

Raghavan Vs. Unnikrishnan and ors.

Raghavan Vs. Unnikrishnan and ors.

SooperKanoon Citation : sooperkanoon.com/720169

Court : Kerala

Decided On : Oct-19-1971

Reported in : AIR1972Ker218

Judge : K. Sadasivan, J.

Acts : [Representation of the People Act, 1951](#) - Sections 81 and 123(1); Representation of the People (Amendment) Act, 1966; [Limitation Act, 1963](#) - Sections 4, 29(2) and 29(4)

Appeal No. : Election Petn. No. 1 of 1971

Appellant : Raghavan

Respondent : Unnikrishnan and ors.

Advocate for Def. : V.K.K. Menon, Adv.

Advocate for Pet/Ap. : C.S. Balakrishnan, Adv.

Disposition : Petition dismissed

Judgement :

ORDER

K. Sadasivan, J.

1. The petitioner is one of the defeated candidates at the recent election to Parliament from Badagara constituency. He contested the election, as an independent candidate. There were three other candidates and they are respondents 1 to 3. Respondents 1 and 2 were sponsored by the Indian National Congress led by Mr. Jagiivan Ram (shortly stated Congress (J) 1 and the 3rd respondent by the Indian Socialist Party. The election was held on 6-3-1971. The votes polled by the candidates were as follows:--

(i) Sri K. P. Unnikrishnan (R1) ... 1,98,939(ii) ' A. V. Raghavan(petitioner) ... 1,41,135(iii) Smt. Leela Damodara Menon (R2) ... 2,236(iv) Sri A. Sreedharan(R3) ... 33,393

The results were announced on 12-3-1971, the 1st respondent Sri. K. P. Unnikrishnan having secured a majority, was on that day declared elected.

2. The election is Challenged by the petitioner mainly on the ground that the 2nd respondent was weeded out from the scene of contest by the Congress High Command by offering her an assignment as India's representative in the United Nations Human Rights Commission (shortly stated UNHR Commission). This, according to the petitioner, was done by Sri. Jagiivan Ram, the President of the Indian National Congress with the connivance of the Prime Minister Smt. Indira Gandhi. The petitioner would maintain that this is a corrupt practice falling under Section 123(1) (A) and (B) of the [Representation of the People Act, 1951](#) (shortly stated the Act) and he seeks to set aside the election on this ground. In support of the petitioner's contention he has averred the following facts in his petition:--

On 23-1-1971 the Kerala Pradesh Congress Committee representing Congress (J) presented a list of names of candidates to the High Command for its consideration. On or about 28-1-1971 the President of the K. P. C. C. announced the names of his party's candidates as approved by the Central Parliamentary Board.

The 2nd respondent was announced as the party's candidate from Badagara Constituency. Accordingly she filed her nomination from that Constituency on 1-2-1971, On 3-2-1971 respondents 1 and 3 and the petitioner also filed their

nomination papers. The 1st respondent filed his nomination as a candidate sponsored by Congress (J). Then an announcement was made by Sri. Uma Shanker Dixit, General Secretary of the party that one of the two candidates sponsored by Congress (J) would withdraw and that Sri. Jagjivan Ram would hold discussions, for that purpose, with the President of the K. P. C. C. On or about 6-2-1971 the 2nd respondent made a Press Statement announcing that she had withdrawn her candidature. She had also stated that on technical grounds her withdrawal was not accepted by the Election Commission. The 2nd respondent who had stuck on to her candidature was finally prevailed upon by Sri Jagjivan Ram and Smt. Indira Gandhi to withdraw in favour of the 1st respondent and in consideration of that she was offered the unique honour of being India's representative in the UNHR Commission for a period of one year.

This offer, the petitioner understands, was made between the 3rd and 6th of February, 1971. On 16-2-1971 the official announcement came from the Central Government stating that the 2nd respondent was made India's representative in the UNHR Commission. The 1st respondent, as the Delhi Reporter of the 'Mathrubhumi', wielded enormous influence in Congress circles at Delhi and was able to bring pressure on the Congress President and Smt. Indira Gandhi to pave the way for his success at the Election by whisking away the 2nd respondent from the scene by offering her the assignment in the UNHR Commission. Reports came in the 'Mathrubhumi' of the 2nd respondent's reluctance to withdraw from the field; but ultimately she withdrew and supported the candidature of the 1st respondent. On 16-2-1971 the announcement came from the Government of India that the 2nd respondent was chosen to lead the Indian Delegation to the UNHR Commission. The assignment was to last for one year and she left for Geneva on 21-2-1971. In the meantime the election took place, According to the petitioner, the withdrawal of the 2nd respondent was procured by the corrupt practice of choosing her as the leader of the Delegation to the UNHR Commission.

