respondent (the appellant ) and whether his election is liable to be set aside ?" and (7) "Whether the election of the respondent 1 (the appellant) is liable to be set aside for the grounds mentioned in the petition ?"

At the relevant time there were two organisations in Churachandpur constituency known as Hmar National Union (H. N. U. ) and the Paite National Council (P. N. C.). The two organisations, whose members were confined to the Hmar and Paite tribes, formed an alliance sometime before the elections with the object of ensuring the election of candidates from the two tribes sponsored by the two organisations. The alliance, therefore, canvassed for the appellant, a Hmar by tribe, in Churachandpur area and for a Paite candidate in Thanlon area of Churachandpur constituency, asking the Hmars and Paites living there to vote only for these candidates and to refrain from voting for any other candidate from any other tribe. In furtherance of this objective the two organisations issued appeals by way of pamphlets and through a fortnightly newspaper called the "Voice of Churachandpur". In these writings, most of which were in Paite Language, the Paites of Churachandpur constituency were called upon to vote for the appellant, though a Hmar, in consideration of the Hmars voting for the said other alliance candidate, a Paite, in Thanlon area. The allegation was that this appeal was made on the ground of caste and community and therefore amounted to a corrupt practice within the meaning of Section 123(3) of the Representation of the People Act, 1951. The second corrupt practice alleged was that on one of the polling agent of respondent 1, was assaulted by the supporters of the appellant, one of whom was the agent of the

appellant, at Perasonum polling station, that the assault deterred the voters from freely exercising their right of ballot and therefore constituted undue influence within the meaning of proviso (a) to Section 123(2). The third corrupt practice alleged was that in further pursuance of the appeal to the Paites and Hmars, the P. N. C. announced an award to the village which gave the maximum votes to the candidate sponsored by the said alliance and that a cup called "the 1967 Election Cup" was given away to the village Binguilan after taking out a ceremonial procession in which the President of the P. N. C. and the appellant took part. This, according to respondent 1, amounted to bribery within the meaning of Section 123(1)(A)(b). The 4th corrupt practice alleged was that during the course of election campaign propaganda was carried on through the said writings to the effect that the goal of these tribes was to set up a separate sovereign 'Chin' State by unifying all 'Chin' (i.e. all non-naga tribes) within Manipur and beyond in Burma, that those who stood against the candidates sponsored by the alliance were the enemies of the 'Chin' nation, who destroyed the solidarity of these tribes and that they "will not be forgotten". By these writings, it was alleged, a feeling of hatred and enmity was aroused against respondent 1 and other candidates who did not belong to Hmar and Paite tribes and who were not espoused by the said alliance. In his written statement the appellant denied these allegations, his principal stand being that he did not know of and was not privy to these writings and did not in any event give his consent to any one of them.

3. At the hearing both parties led considerable evidence, oral as well as documentary. Some of the issues of "the Voice of Churachandpur" and other pamphlets said to have been published and distributed during the election campaign were also produced. Ex. A/7, an English translation of the news item in Paite language from the issue of "the Voice" of Churachandpur" dated January 25, 1967 announced the alliance between P.N.C. and the H.N.U. signed on January 18, 1967 and appealed to the Hmar people in Thanlon area to vote in favour of M. Goukhenpao, though a Paite, and the Paite people in Churachandpur area to cast their votes in favour of the appellant, though a Hmar. The news item declared that the alliance was between "the two giants" among the non-naga tribes of Manipur and therefore it would be "awfully terrifying for others to contest as M.L.A." Ex. A/8, an English translation of an election bulletin issued by the P.N.C. and published in "the Voice of 'Churachandpur" announced that the village which voted best for the P.N.C. would be awarded "the General Election 1967 Cup" by the President of the P. N. C. On January 31, 1967 a pamphlet was issued by the Paite College Students Union at Imphal advocating solidarity amongst the Paites and warning that there were several enemies of the P.N.C. who had but up rival candidates with the object of disintegrating that solidarity and exhorted that it was imperative "for the Paites and the Hmars to stand united for the creation (Unification) of 'chin' nation. Let us work every where we are so that their unity may bring forth diverse good fruits. The long-cherished hope of the now generation is the unification of the Chin nation. All our equals have crossed yonder. What about us?" The leaflet further exhorted caution against the other candidates and stated "Let us remember that those individuals and villages who oppose the opinion of the P. N. C. and H. N. U. are the persons who sell out our nation and country. They will never be forgotten." Ex. A/13 is a bulletin issued by the H. N.U. announcing that "The alliance between the H. N. U. and the P. N. C. is for the success of both of us. So, this alliance which is good for the Hmars is also meant to be good for the Paites."

