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Mahmoodul Hasan Vs Thamman Singh and Others

Election Petition No. 36 of 1980

Court: Allahabad High Court

Date of Decision: May 14, 1985

Acts Referred:
Representation of the People Act, 1951 â€" Section 123(3), 123(3A)

Citation: AIR 1985 All 334

Hon'ble Judges: V.P. Mathur, J

Bench: Single Bench

Final Decision: Dismissed

Judgement

@JUDGMENTTAG-ORDER

V.P. Mathur, J.
This election petition is mainly directed against the election of Sri Thamman Singh to the U.P. Legislative Assembly for

which elections were held on 28th May, 1980. The petitioner was also one of the candidates. The Governor''s notification u/s 15(2) was issued in

April, 1980. May 2, 1980 was the last date for filing the nomination papers and 5-5-80 was the date for scrutiny and withdrawals, if any. The

matter concerns 19, Afzalgarh Constituency in district Bijnor. The counting was held on 3-6-1980 and the results were declared the same day.

The total number of votes casts was 72,778. Out of this number, 1,666 votes were declared invalid. The petitioner received 18,521 valid votes.

The respondent No. 1 Thamman Singh received 18,818 valid votes and thus he was declared elected with a margin of 297 voles against the

petitioner and others. The respondent No. 1 was a candidate for the Bhartiya Janta Party, while the petitioner represented the Congress (I). It is

contended that the respondent No. 2 namely Sri Sheikh Abdullah alias Sheikh Allah Bux was set up as a Dummy candidate by the Bhartiya Janta

Party and he had secured a total number of 12,010 votes. It is further contended that the real name of respondent No. 2 is Sheikh Allah Bux and

this name did not find mention in the Electoral Rolls and at the instance of the respondent No. 1 and the Returning Officer, he entered the name

Allah Bux as an alias of Sheikh Abdullah in the nomination paper, which was accepted in spite of objections by the petitioner and other candidates

and their agents. It is contended that the result of the election was materially affected by the improper acceptance of the nomination paper of the

respondent No. 2. Besides the fact that Sheikh Abdullah was not an alias and his name was not mentioned in the electoral rolls, his signatures on

the nomination papers were not genuine, as he signed in the name of Sheikh Abdullah alias Allah Bux, although no person of that name existed. It is

further contended that if the nomination had not been accepted improperly as mentioned above, all the 12,010 votes which he received, would

have been cast in favour of the petitioner, because these voters were mostly Jhojha Muslims, who had traditionally been Congress (I) voters.

2. In paragraph-15(b) of the petition, it is further contended that the respondent Sri Thamman Singh himself, his agents and workers with his

consent indulged in corrupt practice. They appealed to voters to refrain from voting for the petitioner on the ground of religion and community and

they promoted and attempted to promote feelings of enmity and hatred between the different classes of The citizens of India on the ground of

religion and community and thus the election has been held in contravention of the provisions of law attracting Sections 123(3) and 123(3-A) of the

Represention of the People Act.

3. It is further contended, vide para 17 that in villages Bhutpuri and Hafizabad, which were predominantly Hindu villages, the. respondent No. 1,

his agents and workers with his consent appealed to Hindus not to vote for the petitioner as he was a Musalman, Meetings were held in both these

villages about five days before the poll, in which the respondent No. 2 openly propagated hatred and enmity towards the petitioner and his

community and appealed to the voters to vote for a Hindu or else another Pakistan may be formed. The meeting at Hafizabad was allegedly held at

the house of Ex-Pradhau Budh Singh and the one at Bhutpuri at the Baithak of Gyan Chand. It was further contended that the result of the election

of the returned candidate has been materially affected by improper reception, refusal or rejection of votes and by reception of void votes. It has

also been materially affected by the non-compliance with the provisions of the Representation of the People Act and the rules and the orders made

thereunder. The details of illegality in counting, accepting and rejecting of votes have been given in paragraph No. 18 of the petition. The prayer is

(A) that the election of respondent No. 1 to the Vidhan Sabha seat from 19, Afzalgarh Constituency be declared void :

(B) That the petitioner be declared as a candidate elected instead of respondent No. 1.

(C) That the cost of the election petition be granted to the petitioner.

(D) Any other relief which on the facts and circumstances stated in the petition is capable of being granted to the petitioner against the contesting

respondents, may be so granted.