The circumstances leading to her withdrawal, according to the petitioner, would show that she was induced to withdraw by promise of the said assignment. The Congress Party under whose ticket R-1 and R2 filed their nominations was the party in power at the centre and the President of the party is a Minister also. It

was, therefore, possible for their party to make their offer to R2 through the Central Government. As seen from the news item that appeared in the 'Mathrubhumi' dated 23-1-1971, all the 7 candidates put up by the party in Kerala to Lok Sabha, were the unanimous choice of the K. P. C. C. In the Mathrubhumi dated 30th January, 1971, it was reported that the Kerala list had been fully approved by the Central Parliamentary Board. But on 1-2-1971 the news item appeared in the Mathrubhumi that instead of R2, R1 the Delhi Reporter of the Mathrubhumi was chosen as the Congress Candidate. From R2's statement which appeared in the Mathrubhumi dated 2-2-1971, it was clear that she stuck on to her decision to contest, as she had a good chance of success in view of her past sacrifices and associations with the organisation and the Society.

The report also pointed out the reactions amongst the office-bearers of the party against the change. In the Mathrubhumi dated 3-2-1971, the K. P. C. C. President is reported to have expressed his helplessness in finding a solution to the problem. The change was vehemently criticised by R2 and that statement was also published by the Mathrubhumi. She even stated that she was shocked to hear the decision, especially when she had started her election campaign, by putting up banners and starting wall-markings and writings. It is at this juncture that R2 was removed from the scene by choosing her as the Indian representative in the UNHR Commission. It is also significant, according to the petitioner, that she had chosen an independent symbol also along with the Congress symbol. It was reported that if she contested as an independent candidate the Jana Sangh would support her. Smt. Indira Gandhi had issued a special appeal to the voters of the Badagara Constituency to elect R1 and this statement appeared in the Mathrubhumi dated 4-3-1971.

Smt. Indira Gandhi and Jagjivan Ram have committed corrupt practice falling under Section 123(1) of the Act by exploiting their position as members in the Cabinet and proposing R2 to represent India in the UNHR Commission. This was done to further the chances of success of R-1.

R1 also is equally guilty of the corrupt practice along with R2, Smt. Indira Gandhi, Sri. Jagjivan Ram and members of the K. P. C. C. in having offered to the 2nd

respondent gratification in the shape of an assignment in the World Body as Indian Representative with the object of inducing her to withdraw from con-tost. R2 is guilty of corrupt practice in the sense that she accepted the offer. The offer was made to R2 by Smt. Indira Gandhi and Sri. Jagjivan Ram at the instance and with the consent and knowledge of the 1st respondent who had great influence over Smt. Indira Gandhi and Sri. Jagjivan Ram.

3. On these facts the petitioner would pray that the election of the 1st respondent be declared void and set aside as it is vitiated by corrupt practice under Section 123(1) (A) and (B) of the Act.

4. R1 in his written statement has denied the charge of corrupt practice alleged against him by the petitioner. He was granted the party ticket by the Central Election Committee to be the candidate of the party for the Badagara constituency. It is true that R2 had filed her nomination as candidate of the party; but that was before the list of candidates of the party for Kerala was approved and announced. He was the only candidate approved by the Central Election Committee. The K. P. C. C. President was duly informed from the Central Parliamentary Board about R1's choice as the party-candidate and he in his turn informed the Chief Electoral Officer, Trivandrum. Thereupon the 2nd respondent filed her withdrawal application of her own free will without anybody's compulsion; but due to technical reasons the withdrawal application was rejected by the Returning Officer. She, therefore, continued as an independent candidate with a free symbol, viz., coconut tree bearing fruits. She had no intention at all to contest the election, as R1 had been chosen as the party-nominee.