The issue of "the Voice of Churachandpur" dated February 10, 1967 published a resolution of the third meeting of the Paite College Students at Imphal calling for support by the Paites to the

candidates sponsored by the said alliance. The resolution noted that the said students had selected the delegates named therein to persuade the other candidates to retire from the contest with a message that they violated the party policy and had become turncoats to their nation and calling upon the leaders of the P.N.

C. to be firm in their policy and threatening that those who opposed that policy "are not to be spared at all."

4. On the basis of those writings and the oral evidence the learned Judicial Commissioner arrived at the following findings: that these writings appealed to the Paites and the Hmars of Churachandpur constituency to support candidates sponsored by the alliance only and not to vote for candidates belonging to other tribes, that as gratification for support on award of a cup to the village who gave the maximum support to Hmar and Paite candidates was announced and the president of the P.N.C. did in fact give it away on April 8, 1967 to the said village Bingpilan, that through Ex.A/9 the students of the Paite college not only canvassed for their candidates but appointed delegates to persuade other candidates not to contest and thus not to break the solidarity of the Paites and the Hmars threatening those who did not support the candidates of the alliance that they would not be forgotten nor spared and dubbing them as the enemies of the 'Chin' nation. He also found that the appeal to vote only for Hmar and Paite candidates sponsored by the said two bodies was prejudicial to the electoral chances of respondent 1 who belonged to Gangte tribe; and that this propaganda on behalf of the appellant was clearly and beyond doubt on the basis of caste and community.

5. The evidence of T, Thangkhokai, P.W. 11, was that he was the editor of "the Voice of Churachandpur" since 1965 and at the material time was also the General Secretary of the P.N.C. He admitted that the newspaper as also Exs. A/6, A/11 and A/12, the originals in Paite language whose translations in English are cited above, were printed at the L & R Printing press in Churachandpur in which the appellant was a partner. The appellant himself also admitted in his evidence that he was a partner in the said press. His denial of any knowledge that those writings were printed in his press was disbelieved, and in our view quite legitimately, by the Judicial Commissioner.

6. The question next is whether these pamphlets were printed and distributed by or with the consent of the appellant. In that connection there was the evidence of P.Ws. 1 to 7, 12 and 13 and also of respondent 1, who all testified that these pamphlets and some of the issues of "the Voice of Churachandpur" were distributed at various places amongst the voters by the appellant and his agents and also by the workers of the H.N.U. and the P.N.C. There was also evidence that the appellant and his agent, K.T. Lalla, R.W.14, moved about in a jeep distributing these pamphlets. The evidence was that the theme of these pamphlets was that the 'Chins' living in India and Burma should unite and form one nation, that the non-naga tribes of Manipur were all 'Chins' and that they should stand united to form a separate independent State, that the Paites and Hmars were the biggest tribes against whom the other tribes could not withstand.

7. As against this evidence, the appellant and his witnesses denied any knowledge of or the distribution by them of those writings. The appellant also denied that he was a member of the H.N.U. The cross-examination, however, he was constrained to admit (1) that he was a partner in

the L. & R. Press, (2) that "the Voice of Churachandpur" was printed by that press, (3) that the name of that press was printed on the said pamphlets and writings and (4) that some of these related to him and the said Goukhenpao, the Paite candidate for Thanlon area sponsored by the said alliance. The Judicial Commissioner found on this evidence that the appellant's denial of knowledge that these pamphlets were printed in his press was unbelievable, that as against the evidence of so many witnesses his denial that he and with his consent his agents distributed them was also equally unbelievable. He further found that through these pamphlets the appellant campaigned for this candidature on the basis of caste and community. He also found that P. W. 8, a polling agent of respondent 1 and a voter, was assaulted at Pearsonum polling station by a number of persons, that among those who assaulted him was the agent of the appellant, that the appellant was on that day at that polling station, that the attack was a severe one in that P.W. 8 had to remain in a hospital as an indoor patient for 12 days, that this assault must have deterred a number of voters from freely exercising their right of voting and that therefore it amounted to undue influence within the meaning of Section 123(2) proviso, (a). He further found that this assault was the culmination of the campaign of threats by the Paite college students who were clearly working for the candidates from Hmar and Paite tribes sponsored by the said two organisations, and the feeling of enmity and hatred spread through the said writings against the candidates other than those sponsored by the said two organisations. Lastly, he found that the offer of an award and the giving away of the cup to the said village Bingpilan in consideration of the Paites living there having given maximum support to those candidates amounted to gratification within the meaning of Section 123(1)(A) read with the explanation there to.