4. All the opposite parties-respondents in this case were duly served. Contest has however been put forth only by Sri Thamman Singh respondent

No. 1. The others did not file any written statement, and therefore against them the proceedings have continued ex parte,

5. Sri Thamman Singh look the stand that respondent No. 2 namely Sheikh Abdullah alias Sheikh Allah Bux was one and the same person and

both were his real names and so his nomination paper was rightly accepted and nobody raised any objection against the same. He further contends

that Sheikh Abdullah alias Sheikh Allah Bux was never a dummy candidate set up by the Bharliya Janta Party, but he was an independent

candidate and fought out the election on his own. It is further contended that there was thus no improper acceptance of the nomination paper of

respondent No, 2. It is challenged that if respondent No. 2 had not been in the field, the votes which he received would have gone in favour of the

petitioner.

6. It is contended that the respondent No. 1 never indulged in any corrupt practice and the allegation that he or with his consent or otherwise, his

agents and workers appealed to voters to refrain from voting for the petitioner on the ground of religion and community or promoted or attempted

to promote feelings of enmity and hatred between the different classes of citizens of India on such grounds, are all false. It is specifically said that

the petitioner or with his consent, his agents and workers never held any election meeting in Bhutpuri or Hafizabad and all the allegations made in

paragraph No. 17 and its various sub-clauses of the petition, are bogus and baseless and untrue. As regards counting and declaration of the results

also, the allegations made in paragraph No. 18 are completely denied.

7. On the pleading of the parties, seven issues were struck on 28-11-1980 as follows :

1) Whether the nomination papers of Sheikh Abdullah alias Sheikh Allah Bux, respondent No. 2 were wrongly accepted as alleged in para 15(a)

read with para 16 of the petition? If so, its effect?

2) Whether the respondent No. 1 indulged in corrupt practice as alleged in para 15(b) read with para 17 of the petition? If so, its effect?

3) Whether the votes were wrongly received, refused or rejected as alleged in para 15(c) of the petition? If so, its effect?

4) Whether the provisions of the Representation of People Act and its rules were not complied with as alleged in para 15(d) read with paras 18,

21 and 23 of the petition? If so, its effect?

5) Whether the election petition and its Schedule-B are not properly verified? If so, its effect?

6) Whether copy of Schedule-B to the election petition served upon the respondent No. 1, is not a true copy of the said Schedule attached to the

election petition? If so, its effect?

7) To what relief, if any, is the petitioner entitled?

8. The issues Nos. 5 and 6 were taken up and disposed of as preliminary issues on 13-1-1981 and 10-2-1981 respectively. Then on 18-5-81

issue No. 7 was re-numbered as No. 11 and four additional issues were struck as follows : --

7. Whether the allegations contained in paragraph 17-F (2) and (3) of the election petition arc vague? If so, its effect?

8. Whether the petitioner has, by means of the amendment of the election petition, made allegations of a new corrupt practice which was not

originally pleaded? If so, can the allegations be enquired into by this Court after the expiry of the period of limitation for filing election petition?

9. Whether the allegations contained in paragraph 15-b of the original election petition and in paragraphs 17 to 17-G do not contain concise

statement of material facts? If so, its effect?

10. Whether the allegations of corrupt practice introduced by amendment of the petition were not supported by affidavit? If so, its effect?

9. Issues Nos. 7 to 10 were again taken up as preliminary issues and they were disposed of vide Order dated 16-7-1981. In this manner issues

Nos. 1, 2, 3 and 4 and 11 remain to be disposed of. During the course of the hearing of the petition, the petitioner has however not now pressed

issues Nos. 3 and 4 because fresh elections have already been held and these issues have become redundant. I have also been asked not to look

into the evidence adduced by the parties on these two issues namely 3 and 4. Only two issues which are now pressed are issues Nos. 1 and 2.

Parties have adduced evidence in respect of these issues, and on the basis of the same, decision of the case has to be made.

10. The total number of witnesses examined by the petitioner is 28. Out of them, P. W. 22 Mohd. Aarif Khan, P. W. 26 Maqsood Husain, P. W.

27 Mohd. Yasin son of Haji Shabbir Ahmad and P. W. 28 Mohd. Yaseen Advocate are witnesses who were examined in connection with issues

Nos. 3 and 4 and their testimony need not be now considered. Similarly P. W. 23 Anil Kumar Sharma, Noter-Drafter of the Election Office, P.

W. 2 Ram Singh Clerk-cum-Cashier of Punjab National Bank, Afzalgarh, P. W. 3 Megha Singh, Arms Clerk of Bijnor Collectorate are formal

witnesses who have brought records and their testimony will be considered at the time of the disposal of the issue concerned.

11. As against this the respondent No. 1 has examined six witnesses in all. R. W. 1 Mehar Singh Pushan one of the candidates in this election and

R. W. 2 Mahipal Singh are witnesses regarding the counting i.e. on issues Nos. 3 and 4 and, therefore, their testimony also need not be

considered.