The practice obtaining in the party is that the District Congress Committee would submit their recommendations to the Pradesh Congress Committee and the latter after further processing would submit their recommendation to the All India Congress Committee. It is the Central Election Committee of the party that finally decides upon the candidates for each constituency. As it was a mid-term election the working committee of the party by a resolution authorised the Central Parliamentary Board to function as the Central Election Committee. Thus it was the Central Parliamentary Board that decided the candidates. The list submitted by

the Kerala Pradesh Congress Committee was only in the nature of recommendation submitted to the All India Congress Committee. It was that list that was published on 28-1-1971. a list which was yet to be considered by the Central Parliamentary Board. The list was finalised and published by the Central Parliamentary Board on 31-1-1971. According to that list RI was the party's candidate chosen to contest the election in the Badagara constituency.

Accordingly the K. P. C. C. wrote to the Chief Electoral Officer at Trivandrum to allot the party's symbol to RI. R2 filed her nomination as an alternative candidate only and when the 1st respondent was announced as the approved candidate, she naturally withdrew her nomination. This was only an internal matter of the Congress party. The allegation that R2 refused to withdraw is not correct. She has all along been a sincere and loyal member of the party and she never intended to contest except as a party-candidate. The allegation that Sri. Jagjivan Ram and Smt. Indira Gandhi prevailed upon the 2nd respondent to withdraw in favour of the 1st respondent in consideration of her securing membership in the UNHR Commission is false and malicious. Her withdrawal had nothing to do with her membership in the Commission. It is wrong to say that the offer of membership in the Commission was made to her between the 3rd and 6th of February, 1971 consequent on her withdrawal in favour of R1. Her nomination as India's representative in the Commission was announced only on 16-2-1971. R2 is an eminent social worker and she has been associated with many women's organisations in India. Ladies with such political and social background, qualified to represent India in international bodies are comparatively few.

She was, therefore, eminently fit for the assignment and accordingly she was nominated to the Commission by the External Affairs Ministry of the Government of India in the usual course. RI had no part to play in the affair. He had no information or knowledge or even the possibility of his knowing about her nomination till the news appeared in the news papers. He had left New Delhi on the 1st of February, 1971. and had not returned till after the elections. During the period he had no sort of contacts with either the Prime Minister or Sri Jagjivan Ram. It is open to any political party to decide who should be its candidate for the election. The choice of one person against another does not imply any request or

pressure on the other to withdraw from the election. The allegation that the election was vitiated by the corrupt practice employed, is false. The allegation regarding corrupt practice is itself vague and ambiguous. The news paper reports and pamphlets relied on by the petitioner do not further his cause. Most of the reports are either incorrect or inaccurate.

The allegation that R1. Smt. Indira Gandhi and Sri. Jagjivan Ram have conspired together and decided to send R2 away from India is false and is denied. At no time had R1 heard from the Prime Minister or Sri Jagiivan Ram anything about R2's nomination to the Commission. The election is not vitiated by any corrupt practice and is not liable to be set aside.

5. R2 also has filed a written statement, in which she had denied the charge that she withdrew from the contest in consideration of her nomination to the UNHR Commission. She has stated further, that the newspaper reports, on which reliance has been placed by the petitioner, cannot be relied on for any purpose for the reason that the reports are mostly inferences drawn by the reporters or their figments of imagination. The allegation that R2 was proposed to the UNHR Commission by Smt. Indira Gandhi and Sri Jagjivan Ram is denied, nO inducement was made to her by anybody. She has ever been a loyal worker of the Congress Party, always ready and willing to abide by the mandate of the party. The moment, she became aware that the 1st respondent was the official nominee of the party she expressed her willingness to withdraw and render all support to him and she had actually withdrawn also from contest. No gratification was offered to her in the shape of an appointment in the World Body as India's representative. Her nomination to the Commission came only long after she had withdrawn her candidature. She was the Secretary of All India Women's Conference and is even now holding that place.

She has also gained experience as a worker in Social. Educational and Political fields. Her nomination to the UNHR Commission was in recognition of such experience and her past service. It was never made with the object of inducing her to withdraw her candidature. It is not uncommon that the proposals made by the Pradesh Committee is superseded by the decision of the Central Board. It is

untrue to say that the 2nd respondent's presence in Kerala was an obstacle to the victory of the 1st respondent. On the other hand, her presence in Kerala would have only contributed to the success of the 1st respondent. Even if R2 had not withdrawn, that would not have very much changed the position in the constituency. She has not committed any corrupt practice by accepting her nomination as a member in the UNHR Commission.

6. R3 has not filed any written statement.

7. On the above pleadings, the following issues were raised for trial:--

(1) Is not the petition maintainable; Is it filed out of time?