8. Against these findings the contention of Mr. Goburdhan for the appellant was two and fold: (1) that these findings were not correct, and (2) that there was not sufficient and cogent evidence establishing the complicity of the appellant in the preparation or the distribution of the said writings.

9. Before we proceed to deal with these contentions it is proper to bear in mind the rule that a charge of corrupt practice is in the nature of a criminal charge as its consequence is not only to render the election of the returned candidate void but in some cases to impose upon him a disqualification. The evidence in support of such practice must, therefore, be cogent and definite arid if the election petitioner has to succeed he must establish definitely to the satisfaction of the court the charge he levies against the returned candidate (cf. *Mohan Singh v. Bhanwarlal* (1) & *Jagdev Singh Sidhanti v. Pratap Singh Daulla* (2) where, however, the charge is one of complicity in such a corrupt practice, direct evidence cannot always be expected and in such cases circumstantial evidence can also furnish legitimate proof. In such cases, however, circumstances relied on must be definitely proved and the inferences sought to be drawn from them must point definitely to the complicity of the person against whom the charge is levelled. (See *D. Gopalreddy v. S. Bai Talpalikar*(3) If, for instance, a returned candidate has entrusted the conduct of his election to an agent and that agent publishes a poster containing matter amounting to calumny of the personal character of his opponent and the returned candidate sees it but does not disown or refute it, that would be sufficient to attribute to him consent to such a poster and its publication, (See *Ram Kishan v. Jai Singh* (4)) In *D. Gopalreddy's* case (supra) this Court also laid down that where an appellant questions a finding of fact arrived at by the Court of trial, he must establish how that finding is

erroneous before he can call upon this Court to interfere with such finding and although this Court would re-appraise evidence, if it is a question of credibility of a witness depending on the estimate of his truth to fullness formed from observation of the witness by the trial Judge this Court would be slow to interfere.

10. Having ourselves gone through the oral as also the documentary evidence alongwith, Mr. Goburdhan and keeping in background the principles aforestated, we find ourselves in difficulty in accepting his contention that the findings of fact given by the learned Judicial Commissioner are either erroneous or not in consonance with evidence on record, Three facts clearly emerge from this evidence: (1) that "the Voice of Churachandpur" and some of the pamphlets at any rate were printed at the press in which the appellant was a partner, (2) that some of these writings related to him as the candidate and (3) that the P. N. C. and the H.N.U. sponsored his candidature. It must follow from these facts that the appellant had seen these pamphlets and must have known, therefore, that they contained appeals and exhortations to the members of the two tribes to support his candidature on the sole ground that he was a Hmar and as the Hmars in Thanlon area were to support a Paite candidate, the Paites of Churachandpur should support him, though he was a Hmar, It is clear, and indeed it is not the appellant's case, that he ever refuted or disowned such an appeal made by the two organisations on his behalf. From these three facts the following conclusions are inescapable: (1) that he was the candidate of the alliance, (2) that he left the conduct of the election campaign to the two organisations, (3) that he knew the contents of the aforesaid writings issued by them and (4) that he did not at any time disown them though he knew their contents and that he did not do so because he adopted them as his own or at any rate had given his consent. In the present case no question of indirect or implied consent can. arise because there was ample evidence found satisfactory by the Judicial Commissioner to prove that he himself and/or his agents distributed those pamphlets amongst the voters. It was, therefore, clearly futile of him to deny knowledge of these pamphlets or their having been printed and distributed among the voters.

