

NANGTHOMBAM IBOMCHA SINGH

A

v.

LEISANGHEM CHANDRAMANI SINGH & ORS.

September 13, 1976

[H. R. KHANNA, N. L. UNTWALIA AND JASWANT SINGH, JJ.]

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*Representation of the People Act 1951—Sec. 77—Incurring expenses in excess of what is permissible—Interference by this Court with appreciation of evidence by High Court.*

Respondent No. 1 was declared elected to Manipur Legislative Assembly. The appellant who was one of the rival candidates filed an Election Petition on two grounds (1) Respondent No. 1 was holding office of profit inasmuch he was the speaker of the Assembly; and (2) the Respondent No. 1 incurred election expenses in excess of what is permissible. The High Court negated both the contentions and dismissed the Election Petition.

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In an appeal filed by the Election Petitioner to this Court in view of the change in law with retrospective effect the first ground was not available to the appellant in this Court.

The appellant contended

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- (1) The sum of Rs. 500 paid to his party by respondent No. 1 has been wrongly excluded by the High Court from the total expenditure.
- (2) The sum of Rs., 101.50 spent for the purchase of petrol and mobil oil was not shown by respondent No. 1 in his return.
- (3) Respondent No. 1 spent Rs. 1180/- on the microphone. He has, however, shown Rs. 720 only in the return.
- (4) Respondent No. 1 used Jeep No. 7343 in addition to Jeep No. 194 and the expenses incurred on that jeep are not known.

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Dismissing the appeal,

**HELD :** It is well settled that this Court does not normally interfere in an election appeal with the High Court's appraisal of oral evidence of witnesses unless such appraisal is vitiated by some glaring infirmity. In the present case no such infirmity is shown. The evidence led by the Election Petitioner is not cogent and sufficient to come to the conclusion that various amounts mentioned by him were actually spent by Respondent No. 1. As far as the payment of Rs. 500/- is concerned, the same is admitted by respondent No. 1, but that was paid before the filing of the nomination and what the Statute requires is the expenses incurred from the date of nomination till the date of the declaration of the result. [575 B-C, 576G]

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Stray and solitary use of a jeep for visiting a place a few hundred yards away from the residence of the respondent where some untowards incident had taken place cannot be held tantamount to the use of the jeep for election purposes. [577B-C]

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**CIVIL APPELLATE JURISDICTION :** Civil Appeal No. 799 of 1975.

From the Judgment and Order dated 31-1-75 of the Gauhati High Court, Imphal Bench in Election Petition No. 2/74.

*Janardhan Sharma and Jitendra Sharma;* for the appellant.

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*S. V. Gupte Naunit Lal and (Miss) Lalita Kohli,* for Respondent No. 1.

A The Judgment of the Court was delivered by

B KHANNA, J. In the mid-term poll to Manipur Legislative Assembly held in February 1974, respondent No. 1 (hereinafter referred to as the respondent) was declared elected from the Patsoi Assembly constituency. The appellant, who was one of the rival candidates, filed an election petition to challenge the election of the respondent. The election petition was dismissed by the Gauhati High Court. The appellant has now come up in appeal against the judgment of the High Court.

C The respondent, who was a candidate sponsored by the Manipur People's Party secured 5,033 votes, while the appellant who was his nearest rival secured 2,473 votes. There were some other candidates, but we are not concerned with them. The respondent was the Speaker of Manipur Legislative Assembly at the relevant time. The Assembly was dissolved in 1973. The respondent, however continued to hold the office of the Speaker till March 8, 1974. The appellant challenged the election of the respondent on two main grounds. One of the grounds was that the respondent being Speaker of the Assembly held an office of profit in the State Government and as such was disqualified to seek election. The other ground was that the election expenses of the respondent exceeded the prescribed limit of Rs. 2,500. It was also stated that some of the expenses incurred by the respondent for the purpose of election had not been shown by him in the return filed by him, and as such, he was guilty of corrupt practice. The High Court repelled all the grounds, and in the result dismissed the election petition.