(2) Was the 2nd respondent offered the appointment as Indian Delegate to the United Nations Human Rights Commission to induce her to withdraw from contesting the election; Was the offer made by the Congress High Command led by Sri. Jagjivan Ram and Smt. Indira Gandhi; If so, when was the offer made?

(3) Was not the appointment of the second respondent as Indian Delegate to the United Nations Human Rights Commission made by the External Affairs Ministry of the Government of India in their usual course of business?

(4) Was the offer of appointment made with the consent and/or knowledge of the 1st respondent?

(5) Was the result of the election so far as the petitioner is concerned materially affected by the withdrawal of the second respondent from the contest; Was the withdrawal of the second respondent made with the intention of furthering the chances of success of the 1st respondent?

(6) Would the offer of appointment and its acceptance by the second respondent amount to corrupt practice as contemplated by Section 123 of the Representation of the People Act?

(7) Was the second respondent an alternate candidate of the Congress Party led by Sri. Jagjivan Ram as contended by the 1st respondent?

(8) Does the alleged corrupt practice described in the petition, even if taken to be proved, amount to bribery as defined in Section 123 of the Act?

(9) Is the election of the 1st respondent liable to be set aside as being vitiated by corrupt practice under Section 123(1) of the Act?

(10) Re: costs and reliefs?

8. Before turning to the question of corrupt practice alleged against respondent No. 1, it would be convenient, at this stage, to deal with limitation covered by issue No. 1. The election was held on 6-3-1971 and the results were announced on 12-3-1971. Under Section 81 of the Act, an election petition has to be presented before the Tribunal within forty five days from, but not earlier than, the date of election of the returned candidate. So the petition ought to have been filed, in the normal course, on the 26th of April. But the petition was filed only on the 22nd of May for the obvious reason that the summer recess had intervened in the mean time. Under Section 4 of the Limitation Act:--

'Where the prescribed period for any suit, appeal or application expires on a day when the court is closed, the suit, appeal or application may be instituted, preferred or made on the day when the court re-opens'.

And under Section 29(2). Sections 4 - 24 (inclusive) are made applicable to special or local law (Representation of the People Act is a Special Law) in so far as and to the extent to which they are not expressly excluded by such special or local law. This position has been upheld by the Supreme Court in *D. P. Mishra v. Narayan Sharma*, (AIR 1970 SC 1477), there the question that arose for consideration was whether an appeal under Section 116-A of the Act was filed in time. The court held:--

'By virtue of Section 29(2) of the Limitation Act. Sections 4 and 12 thereof apply and if the appeal is filed on the date on which the court re-opens after the recess it will be regarded as within time if the period of limitation, after taking into account the time requisite for obtaining a certified copy, had expired during the course of the recess'.

Learned counsel for the 1st respondent contended for the position that it must be presumed that the Limitation Act is impliedly excluded. I see little scope for such a contention, and the wording of Section 29(2) would, in fact, rule out such a contention. Counsel also pointed out that the ruling was rendered under the Act before amendment and as such it has no binding force in the present case which is one coming under the amended Act. I fail to see any force in this contention either. Under the amended Act, no doubt, a petition calling in question the election is to be filed before the High Court, while under the Act such a petition had to be filed before the District Judge having jurisdiction constituting himself the Election Commission. Under the former Act, appeal from the decision of the Election Commission lay to a Division Bench of the High Court, whereas under the present Act, it lies to the Supreme Court. Barring this difference, no other material change appears to have been brought about by the amendment and this change has no bearing on the time allowed for filing the election petition. I, therefore, hold that the present petition is within time.

9. The other issues can conveniently be considered together. It is the case of the petitioner that the Congress High Command was worried over the 2nd respondent's obstinacy in contesting the election as against R1, the party's official candidate and unless she was removed from the scene, the success of R1 was doubtful. There was the danger of congress votes splitting and in such a contingency the petition stood a good chance of success and it was in this background that Smt. Indira Gandhi and Sri Jagiivan Ram of the Congress High Command thought of weeding away R2 by offering her the honour of representing India in the UNHR Commission. This plot succeeded and R2 withdrew for nomination. It is the further case of the petitioner that this was brought about by the consent and knowledge of RL On carefully scanning the materials placed before me in support of this allegation. I am unhesitatingly of the view that the allegation is baseless. R2 withdrew her candidature on 6-2-1971; but her nomination to the UNHR Commission was announced only on 16-2-1971.

