

CIVIL MISCELLANEOUS

Before R. S. Narula, J.

MOJI,—Petitioner

versus

SURAJ MAL AND ANOTHER,—Respondents

Civil Writ No. 2727 of 1965

1965

 December, 7th. *Punjab Gram Panchayat Act, 1952 (IV of 1953)—S. 13-U(7)—
 Appointment of an employee of a local authority as counting agent—
 Whether constitutes corrupt practice.*

Held, that the mere employment of an employee of a local authority as counting agent distinguished from an election agent or a polling agent does not constitute a corrupt practice within the meaning of section 13-U(7) of the Punjab Gram Panchayat Act. The duties of the counting agent come in the field for the first time after the polling is over. What is required by section 13-U(7) of the Act is not the seeking of assistance "for the furthering of the election" but "for the furthering of the prospects of the election". "To further" means in its ordinary dictionary concept "to promote" or "to help forward" or "to advance". How a counting agent can promote, advance or help forward "the prospects" of an election is inconceivable. A counting agent, in the nature of things, merely attends to safeguard the interests of the election and not to further it.

Petition under Articles 226/227 of the Constitution of India, praying that a writ of certiorari, mandamus or any other appropriate writ, order or direction be issued quashing the order of respondent No. 2, dated 23rd September, 1965.

P. S. DAULTA WITH A. S. NEHRA ADVOCATES, for the Petitioner.
 NEMO, for the Respondents.

ORDER

Narula, J. NARULA, J.—Moji petitioner is impugning in this writ petition the order of respondent No. 2, Shri S. L. Dhani, Prescribed Authority for Panchayat elections, Gohana, District Rohtak, dated September 23, 1965, setting aside the petitioner's election as a Panch to the Gram Panchayat of Bidhal within that tehsil and district on the solitary ground that he had admittedly employed one Balbir Singh Malik,

an employee of the Municipal Corporation of Delhi, as his counting agent at the election held on December 27, 1963. The election petition, dated January 23, 1964 (copy annexure 'A') had been filed by Suraj Mal, respondent No. 1. At the trial of the election petition respondent No. 2 framed as many as seven issues out of which issue No. 4 reading as follows is the only relevant one for the purposes of this case:—

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"4. Whether Moji, respondent, had appointed Shri B.S. Malik as his polling Agent ? If so, to what effect ? O.P.P."

In his impugned order (copy annexure 'B') respondent No. 2 held that B.S. Malik was counting agent and not the polling agent of the petitioner, but further held that the employment of an employee of a local authority as a counting agent amounted to a corrupt practice within the meaning of section 13-U(7) of the Punjab Gram Panchayat Act, 1952 (Act 4 of 1953) as amended by Punjab Act 26 of 1962, hereinafter referred to as the Act.

None of the respondents has appeared to oppose this petition.

Section 13-U (7) reads as follows:—

"(7) The obtaining or procuring or abetting or attempting to obtain or procure by a candidate or his agent, or by any other person with the consent of a candidate or his agent, any assistance (other than the giving of vote), for the furtherance of the prospects of that candidate's election, from any person in the service of the Government, the Government of India or the Government of any other State or a local authority."

Section 13-0 (1)(b) is in the following terms:—

"(1) If the prescribed authority is of the opinion—

"(a)

(b) that any corrupt practice has been committed by the elected person or his agent or by any

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other person with the consent of the elected person or his agent;

(c) -----

the prescribed authority shall set aside the election of the elected person."

There is, therefore, no doubt that if the petitioner is proved to have obtained or attempted to obtain any assistance for the furtherance of the prospects of his election from B. S. Malik, who was admittedly an employee of a local authority (the Municipal Corporation of Delhi) the petitioner's election was liable to be set aside under section 13—0 (1)(b) of the Act.

In the instant case there was no evidence whatsoever of any assistance having been obtained or attempted to have been obtained by the petitioner for the furtherance of the prospects of his election from B. S. Malik. The prescribed Authority held that a statutory presumption of such assistance having been obtained arose because of the mere employment of Shri Malik and that the said statutory presumption had not been rebutted. For this proposition respondent No. 2 relied upon the decision of the Supreme Court in *Dr. Y. S. Parmar v. Hira Singh Pal* (1).

That case related to the committing of a corrupt practice defined in section 123(7) of the Representation of the People Act, 1951. The corrupt practice in question as defined in that provision is in the following terms:—

"(7) The obtaining or procuring or abetting or attempting to obtain or procure by a candidate or his agent or, by any other person with the consent of a candidate or his election agent, any assistance (other than the giving of vote), for the furtherance of the prospects of that candidate's election, from any person in the service of the Government and belonging to any of the following classes, namely:—

- (a) gazetted officers;
- (b) stipendiary judges and magistrates;
- (c) members of the armed forces of the Union;

(1) A.I.R. 1959 S.C. 244.