F In appeal before us Mr. Sharma on behalf of the appellant has not challenged the finding of the High Court insofar as it has held that the respondent was not disqualified from seeking election because of the fact that he held the office of the Speaker. The appellant indeed could not challenge this finding as we find that the Manipur Legislature has now passed the Manipur Legislature (Removal of Disqualifications, (Amendment) Act, 1975 (Manipur Act 1 of 1975). As a result of this amendment, a person holding the office of Speaker of Manipur Legislative Assembly shall not be disqualified from seeking election to the Legislative Assembly of that State because of his holding that office. The amending Act, according to clause (2) of section 1, shall be deemed to have come into force on February 6, 1973. The fact that the legislature is competent to enact such a law with retrospective operation is now well-established (see *Kanta Kathuria v. Manak Chand Surana*<sup>(1)</sup> and *Smt. Indira Nehru Gandhi v. Shri Raj Narain*<sup>(2)</sup>). In view of the above amending Act, the respondent cannot be held to be disqualified from seeking election to the Legislative Assembly of Manipur on account of his having held the office of the Speaker of the Legislative Assembly.

(1) [1970] 2 S.C.R. 830.

(2) [1976] 2 S.C.R. 347.

Mr. Sharma has assailed the finding of the High Court insofar as it has held that the election expenses of the respondent did not exceed the prescribed limit of Rs. 2,500. According to the return filed by the respondent, he incurred a total expense of Rs. 2,160 in connection with his election. It is urged by Mr. Sharma that though the respondent paid Rs. 500 to the Manipur People's party for securing a ticket of that party, he did not show that amount in the return filed by him. Adding that sum of Rs. 500 to the amount of Rs. 2,160 would take the expenses beyond the prescribed limit of Rs. 2,500. The said amount of Rs. 500, we find, was paid by the respondent to Manipur People's party on December 5, 1973. According to an amendment made in section 77 of the Representation of the People Act, 1951 by Act 40 of 1975, every candidate at an election will either by himself or by his election agent, keep a separate and correct account of all the expenditure in connection with the election, incurred or authorised by him or by his election agent between the date on which he has been nominated and the date of the declaration of the result thereof, both dates inclusive. The respondent admittedly filed his nomination on January 23, 1974. The amount of Rs. 500 was paid by the respondent on December 5, 1973 long before the date on which the respondent filed his nomination. The said amount of Rs. 500 consequently need not have been shown in the return of expenses filed by the respondent, nor could the said amount be taken into consideration in calculating the total expenses of the respondent with a view to judge as to whether his expenses exceeded the prescribed limit. It has not been disputed that Act 40 of 1975 by which amendment was made in section 77 of the Representation of the People Act, 1951 has a retrospective effect and was in operation at the time the election with which we are concerned was held.

Mr. Sharma has next contended before us that an amount of Rs. 101/55 paise was spent for the purchase of petrol and mobil-oil by the respondent in addition to the amount of Rs. 586 which was shown by the respondent to have been spent by him on the purchase of petrol and mobil-oil. According to Mr. Sharma, petrol and mobil-oil worth Rs. 101/55 were purchased by the respondent from Singh & Co., Imphal during the dates January 18 to 23, 1974. In this respect, we find that the evidence adduced by the appellant is not at all satisfactory. Two witnesses were examined by the appellant in this connection. One of them was the appellant himself, who came into the witness box as PW 1. It is apparent that this witness has no personal knowledge in the matter. The other witness examined by the appellant is R. B. Shukla, PW 21. The evidence of Shukla shows that he sold petrol and mobil-oil worth Rs. 101/55 paise for vehicle bearing number 194. The respondent undoubtedly used jeep NLM 194 during the elections. There is nothing in the record of Singh & Co. or in the evidence of PW Shukla to indicate that the petrol and mobil-oil worth Rs. 101/55 paise were supplied for jeep NLM 194 and not for another vehicle bearing that number. The respondent in the course of his deposition has denied having purchased petrol and mobil-oil from Singh & Co.