Findings

12. Issue No. 1 : The contention of the petitioner is that the name of Sheikh Allah Bux was not in the electoral roll. When he came to know of this

fact, he filed his nomination paper in the name of Sheikh Abdullah mentioning his real name as Allah Bux, as an alias and his nomination paper was

accepted and in spite of objection to the contrary even at the time of scrutiny it was not rejected, with the result that it was a case of wrong

acceptance of the nomination paper. It is contended that Sheikh Allak Bux belonged to the Jhojha Biradari of Musalmans, who were traditionally

Congress (I) workers and he had been set up as Dummy candidate by the Bhartiya Janta Party in order to cut some of the votes, which

Mahmoodul Hasan --petitioner could get. It is further said that if Sheikh Allah Bux had not contested the election, all the Jhojha votes which he

received and which admittedly amounted to a total number of 12,010 votes, would have been cast in favour of the petitioner and that would have

materially affected the result of the winning candidate.

13. In the case of Chhedi Ram Vs. Jhilmit Ram and Others, , it has been observed ""Under Section 100(1)(D) of the Representation of the People

Act, 1951 the election of a returned candidate shall be declared to be void, if the High Court is of opinion that the result of the election, in so far as

it concerns the returned candidate, has been materially affected by the improper acceptance of any nomination. True, the burden of establishing

that the result of the election has been materially affected as a result of the improper acceptance of a nomination is on the person impeaching the

election. The burden is readily discharged if the nomination which has been improperly accepted was that of the successful candidate himself. On

the other hand, the burden is wholly incapable of being discharged if the candidate whose nomination was improperly accepted obtained a. less

number of votes than the difference between the number of votes secured by the successful candidate and the number of votes secured by the

candidate who got the next highest number of votes. In both these situations, the answers are obvious. The complication arises only in cases where

the candidate, whose nomination was improperly accepted, has secured a larger number of votes than the difference between the number of votes

secured by the successful candidate and the number of votes got by the candidate securing the next highest number of votes. The complication is

because of the possibility that a sufficient number of voles actually cast for the candidate whose nomination was improperly accepted might have

been cast for the candidate who secured the highest number of votes next to the successful candidate, so as to upset the result of the election, but

whether a sufficient number of voters would have so done, would ordinarily remain a speculative possibility only. In this situation, the answer to the

question whether the result of the election could be said to have been materially affected must depend on the facts, circumstances and reasonable

probabilities of the case, particularly on the difference between the number of votes secured by the successful candidate and the candidate securing

the next highest number of votes, as compared with the number of votes secured by the candidate whose nomination was improperly accepted,

and the proportion which the number of wasted votes (the votes secured by the candidate whose nomination was improperly accepted) bears to

the number of votes secured by the successful candidate. If the number of votes secured by the candidate whose nomination was rejected (or

improperly accepted) is not disproportionately large as compared with the difference between the number of voles secured by the successful

candidate and the candidate securing the next highest number of votes, it would be next to impossibility to conclude that the result of the election

has been materially affected. But, on the other hand, if the number of votes secured by the candidate whose nomination was improperly accepted

is disproportionately large as compared with the difference between the votes secured by the successful candidate and the candidate securing the

next highest number of votes and if the votes secured by the candidate whose nomination was improperly accepted bears a fairly high proportion

to the votes secured by the successful candidate, the reasonable probability is that the result of the election has been materially affected and one

may venture to hold the fact as proved.

In support of his contention, the petitioner has examined himself as P. W. 1. He says that Sheikh Allah Bux had no other second name and Sheikh

Abdullah was not his name or alias and that although objections against his nomination papers were made, the Returning Officer simply asked him

to add his own name Allah Bux as an alias of Sheikh Abdullah. He also says that if he had not contested the election, his votes would have come to

him. During cross examination he gives out that in the voters'' list the name was Sheikh Abdullah and Allah Bux''s name did not find any mention

any where. His second witness is Ram Singh, Cashier-cum-Clerk in Punjab National Bank, Afzalgarh who brought certain records. It was proved

from these documents that Sheikh Abdullah son of Sri Azmat Ullah, resident of Mohalla-Mumtaz Hussain, Afzalgarh had applied for a crop loan to

the Bank and an agreement between him and the Bank authorities was drawn out and Allah Bux signed at 12 places as Allah Bux and no where

mentioned his name as Sheikh Abdullah. The loan was for a sum of Rs. 7062/- and was sanctioned on 8-8-1980. A photo of the applicant was

also affixed to the application.

14. The 3rd witness is Megha Singh, Arms Clerk, Collectorate, Bijnor. He brought the Arms Register for the period 9-12-1924 to 6-9-1982.