- (d) members of the Police forces;
- (e) excise Officers;
- (f) revenue officers other than village revenue officers known as lambardars, malguzars, patels, deshmukhs or by any other name, whose duty is to collect land revenue and who are remunerated by a share of or commission on the amount of land revenue collected by them, but who do not discharge any police functions; and
- (g) such other class of persons in the service of the Government as may be prescribed."

But the learned Prescribed Authority appears to have completely omitted to notice the second explanation to sub-section (7) of section 123 of the Representation of the People Act, which is in the following words:—

"(2) For the purposes of clause (7), a person shall be deemed to assist in the furtherance of the prospects of a candidate's election if he acts as an election agent, or a polling agent or a counting agent of that candidate."

In *Dr. Y. S. Parmar's case* the Supreme Court negatived the argument advanced on behalf of the elected candidate about the necessity of evidence of actual obtaining of the requisite assistance or an attempt at the same in the following words:—

"It (the above-said argument) overlooks the provisions of the second explanation to the section which we have already set out. Under that explanation if a person acts as the polling agent of a candidate it must be held without more, that he assisted in furtherance of the prospects of that candidate's election."

It was again held in the said judgment:—

"It follows *in view of the explanation* that the appellant procured and obtained the assistance of Amar Singh, for the furtherance of the prospects of his election." (italicised by me).

It is obvious from the phraseology adopted in section 13-U(7) of the Act that the framers of the Act had before them the provisions of section 123(7) of the Representation

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of the People Act, 1951 and merely transplanted from the 1951 Act into the present Act the relevant part of that sub-section. While so doing the Punjab Legislature has omitted to add any provision like the second explanation to sub-section (7) of section 123 of the Representation of the People Act, 1951 to section 13-U(7) of the Act. This appears to be a deliberate and conscious departure and it will, therefore, have to be presumed that the State Legislature did not intend to bring in the statutory presumption contained in section 123(7) of the Representation of the People Act for the purposes of elections under the Punjab Gram Panchayat Act. The Prescribed Authority, therefore, committed a glaring and apparent error of law in following the judgment of the Supreme Court in *Dr. Y. S. Parmar's case* which has been given in an entirely different setting and in connection with an entirely different provision of law.

In the absence of a statutory provision like the one contained in explanation (2) to section 123(7) of the Representation of the People Act, it appears to be impossible to construe the mere employment of a counting agent distinguished from an election agent or a polling agent as constituting a corrupt practice within the meaning of section 13-U(7) of the Act. The duties of the counting agent come in the field for the first time after the polling is over. What is required by section 13-U(7) of the Act is not the seeking of assistance "for the furthering of the election", but "for the furthering of the prospects of the election. "To further" means in its ordinary dictionary concept "to promote" or "to help forward" or "to advance". How a counting agent can promote, advance or help forward "the prospects" of an election is inconceivable. A counting agent, in the nature of things, merely attends to safeguard the interests of the election and not to further it. Indeed an argument of this type appears to have been addressed before the Supreme Court in *Dr. Y. S. Parmar's case*. But the same had to be repelled by their Lordships of that Court only in view of the statutory presumption referred to above. In this connection the Supreme Court observed in its judgment in *Dr. Parmar's case* as below:—

"Mr. Achhruram appearing for the respondent pointed out that the explanation clearly shows that the candidate's intention is irrelevant, for such presumption arises even when a candidate has procured another person to act as his counting

agent and it is very difficult to imagine that the appointment of a counting agent can further the prospects of any election, for the counting agent acts after the polling is over and only when the votes already polled, are counted. Therefore it seems to us that in the case of the appointment of a polling agent which comes *within the explanation* as the present case does, the intention of the candidate in procuring the assistance is irrelevant." (italicised by me).

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It is, therefore, obvious that the judgment of the Supreme Court in *Dr. Parmar's case* was based on the statutory presumption raised by explanation (2) to section 123 (7) of the Representation of the People Act alone.

This is also obvious from a reference to a similar provision contained in section 123(8) of the Representation of the People Act, where no such explanation as the one referred to above exists. Relating to that provision of law it has been held by their Lordships of the Supreme Court in *Mahendra Kumar vs. Shrimati Vidyawati and others* (2), that the appointment of a Government servant as polling agent does not *per se* fall within the mischief of section 123(8). But if he also does canvassing work for the candidate, it would be undoubtedly corrupt practice falling within that section. It is the law laid down in *Mahendra Kumar's case*, by the Supreme Court which is more relevant for the purposes of deciding this case than the one laid down in *Dr. Parmar's case*.

The election of the petitioner has been set aside by the impugned order of respondent No. 2 on no other ground except the one referred to above. The error of law in the impugned order is apparent on its face. The order of the Prescribed Authority dated 23rd September, 1965, cannot, therefore, be sustained.

In the above circumstances I allow this writ petition and set aside the impugned order of respondent No. 2 in so far as it relates to Moji petitioner. The result is that the election petition filed by respondent No. 1 against the petitioner stands dismissed. As no one has appeared to oppose the petition, there will be no order as to costs in this case.

B. R. T.