To establish the nexus between the withdrawal of her candidature and her nomination to the Commission, the petitioner would allege that the offer was made sometime between the 3rd and 6th of February. For this there is absolutely no

evidence. According to both R1 and R2, nomination to such international bodies like the UNIR Commission is normally made by the External Affairs Ministry and not by the Prime Minister. The petitioner was not able to point out any circumstance to refute this assertion. R2 has stated in her evidence that this is not the first time that she is given the privilege of representing India in such International Bodies. She has to her credit a fairly long period of service in the social and political fields and it is in consideration of such service, that she was chosen to represent India in the Commission. Before her, eminent ladies like Smt. Lakshmi N. Menon. Smt. Hanna Sen and Smt. Tarakeshwari Sinha have represented India in the Commission. The present Assignment is to last only for one year and it is the case of the 2nd respondent that it is not an office of profit bringing any income to her.

It is highly problematic in such circumstances that she could have yielded to the pressure, if at all any pressure was exerted on her; to withdraw her candidature. She has stated in her evidence that she filed her nomination paper on the 1st of February as directed by the K. P. C. C. President. It is true that on the 31st of January there was a Radio announcement from Delhi to the effect that R1 was selected as the party-candidate for the Badagara constituency. One might ask why even after that, she found it fair and proper to file the nomination. Her answer to this, is that she had no official information through the K. P. C. C. President, or from other sources that R1 had been chosen as the party-nominee for the Badagara Constituency. When she was officially told that R1 was chosen in her place, she withdrew. Due to technical reasons, no doubt, her petition for withdrawal was not accepted by the Returning Officer. So she continued to be a candidate on paper and people misled by that circumstance had thought it fit to exercise their votes in her favour, and she 'happened to poll as many as 2.236 votes. Candidates were chosen for 7 Lok Sabha seats from Kerala by the Pradesh Committee and in that list Smt. Leela Damodara Menon was also included.

According to the party Rules this list has to receive the assent of the Central Parliamentary Board and then only could it be said that the list was final. Accordingly the K. P. C. C. President proceeded to Delhi as is evident from Ex. P-2 report, of Mathrubhumi dated 23rd January, 1971. To queries put by Press

Representatives, the K. P. C. C. President Sri. Viswanathan refused to divulge the names of the candidates and he is reported to have told them that only after getting the seal of approval of the Central Parliamentary Board could he divulge the list; (this is seen from Ex. P-2). But in his parleys at Delhi Sri. Viswanathan could not meet the Congress President and this is gatherable from Ex. P-4 (Mathrubhumi report dated 3-2-1971 and published in the issue dated 4th February). He was able to meet only a few members of the Central Parliamentary Board and the Prime Minister. From his discussions with them the idea he gathered was that the list was acceptable to them all. He made an attempt to interview the Congress President; but he could not do so as he was told that the President was ill. With the impression that he gathered from the persons whom he was able to meet, he returned to Kerala and issued instructions to the various candidates included in the list, to file their nomination.

It was in this back ground that R2 also filed her nomination. This is clear from Ex. P-5. Mathrubhumi dated 2nd February, 1971, wherein R2 is reported to have stated that she acted only according to the directions of the K. P. C. C. President. As a matter of fact the list carried by the K. P. C. C. President for the approval of the Central Parliamentary Board was not officially approved by them. The impression that he was able to gather from Delhi circles that nobody was opposed to the list, was not Correct. Board's approval was subsequently communicated to the K. P. C. C. President and in the list so approved Smt. Leela Damodaran Menon was seen replaced by Sri K. P. Unnikrishnan. Exs. P-3 & P-3 (a) are reports of the Mathrubhumi dated 3rd February, 1971 which would throw light on this matter. Therein, the K. P. C. C. President has conceded that the ultimate authority to fix up the candidates is the Central Parliamentary Board and this power of the Board is unquestioned.