Three licenses were issued in the name of Sheikh Allah Bux son of Sri Azmat Ullah resident of Afzalgarh. No alias has been mentioned in any of

these documents.

15. The 4th witness is Sri Pawan Kumar, Proprietor, Sanjay Printing Press, Dhampur. He printed posters for Sheikh Allah Bux and some other

candidates for the election of 1980. One such poster is Ext. P-11. He personally knew Sheikh Allah Bux and the printing was made with the

instructions of Allah Bux''s son. He however says during cross-examination that Allah Bux was carrying on the business of fuel-wood-tale at

Dhampur and that he has heard that he was also called by the name of Sheikh Abdullah.

16. Ikramuddin(P. W. 5), Shabbir Ahmad (P. W. 6), AH Husain (P. W. 7), Liaqat Ali Jhojha (P. W. 8), Mohd. Asghar (P. W. 9), Khursheed

Alam (P. W. 10), Nanhe Jhojha (P. W. 11), Shafiq Ahmad (P. W. 12), Abdul Samad (P. W. 24), and Mohd. Aslam (P. W. 25) all come

forward to say that the name of Allah Bux was not Sheikh Abdullah and that the nomination paper that he had filed in the name of Sheikh Abdullah

alias Allah Bux was incorrectly filed and wrongly accepted. Out of these witnesses Mohd. Aslam P. W. 25 comes to say that Sheikh Allah Bux

was his maternal uncle as well as his father-in-law, as his daughter is married to him (P. W. 25 Mohd. Aslam). Ikramuddih (P. W. 5) makes a very

significant statement when he says that Allah Bux was a Jhojha and contested the election as an independent candidate and his father whose real

name was Azmat Ullah, was also known by the name of Dal Sapara. He also says that Haji Ali Husain is the eldest brother of Allah Bux. His

further statement is that in the Biradari people carry surnames (Takhallus), though not Urfivat. Liaqat Ali (P. W. 8) says that he is distantly related

to Allah Bux and that in the family of Allah Bux people carry aliases also. According to Mohd. Asghar (P. W. 9), Allah Bux''s father was Azmat

Ullah and he was also known as Azmat Thekedar. According to Khurshid Alam (P. W. 10) at the Lime of the filing of the nomination paper, Allah

Bux gave out that his name is Abdullah also. According to Mohd. Aslam (P. W. 25), who claims to be the son-in-law of Allah Bux, Azmat Ullah

was never known as Dal Sapara and had no alias.

17. In the light of this evidence, it becomes absolutely clear that the person who filed the nomination papers in the name of Sheikh Abdullah alias

Sheikh Allah Bux, was actually Allah Bux. It is also established beyond doubt now from the testimony on the record that even Allah Bux''s father

carried a surname or alias and was known as Dal Sapara and people also called him Azmat Thekedar, although his real name was Azmatullah. it is

true that Allah Bux who remained a Chairman of the Town Area Committee for some time, who applied and obtained loan from the Bank and who

signed on the different official papers always, did so in the name of Allah Bux and never wrote out his name as Sheikh Abdulla. But in view of the

testimony of Liaqat AH (P. W. 8) that the family carries aliases also and the testimony of Ikramuddin (P. W. 5) that even his father is called as Dal

Sapara and in the Jhojha Biradari people carry surnames and in the light of the definite and direct evidence of P. W. 4 Pawan Kumar that he had

heard that Sheikh Allah Bux was known Sheikh Abdullah, there remains no doubt in my mind that Sheikh Allah Bux was also carrying on the name

of Sheikh Abdullah, although the more well known and popular name was Sheikh Allah Bux. Nobody else comes forward to say that Sheikh

Abdullah was some other man who was alive when this election took place. No man of that name has raised any objection against the so-called

usurpation of his name by Allah Bux. Under these circumstances it cannot be said that Sheikh Abduilah was not named as Sheikh Allah Bux. On

the contrary it appears that Sheikh Allah Bux was also known by the name of Sheikh Abdullah, which was the name, mentioned in the electoral

roll. Therefore, when at the time of the filing of the nomination paper, Sheikh Allah Bux wrote out his name as Sheikh Abdullah and his alias is

Allah Bux or vice versa, there was no illegality in it. It is not disputed that the signatures on the nomination papers were those of Sheikh Allah Bux.