- A** Mr. Sharma has also assailed the finding of the High Court regarding the expenses incurred by the respondent on microphones. According to the return filed by the respondent, he spent Rs. 720 on that account. The case of the appellant is that the respondent paid Rs. 1,130 to Sena Yaima Sarma, Rs. 1,180 to Lockey Sound Equipment and Rs. 1,000 to Hijam Iboton Singh for use of microphones in connection with his election. As against that, the case of the respondent is that he hired microphone from Lockey Sound Equipment and paid Rs. 720 only to that concern in that connection. There is no cogent evidence on the record to indicate that respondent paid anything over and above Rs. 720 on account of the use of microphones. The High Court found that the representatives of the firms from which the microphones were alleged by the appellant to have been taken on hire by the respondent, were not examined as witnesses and that evidence adduced in this behalf was of a most unsatisfactory character. We find no cogent ground to take a different view. Emphasis has been laid by Mr. Sharma upon the fact that in the return filed by the respondent, the date of payment of Rs. 720 has been mentioned to be February 26, 1974 while according to the evidence of the respondent in the witness box, the said payment was made on March 24, 1974. In this connection, we find that the bill of Lockey Sound Equipment for the hire charges of microphones is dated February 26, 1974. It seems that the respondent mentioned the date of the bill in connection with that payment. No inference adverse to the respondent, in our opinion, can be drawn from the above discrepancy regarding the date of payment.
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- E** Lastly, it has been argued on behalf of the appellant that the respondent also used jeep MNS 7343 in addition to jeep NLM 194. It is stated that the expenses incurred by the respondent on account of petrol and mobil-oil for jeep MNS 7343 were not shown by him in his return. In this respect we find there was no allegation in the election petition as originally filed regarding the use of jeep MNS 7343 by the respondent. This allegation was introduced by the appellant only as a result of the amendment of the election petition. No documentary evidence was placed on the file by the appellant to show that the respondent used jeep MNS 7343 for the purpose of his election. Oral evidence was however, adduced by the appellant for this purpose. The High Court found the evidence adduced in this connection by the appellant to be wholly unreliable. After hearing Mr. Sharma, we find no cogent reason to take a contrary view. It is well established that this Court should not normally interfere in an election appeal with the High Court's appraisal of oral evidence of witnesses unless such appraisal is vitiated by some glaring infirmity. No such infirmity has been brought to our notice. Reference has been made by Mr. Sharma to first information report dated February 23, 1974 which was alleged to have been made by the respondent to the police. No attempt was made by the appellant to bring on record the original first information report or to prove the same. The High Court in the circumstances held that the appellant could not rely upon a copy of the said first information report.
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Mr. Sharma then contends that the appellant in any case can rely upon the oral deposition of the respondent when he came into the witness box. We have been taken through that deposition, and we find no warrant for the conclusion that jeep MNS 7343 was used by the respondent in connection with his election. All that has been stated by the respondent in the course of his deposition is that on February 23, 1974 he came to know of some untoward incident at a distance of a few hundred yards away from the place of his residence. He went in jeep MNS 7343 towards that spot and thereafter returned in that jeep from that spot. Such stray and solitary use of the jeep for visiting the place of incident a few hundred yards away from the residence of the respondent cannot, in our opinion be held to tantamount to the use of the jeep for election purpose. There is no cogent evidence to show that the jeep was used otherwise by the respondent for attending his election meetings or for other election purposes.

As a result of the above, we dismiss the appeal. Considering the fact that the first ground which constituted the principal weapon of attack of the appellant against the validity of the respondent's election is not available because of the change made in law during the pendency of the appeal, we direct that the parties should bear their own costs of the appeal.

P.H.P.

*Appeal dismissed.*