11. But even if the appellant had knowledge of these writings and he and/or his agents with his consent had distributed them as part of his campaign, the question still remains whether they were appeal for support on the ground that he was a Hmar and that the Hmars and the Paites of the said alliance should vote for him. In other words, whether he campaigned on the basis of caste or community. It may in this connection be observed that the appellant never challenged that the Paites and the Hmars are communities distinct from the other tribes. In fact most of the pamphlets were printed in Paite language, a language different from the language of the other tribes. The appeal made in these pamphlets was not on the footing that if he, a Hmar, was voted by the two tribes he would undertake work of general utility for the two tribes or try to redress their grievances, if any, or to reduce their economic, educational or other backwardness. If that was the basis of his campaign it may be possible to argue that such an appeal may not constitute corrupt practice. (See Ghasi Ram v. Dal Sing (5) and M. L. Varma v. Muni Lal (6) dec. by the High Court of Punjab. The appeal made by or on behalf of the appellant was not that being a Hmar he would be the best judge of the disabilities of the Hmars and therefore a fit and proper person to be elected for removal of their disabilities, social, economic or educational. Nor is it possible to hold that either the P. N. C. or H. N. U. was a political party as was the case in Khilumal Topandas v. Arjun Das (7) and in Kultar Singh v. Mukhtiar Singh (8). "As aforesaid, the two organisations were purely communal, their

membership being confined to the members of the two tribes only. No attempt was made to show that their membership was open to the other tribals. Being the largest of the non-Naga tribes in Manipur, the object of combining together was to ensure election of the candidates from their tribes only and to give no chance to any one else to succeed in the election. The appeal was, therefore, clearly based on the ground of community and caste and fell within the mischief of Section 123(3) even if a restricted meaning were to be attributed to the word "community" in the light of the other words, namely, caste, language and religion, used along with it in that sub-section. Since, however, it was never challenged that the Paites and Hmars were communities within the meaning of Section 123(3), we find no necessity of going into that question any more. We must, therefore, confirm the finding that the appellant was guilty of corrupt practice on this heading and that his election was, therefore, vitiated thereby.

12. There was also clear and ample evidence corroborated by the independent testimony of Dr. Ningthoujam Singh, P.W. 15, that P.W. 8 was assaulted on February 15, 1967 at Pearsonum polling station and that amongst those who assaulted him was Bungkham, the appellant's polling agent there. That evidence also established that the appellant was that day at that polling station but never denounced that assault nor disowned it nor assured the voters in that area that there would be no interference with their exercise of the right of voting even if they supported respondent 1. The absence of such denunciation or refutation by him shows that he at any rate acquiesced and gave implicitly his consent to that incident. Mr. Goburdhan, however, argued that the assault was only a stray incident and cannot attract Section 123(2), proviso (a). But the assault cannot be considered as an isolated event. As already stated, before the polling day pamphlets were issued wherein threats were freely canvassed and exhortations made that those who opposed the candidates supported by the two organisations would not be forgotten nor spared. In the light of propaganda of this nature carried on before the polling days it is impossible to view the assault as an isolated incident nor can it be legitimately argued that the conclusion of the Judicial Commissioner that it was a culmination of those threats was either an unreasonable or an unwarranted conclusion. There can be no doubt that such rowdiness at a polling station was bound to deter voters from coming to the polling station to exercise freely their franchise. We have no doubt that the assault by the appellant's polling agent attracted Section 123(2), proviso (a) and that also rendered the election void. In "view of our confirming these two findings of the learned Judicial Commissioner, it is not necessary for us to go into the question whether the promise to award a cup and the actual awarding of it constituted bribery and therefore a corrupt practice. The two contentions raised by counsel for the appellant, therefore, fail.

13. The third contention raised by Mr. Goburdhan was that the Judicial Commissioner was in error in allowing the plea of distribution of the said pamphlets by the appellant and with his consent by his agents by way of amendment as such an amendment was clearly time-barred. The contention has no substance. In the original petition the plea of publication was in fact taken and publication must necessarily include and mean distribution also.

(See *Mc. Farlane v. Hulton* (9)) But apart from that no such contention was raised in the trial court nor has that contention been urged in the grounds of appeal before us. In point of fact the contention taken was a limited, one as to the date of awarding the cup which by mistake was

originally mentioned as March 8, 1967 and which was subsequently corrected to April 8, 1967. That obviously was not a new plea which could not be corrected by amendment.

14. For the reasons aforesaid our conclusion is that the appeal is without substance and is therefore dismissed with costs.