Therefore, it cannot be said that the signatures were not genuine. This being so, the entire edifice on which issue No. 1 has been framed, goes off. I

hold therefore that the nomination papers of Sheik"h Allah Bux alias Sheikh Abdullah were not wrongly accepted. They were rightly accepted and

it is also wrong to say that he was a dummy candidate for the respondent No. 1 or that he was set up by the Bhartiya Janta Party. The nomination

paper which he filed, has been placed on the record, and shows that he mentioned that he had been set up by Congress (U) Party and wanted one

of the three symbols namely "spinning wheel1 "a camel" and "a lion" to be allotted to him. The symbol of camel was allotted to him. In the

pamphlet Ext. P-11, he had mentioned himself as an independent candidate. He got a substantial number of votes in this case and therefore it will

be wrong to say that he was a dummy candidate. The allegations made in para 15-A and Para-16 of the petition are not established and on this

ground, the result of the election cannot be declared as void.

18. Issue No. 2 :-- The contention of the petitioner is that the respondent No. 1, himself and also through his agents and workers with his consent

indulged in a corrupt practice by appealing to voters lo refrain from voting for the petitioner on the ground of religion and community and by

promoting and attempting to promote feelings of enmity and hatred between different classes of citizens on the ground of religion and community.

Two instances have been specifically cited in paragraph No. 17 of the petition. It is contended that the respondent. No. 1 through his supporters

and agents held election meetings at two villages Bhutpuri and Hafizabad which are predominately Hindu villages and there an appeal was made by

him and also by some persons on his behalf in his presence, that Hindus should not vote for a Musalman and specially for the petitioner. There was

propagation of hatred and enmity towards the petitioner on the ground of his community and religion and an appeal was made to the voters, only to

vole for a Hindu candidate. The meeting at Hafizabad was made at the house of the Ex-Pradhan Budh Singh at about 9 A.M. and the meeting in

Bhutpuri was similarly held at the baithak of the residential house of Gyan Chand at about 10-30 or 11 A.M. The details have been given in Sub-

clauses (a) to (g) of the petition and in the schedule annexed with it. According to these allegations the case will be covered by Sections 123(3)

and 123(3-A) of the Representation of the People Act.

19. Before we take up the evidence in this respect, the legal position regarding a plea of this type should be made absolutely clear. There is a

catena of decisions of the Supreme Court and almost all the High Courts in India and it has now been very well settled that allegations of corrupt

practice are quasi criminal in nature and the evidence that would be required in support of such allegations would be as is required on a criminal

charge. Previously, vide the case of M.Chenna Reddy v. V. Ram Chandra Rao (1968) 40 E. L. R. 390 the view was somewhat different but in the

case of Surinder Singh v. Hardial Singh, AIR 1985 SC 89, it was held that the ratio in this case runs counter to the current judicial thought on the

point. Reference was made to a number of other cases, which may be mentioned as below :--

1. Magraj Patodia Vs. R.K. Birla and Others,

2. Mohan Singh Vs. Bhanwarlal and Others,

3. Guruji Shrihari Baliram Jivatode Vs. Vithalrao and Others,

4. Mahani Shreo Nath v. Choudhry Ranbir Singh, (1970) 3 SCC 647 .

5. Abdul Hussain Mir Vs. Shamsul Huda and Another, .

20. The sum and substance of all these rulings is that a charge of corrupt practice is just like a charge in a criminal case with the difference that

while in a criminal case, an accused can refuse to plead and decline to adduce evidence on his behalf and still compel the prosecution to prove its

case beyond reasonable doubt, the position in an election petition is not similar. But the fact remains that the burden of proving the commission of

corrupt practice which is pleaded, is squarely upon the petitioner, and he must discharge that burden satisfactorily. He cannot for that purpose

depend on preponderance of probabilities, because Courts would not set at naught, the verdict of the electorate except on good grounds. The

corrupt practice which is alleged in the petition must be established beyond reasonable doubt by evidence which is clear and unambiguous. The

charge of corrupt practice is a grave charge and if it is proved, it may result in disqualification from taking part in elections for a number of years.

Therefore, from its very nature, the charge must be established by clear and cogent evidence by the person who seeks to prove it and the Court

will require that the conduct attributed to the offender is proved by evidence which establishes it beyond reasonable doubt. In the matter of quasi

criminal charges which carry other penalties than mere losing of a seat, strong testimony is needed to subvert a Returning Officer''s declaration.

When elections are challenged on a ground with a criminal taint, the benefit of doubt in testimonial matters belongs to the returned candidate.

21. The Supreme Court again considered the entire law in the matter in the case of Ram Saran Yadav v. Thakur Muneshwar Nath Singh, AIR

1985 SC 24. The cases of (i) Daulat Ram Chauhan Vs. Anand Sharma, ;

(ii) Manmohan Kalia Vs. Yash and Others,

(iii) A. Younus Kunju Vs. R.S. Unni and Others, .