Thereafter he issued instructions to R2 to withdraw and she did accordingly by presenting her application on 6-2-1971, R2's nomination to the UNHR Commission was not whispered by anybody or from any quarters in any of these days. In the light of these proved facts and circumstances, it is idle for the petitioner to contend that R2 was induced to withdraw by offering to her the nomination in the UNHR Commission. That nomination came only on the 16th. It is difficult in the

circumstances to connect her withdrawal with her subsequent nomination in the UNHR Commission. Ex. P-11 (Mathrubhumi report dated 3rd February published in the issue of 4th February) was relied On by the counsel for the petitioner to show that Smt. Indira Gandhi and Sri. Jagjivan Ram had a hand in whisking away R2 from the scene of contest by offering her a seat in the UNHR Commission, In Ex. P-11, R1 is stated to have told the Press Representatives that it was at the instance of the Congress President and the Prime Minister (though the General Secretary Uma Shankar Dixit) that he happened to file his nomination and from this statement the learned counsel would infer that both the Congress President and the Prime Minister must be instrumental in providing R2 a seat in the UNHR Commission and thus strengthen the chances of success of R1,

This report was put to R1 in the witness box and it was emphatically denied by him. No such statement was ever made by him to any Press Representative. Of course, the reporter in question was examined before me and he stated that such a statement was made by R1. In the face of such emphatic denial coming from the candidate himself. I do not propose to give any particular weight to the reporter's evidence. It is only the substance of the statement that the Reporter releases to the Press; substance in his own language, and errors are likely to occur in the process. Even granting that he was advised by the Congress President and the Prime Minister to present his nomination, could it be further inferred therefrom that R2 was offered her Assignment in the UNHR Commission also, by them? Without other stronger and more conclusive materials it is impossible for me to draw the inference that either the Congress President or the Prime Minister was behind R2's nomination to the UNHR Commission.

10. From some of the Press Statements attributed to R2 it is, of course, possible to infer that she did not relish the change made by the Central Parliamentary Board, in the list submitted to them by the K. P. C. C. President. This dissatisfaction was strongly felt by her and she seems to have given expression to it also in strong terms. Exs. P-1 and D-1, in particular, would reflect the depth of her feeling. Ex. P-1 is a report' that appeared in the Malayala Manorama dated 16th May, 1971. She was talking to a friendly gathering at the Y. M. C. A. Hall. Kozhikode. convened to congratulate her on her getting the UNHR Commission. In the course of the talk

she is stated to have referred to the replacement of her candidature at Badagara. In a jocular spirit she seems to have stated that it was when her own human rights were imperilled that she thought of going to a representative to the World Human Rights Commission. This statement was denied by her in the witness box, even though the reporter would maintain in his evidence that such a statement was made. It has to be remembered that her address was in English and what was reported was the Malayalam rendering of it. Malayalam rendering might or might not be exact.

That apart, the point to be remembered is that even if it is conceded that such a statement was made, it had nothing to do with the corrupt practice alleged against her. The worst that could be said in respect of Ex. P-I statement, is that the dissatisfaction and bitterness felt by her about the change were still lingering in her mind. Ex. D-I is a much earlier statement (Mathrubhumi dated 4th February, 1971) alleged to have been made even before she filed her application for withdrawal. In that she is reported to have said that great injustice was shown to her by the Central Parliamentary Board in not accepting her candidature. It was an injustice done not only to her individually; but to womanhood as a whole. A deputation of the Congress workers from Badagara met and informed her that acceptance of R1's candidature by the Central Parliamentary Board had created confusion in the constituency and it was in that connection that the above said statement happened to be made by her. Counsel would argue from, this statement that she was adamant in contesting even after R1's name was announced from Delhi as the candidate approved by the Central Parliamentary Board. But I cannot accept the contention.

In Ex. D-I itself she has hinted that she does not want to rebel against the decision of the Central Parliamentary Board. For a mere seat in the Parliament she was not prepared to sacrifice her past and become a rebel. She would, however, do so for some high principle.

11. To bring-in the Prime Minister in the controversy and connect her with the alleged corrupt practice, the petitioner has relied on an episode also; that is. that on the 3rd of February at about 4 a. m. R1 by mistake had gone to the petitioner's

house and in the course of their conversation had divulged to him that Smt. Indira Gandhi would pressurise R2 to withdraw her candidature by offering her the Assignment of being the leader of the delegation to the UNHR Commission. The petitioner's case is that R1 mistakenly thought that it was Mr. Raghavan Nair's house (Raghavan Nair is an advocate at Badagara who was supporting R1). R1 is stated to have conversed with the petitioner thinking that the latter was Sri Raghavan Nair. The story is not believable. The petitioner himself has stated that on seeing R1 they recognised each other and it was after that that the conversation started. After knowing each other, R1 as a prudent man would never have made such disclosures to the petitioner. I am not, therefore, depending on this alleged episode, for any purpose.