(iv) Samant N. Balkrishna and Another Vs. V. George Fernandez and Others, were considered and the sum and substance was noted as below.

A charge of corrupt practice has to be proved by convincing evidence and not merely by preponderance of probabilities. It is for the party which

sets up the plea, to prove it to the hilt beyond reasonable doubt, and the manner of proof should be the same as is required for an offence in a

criminal case. Since the charge is proved entails a heavy penalty in the form of disqualification, the Courts have held that a very cautious approach

must be made in order to prove the charge. Another well settled principle is that it must be shown that the corrupt practice proceeds either from

the candidate himself or through his agents, or by any other person either with his consent and with the consent of his election agent, so as to

prevent or cloud the very exercise of any electoral right. While insisting on standard of strict proof the Court should not extend or stretch this

doctrine to such an extreme extent as to make it well nigh impossible to prove an allegation of corrupt practice. Such an approach would defeat

and frustrate the very laudable and sacrosanct object of the Act in maintaining the purity of the electro process. By and large, the Court while

appreciating or analysing the evidence must be guided by the following consideration :

i. The nature, character, respectability and credibility of the evidence;

ii. The surrounding circumstances and the improbabilities appearing in the case;

iii. The totality of the effect of the entire evidence which leaves a listing impression regarding the corrupt practices alleged.

22. In the case of S. Harcharan Singh Vs. S. Sajjan Singh and Others, also this principle was followed.

23. In the case of Lakshmi Raman Acharya Vs. Chandan Singh and Others, there was an observation to the following effect : ""It is unsafe in an

election case to accept oral evidence at its face value, without looking for assurance from some surer circumstance or unimpeachable documents.

This observation was based on an earlier case of Rahim Khan Vs. Khurshid Ahmed and Others, .

24. In the case of Kanhaiyalal Vs. Mannalal and Others, it was held that the Court will have to be cautious and circumspect in accepting oral

testimony. It will have to be judged with the greatest care and an electoral victory cannot be allowed to , be nullified by a mouthful or oral

testimony without contemporaneous assurance of a reliable nature from an independent source. Subsequently in the case of Birbal Singh Vs.

Kedar Nath, it was held that interested witnesses are not necessarily false witnesses, though the fact that a witness has a personal interest or stake

in the matter must put the Court on its guard. The evidence of such witness must be subject to a closer scrutiny and indeed the Court may in a

given case be justified in rejecting that evidence unless it is corroborated from an independent source. But the reasons for corroboration must arise

out of the context and texture of evidence. Even interested witnesses may be interested in telling the truth to the Court, and therefore, the Court

must assess the testimony of each important witness and indicate its reasons for accepting or rejecting it.

25. Lastly in the case of A. Younus Kunju Vs. R.S. Unni and Others, , it was noticed that the election was fought on party basis and there was

sharp division of the electorate on the basis of political parties. That being the position, workers at election with party alignment would necessarily

be political supporters of the respective candidates and when called as witnesses, they would support their stand.

26. With this background of the legal position, let us look to the evidence which has been adduced. It may be mentioned at the very out-set that

there is no documentary evidence in support of this allegation, although documentary evidence was possible. I say so because according to the

testimony of some of the witnesses specially Lal Singh (P. W. 15), Dayaram Singh (P. W. 16), Sunder Singh (P. W. 17), and Babu Ram (P. W.

18), as soon as alleged election meetings were held at Hafizabad and Bhutpuri, an information was communicated to the petitioner with details

about the persons attending and the speeches made and the propaganda carried out. Naturally all this allegedly happened about five days before

the date of election which will thus fix the date of meetings to 23-5-1980. Obviously there was full opportunity for the petitioner to have brought

these facts in writing to the notice of the Chief Election Commissioner, the State, Election Officer, the District Magistrate and the Superintendent of

Police and other authorities, he could have also lodged a report on the basis of these allegations communicated to him. Nothing like this was done.

On the contrary it is said that he remained unperturbed and did not take any action at all immediately after the so-called meetings and even

afterwards up to the date of poll and before the filing of the election petition. In this manner it is clear that though documentary evidence could be

available, no action was taken to have it.

27. The oral testimony regarding the so-called meeting at Bhutpuri consists of the single testimony of Lal Singh (P. W. 15). The petitioner himself

never attended any meeting either at Bhutpuri or at Hafizabad. Lal Singh''s contention is that the meeting was held at the. house of Gyan Chand

between 10.30 to 11 A. M. and only Hindus attended it. It was arranged by Gyan Chand and Vikram Singh. The venue was the Baithak of Gyan

Chand and about 100 to 125 persons collected. At first Thamman Singh opposite party No. 1 was introduced and then he started giving a lecture

exhorting Hindus to vote for Hindu only and not for Musalman and saying that since he was a Hindu, it was the duty of every Hindu voter to vote

for him. This took about ten minutes. He was followed by Magan Singh who dittoed what the respondent No. 1 said and added that Hindus

should vote only for Hindu and not for a Musalman. Thereafter in the presence of the respondent No. 1 Bhagwat, Om Prakash and others

indulged in communal propaganda. This witness Lal Singh belongs to village Chhatarpur. He admits that he was counting agent of the petitioner in

this election and he is an old Congress (I) worker. He also admits that in this Election of 1980 also he worked for the petitioner. This meeting is

said to have taken place on 23-5-1980 but during cross-examination the witness says that he communicated the information of this meeting to the

petitioner on 6-5-1980, This could not have happened. He could not have communicated the information even before the holding of the meeting,

and in any view of the matter if the date has been wrongly noted in place of 26-5-1980, within three days he informed about action by way of

making report to the authorities. As against the testimony of Lal Singh P. W. 15, there is the respondent No. 1''s own statement as P. W. 6. He

denied having held any meeting in Bhutpuri or in any other village. Gyan Chand at whose baithak the meeting is alleged to have taken place has

been put into the witness box as R. W. 3. he is resident of Bhutpuri. He swears that he does not belong to any political party and that his house

does not contain any baithak, but it only has a room. He also says that on 23-5-80 no meeting of the Hindus was held at his house or in his room

and that there was no propagation of hatred between different communities at his instance or at his place.

28. R. W. 4 is Magan Singh, a resident of Bhanauti. He is said to have arranged a meeting at Bhootpuri, by the petitioner''s witnesses. He swears

that he did not work for any one in the election and he did not arrange any meeting at Bhutpuri at the house of Gian Chand or else where. He also

swears that he himself also did not attend any election meeting in Bhutpuri or even in Hafizabad and further says that he never accompanied the

respondent No. 1 in connection with his election work to these villages.

29. Thus the testimony of Lal Singh (P. W. 15) is effectively countered by the statement of Gian Chand, Magan Singh and Thamman Singh. The

circumstances of the matter also show that the allegation regarding the holding of the meeting is reckless. It is said that the meeting was held at the

baithak of Gian Chand. Gian Chand says that he has no Baithak in his house. Even if his room is taken to be a baithak, according to P. W. 15 Lal

Singh, the meeting was attended by about 100 or 125 persons and we have still to see in normal residential houses, a room big enough, to

accommodate such a number of persons for the purposes of organizing a peaceful meeting. No such room could be there in the house of Gian

Chand in which so many persons could have collected to hear what Thamman had to say. In my opinion the oral evidence adduced in this respect

is unreliable, and naturally it has to be held that the petitioner has failed to prove that any meeting was held at Bhutpuri in which communal passions

were roused and votes were solicited on the ground of caste, community or religion.

30. Then it is said that before the meeting at Bhutpuri at about 9 A. M. a similar meeting was held in village Hafizabad on the same day at the Gher

of Ex-Pradhan Budhsingh The witnesses of the petitioner in this respect are Daya Ram Singh (P. W. 16), Sunder Singh (P. W. 17) and Babu Ram

(P. W. 18). It is contended that in this meeting also about 150 to 200 persons had collected and they were only Hindus. According to Daya Ram

Singh, first Budh Singh introduced the respondent No. 1 and thereafter for about 15 to 20 minutes respondent No. 1 spoke. The refrain of his talk

being that he was a Hindu and Hindus should support only a Hindu and hence he should be supported and not a Musalman. He was followed by

Budh Singh who spoke for about 5 to 10 minutes and corroborated what Thamman Singh had said. All this in this manner took about half an hour

but Daya Ram Singh is positive to say that the total time spent in these things was l 1/2 hours. It is also said that after the close of the meeting Om

Prakash, Chandrabhan Singh, Magan Singh, Bhagwant Singh, Budh Singh Seth and Anand Singh generally indulged in propagating on communal

lines. The same day Daya Ram Singh informed the petitioner. This witness is related to Sunder Singh and Baburam both and he says that for this

meeting no proclamation from before was made. Sunder Singh also is a resident of Hafizabad. He also says that the meeting was held at 9 A. M. in

the gher of Budh Singh Ex-Pradhan and about 100 to 150 persons attended and they were all Hindus and it was arranged by Budh Singh Ex-

Pradhan, Budh Singh Seth, Anand Singh. First the respondent No. 1 Thamman Singh gave a speech for about 10 to 15 minutes exhorting that

Hindus should vote only for a Hindu and not for a Musalman. He was followed by Budh Singh Pradhan, who also said the same thing. Then Anand

Ji said that people should not vote for a Musalman because otherwise another Pakistan shall be formed. This was however said after Thamman

Singh had left the place. During cross-examination, he says that a proclamation (Munadi) had taken place in the village for this meeting. This is in

direct contradiction to the testimony of Daya Ram Singh. He also says that the meeting lasted only for 15 to 20 minutes. This is also in direct

contradiction to Daya Ram Singh. According to him he made a verbatim report to the petitioner.