12. According to the petitioner the circumstances dealt with above, viz., the various Press statements, the acceptance by R2 of the Assignment just before the date of the election and the casual meeting between the petitioner and R1 in the early hours of the morning of the 3rd February and the disclosure made rather unwittingly to him, are sufficient to show the connection between R2's Assignment in the UNHR Commission and her withdrawal, and further that Smt. Indira Gandhi, Sri. Jagiivan Ram and R1 had all conspired together to bring about that result. But to me it appears that none of the circumstances mentioned by him taken singly or collectively would help him in establishing the corrupt practice as alleged by him.

13. There is also the insurmountable difficulty in proving that the alleged offer was made to R2 by the candidate or his agent or by any other person with the consent of the candidate, which is a vital factor in fastening liability upon the candidate so as to make the election void. Relying on *Nani Gopal Swami v. Abdnl Hamid Chowdhury*, (AIR 1959 Assam 200) -- a Bench ruling of the Assam High Court--it is argued by the- learned counsel for the petitioner that for the purpose of the Act the expression 'agent' has a much wider connotation than it is ordinarily understood, to have under the law of contract, and that anybody, who acts in furtherance of the prospects of the candidate's election may be said to be an agent of the candidate concerned provided he does so with the consent of the candidate:

'This consent may not be necessarily, an express consent and no written document is necessary. It may be gathered and implied from the circumstances of the case. Under the Act, an 'agent' includes not only a person, who has been specifically engaged by the candidate or his election agent to work for him in the election but also a person who does in fact work for him and whose services have been accepted by the candidate.....The case however of an 'agent' who has been proved to be regularly working for the candidate during the election stands on a somewhat different footing. In his case, approval or consent to any act done by him to promote the candidate's election is implied. Where therefore, corrupt practice in the course of the election proceedings is attributed to an 'agent' it raises a strong presumption that it was done at the instance or with the express or implied consent of the candidate himself. The candidate is himself vicariously responsible for the act and conduct of his 'agent' during the election'.

The language of Sub-section (2) of Section 100 strengthens the above view. Thus according to the court, anybody who acts in, furtherance of the prospects of the candidate's election would constitute himself an agent of the candidate for the purpose of the section, and when that fact is established consent of the returned candidate must be presumed. *Inder Lall Yugal Kishore v. Lal Singh Mukund Singh*, (AIR 1961 Raj 122) is also cited to support the above proposition. This decision follows AIR 1959 Assam 200 (cited supra) and in both the cases the leading judgment was written by Sarjoo Prasad, C. J., who in 1961 when he rendered the latter decision was the Chief Justice of the Rajasthan High Court. The learned Judge observed in the Rajasthan case:--

'This, in our opinion, is a complete misconception of the legal principle, (that express consent of the returned candidate had to be proved before he could be held liable for the acts of the agent) and we regret to have to say that the Tribunal did not properly appreciate the decision, which was delivered by me as the Chief Justice of the High Court of Assam in *Nani Gopal Swami v. Abdul Hamid Chowdhry*, AIR 1959 Assam 200--on which, as the Tribunal observes, both parties relied before it. It was expressly pointed out in that case that an association of persons or a society or a political party or its permanent members, who set up a candidate, sponsor his cause, and work to promote his election, may be aptly

called the agent of the candidate for election purposes.....Therefore it must be held that the publications in this case were by the agents of respondent No. 1 and we cannot believe that the respondent was unaware all along about the activities of his agent'.

The Kerala High Court had to consider this question in *Abdul Majeed v. Rhargavan*. (AIR 1963 Ker 18). AIR 1959 Assam 200, and other decisions which proceeded on the same lines were reviewed by the learned Judges in that case: Velu Pillai. J., who spoke for the Bench observed:--

'Under the 1956 amendment there was general consensus of opinion that the term 'any other person' in Sub-section (1) (b) would include an agent....We are aware that in denning the several corrupt practices Section 123, has used the term 'agent' in contradistinction with 'any other person' but this might well be to clarify that the consent of the candidate or his election agent is not a necessary element in the definition of corrupt practice by an agent. However, it seems to us that more appropriate language might to employed in Sub-section (1) (b), in view of the iuxtaposition of Sections 100 and 123. Even if there is an anomaly on this account, we think the greater anomaly would be to exclude an agent from the scope of the expression 'any other person' in Sub-section (1) (b) (of Section 100).'