31. The next witness is P. W. 18 Babu Ram. He also belongs to Hafizabad. According to him Budh Singh Pradhan had arranged a meeting of

Hindus in his Gher which lies to the east of the village and about 150 persons attended that meeting. The meeting continued between 8.30 and

10.00 A. M., i.e. for about 1 1/2 hours. This estimate is, however, proved to be wrong when subsequently he fixes the time by saying that

speeches of Thamman Singh and Budh Singh took a total period of 21 minutes. According to this witness, respondent No. 1 said that he had come

to seek the votes in the name of Hindu religion and that votes should be given to him and not to a Musalman. This is, however, in contradiction of

the other witnesses. There is no allegation by others that Thamman Singh ever said that he had come to seek the votes in the name of Hindu

religion. According to Babu Ram, after respondent No. 1, Budh Singh Pradhan spoke and what he said was simply that whatever had been

spoken to by Thamman Singh was correct and that he should be supported. No one else spoke. No one said anything to the persons who had

gathered there. In this manner Babu Ram contradicts other two witnesses regarding the part played by Anand Ji, Om Prakash Gupta, Chandra

Bhan Singh, Magan Singh, Bhagwant Singh and Budh Singh Seth. During cross-examination the witness says that there was prachar in the village in

respect of this meeting which means that either there was proclamation or mere propaganda to the effect that Thamman Singh will come and a

meeting will be held. This Prachar took place 2 or 3 hours before the holding of the meeting. The witness admits that he was petitioner''s agent at a

polling booth and that Daya Ram also worked for the petitioner. During cross-examination he makes a very disturbing statement when he says that

one or two hours after this meeting he disclosed to Dayaram the names of the persons present there and those who had spoken at the meeting. If

this statement is correct, then it shows that Dayaram was not present, because there was no occasion otherwise for this witness to have told about

the facts and details of the meeting and the names of the speakers to Dayaram, when Daya Ram himself was present in the meeting. So it appears

that either this witness or else Dayaram is not telling the truth. He also admits one thing more and it is that the Gher of Budh Singh Pradhan is 1 1/2

furlongs away from his residential house.

32, Against this evidence, the respondent No. 1 has examined himself as R. W. 6, denying the holding of any meeting at Hafizabad. Magan Singh

R. W. 4 also says that he had never gone to attend any meeting at Hafizabad. Budh Singh, Ex-Pradhan, has been examined as R. W. 5. He is

resident of Hafizabad. He was Pradhan in the year 1960-61. He swears that he does not belong to any political party and did not work for any

political party in the year 1980. He admits that he owns a Gher but says that it is at a distance of 100 to 150 paces from his residential house. He

says that no meeting was called at his house or Gher either by him or by Anand Singh or by anybody else and that his Gher is 15'' X 15''

surrounded by walls on two sides and open on the other two sides. According to the petition, the meeting in Hafizabad was held at the house of

Ex-Pradhan, Budh Singh, but now the witnesses have shifted the venue to the Gher of Budh Singh. It appears to have dawned upon them at a late

stage that 100 persons perhaps could not collect at a residential house and that a Gher is more appropriate place. Budh Singh denies that any

meeting was held at his Gher. I have already mentioned some of the contradictions between the testimonies of the witnesses in this respect. After

going through the entire evidence on record and considering it in the light of the legal position that it is very easy to lay charge of corrupt practice,

but it is extremely difficult to prove it, I feel that the evidence that has been adduced in support of the charge is unreliable. It is, therefore, not

proved that any election meeting was held by respondent No. 1 in Hafizabad.

33. The result is that the basis for the charge disappears and it will have to be held that respondent No. 1 did not indulge in any corrupt practice

either himself or through his agents or workers, as is alleged in the petition.

34. This issue is accordingly answered against the petitioner and in favour of respondent No. 1.

Issue No. 11

35. Considering all the facts and circumstances of the case, I do not find the petitioner entitled to any relief.

ORDER

36. In the result, the election petition is devoid of merit and is hereby dismissed with costs to respondent No. 1, the amount of which I assess at

Rs. 1500/- (One Thousand five Hundred only).