The learned Judge would continue to observe:--

'Consent of the returned candidate or his election agent to the actual commission of corrupt practice by any other person, is part of the specification in Sub-section (1) (b) of the ground for nullifying the election. If as we have held, the term 'any other person' includes an agent, Sub-section (1) (b) would come into play only if the agent commits the corrupt practice with the requisite consent. This follows from the plain language of the provision. Consent to the actual commission of the corrupt practice under Sub-section (1) (b) must be differentiated from consent which is part of the definition of the term 'agent' in the explanation to Section 123, which is consent given to a person by the candidate, and never, be it noted, by the election agent, to act 'as an agent in connection with the election'. The latter consent is part of the make-up of the constitution of an agent, and with out such consent, which may be either express or implied, there could be no agency even

in the law of election..... Despite the distinction in the definitions in Section 123, it must follow from our conclusion that the term 'any other person' in Sub-section (1) (b) includes an agent, that Sub-section (1) (b) and Sub-section (1) (d) (ii) between them make a distinction in prescribing the conditions for nullification of an election. The reason for the distinction is not far to seek and lies in the greater measure of responsibility of the returned candidate for what the agent does with consent, than for what the latter does without it but in the interests of the former. We consider that this is the reasonable way to interpret Sub-section (1) (b). To accept the contention, that no consent to an agent is necessary under Sub-section (1) (b), would be to do away with this distinction and to render Sub-section (1) (d) (ii) otiose'.

Section 100 of the Act deals with the grounds for declaring election void; whereas Section 123 deals with corrupt practices. One of the grounds dealt with in Section 100(1)(b) is the commission of corrupt practice by a returned candidate or his election agent or any other person with the consent of a returned candidate or his election agent- In the explanation to Section 123(7) it is stated that:--

'In this section the expression 'agent' includes an election agent, a polling agent and any person who is held to have acted as an agent in connection with the election with the consent of the candidate'.

Section 123(1) of the Act. while dealing with 'bribery' which is a corrupt practice would elucidate:--

'Any gift, offer or promise by a candidate or his agent or by any other person with the consent of a candidate

According to the Kerala decision cited above, persons on whom agency will be imposed by law. viz., anybody who acts in furtherance of the prospects of the candidate's election will come under the second category, viz., 'any other person with the consent of a candidate or his election agent'. Thus if the corrupt practice alleged to have been committed by Smt. Indira Gandhi and Sri. Jagjivan Ram is taken to have been established, it has to be further shown that it was committed with the consent of the candidate or his election agent. For this, there is no proof.

In dealing with agency in this connection (the?) following observation appears in Halsbury's Laws of England 3rd Ed. Vol. 14 p 170:--

'It is not necessary in order to prove agency to show that the person was actually appointed by the candidate or that he was paid. The crucial test is whether there has been employment or authorisation of the agent by the candidate to do some election work or the adoption of his work when done'.

14. Learned counsel pointed out that Smt. Indira Gandhi had issued a personal appeal to the voters of the Badagara constituency for the success of R1. But it appears that she had issued such appeals in respect of other candidates in other constituencies as well. This, in my view, is not helpful in proving corrupt practice in the present case. As a prominent member of the party there is nothing wrong in her blessing the candidates set up by the party and even canvassing for them. The point with which we are directly concerned is whether any corrupt practice at all has been committed and if so such corrupt practice has been committed by the returned candidate or his election agent or any other person, with his consent. I have found above that no corrupt practice falling under Section 123 of the Act has been proved to have been committed and even if the assignment of a seat to R2 in the UNHR Commission is to be construed as a corrupt practice the petitioner has not succeeded in proving further that such corrupt practice was committed by the candidate or the election agent, or any other person with his consent or knowledge.

All the above points have, therefore, to be found against the petitioner and I do so. Learned counsel argued also for the position that the result of the election having been materially affected by the corrupt practice committed in the interests of the returned candidate by an agent other than his election agent, under Section 100(1)(d)(ii), candidate's consent is unnecessary. This is simply begging the question. In the first place, there is no proof of any corrupt practice having been committed by any agent, and secondly, even if it is conceded that something like that had happened the result of the election has been materially affected in so far as it concerns the returned candidate is highly speculative. Yardstick is lacking to measure the result that could have accrued in such a contingency. None of the

grounds, in my view, has been established in the case.

15. The result is that the Election Petition is dismissed. The petitioner will pay one half of the costs, including advocate's fee of Rs. 200/-. to the 1st respondent and suffer his costs. The other respondents will suffer their costs.

SooperKanoon - India's Premier Online Legal Search - sooperkanoon.com