

PETITIONER:
KALAMATA MOHAN RAO

Vs.

RESPONDENT:
NARAYANA RAO DHARMANA & ORS.

DATE OF JUDGMENT 09/11/1995

BENCH:
VERMA, JAGDISH SARAN (J)
BENCH:
VERMA, JAGDISH SARAN (J)
PARIPOORNAN, K.S.(J)

CITATION:
1996 AIR 535 1995 SCC (6) 728
JT 1995 (8) 220 1995 SCALE (6)254

ACT:

HEADNOTE:

JUDGMENT:

J U D G M E N T

J.S. VERMA. J. :

This is an appeal under Section 116A of the Representation of the People Act, 1951 (for short "the R.P. Act") by the returned candidate against the judgment dated 18th December, 1991 by N.D. Patnaik, J. of the High Court of Andhra Pradesh in Election Petition No. 7 of 1990, setting aside the election of the appellant to the Andhra Pradesh Legislative Assembly from No.6 Pathapatnam Assembly Constituency held on 22.11.1989. The appellant was candidate of the Telugu Desam Party while respondent No. 1 Narayana Rao Dharmana was the Congress (I) candidate at the election. The appellant polled 41,040 votes and was declared elected against respondent No. 1 who obtained 40,766 votes. The election petition was filed on several grounds including the corrupt practice under Section 123(3) of the R.P. Act of appealing for votes on the ground of his religion. The High Court has recorded a finding that the appellant is guilty of the corrupt practice under Section 123(3) and on that basis the election of the appellant has been set aside. The other grounds on which the election was challenged have not been held to be proved and, therefore, reference to them is unnecessary at this stage.

The only question for decision in this appeal is the correctness of the High Court's finding against the appellant for commission of the corrupt practice under Section 123(3) of the R.P. Act. The relevant pleading of this corrupt practice is contained in para (xxvii) of the election petition. The gist of the pleading is that the appellant on 17.11.1989 got pasted posters on the walls at several places in the constituent which depicted the Telugu Desam Party Supremo N.T. Rama Rao in the role of Lord Krishna worshipped by the Hindus as an incarnation blowing a conch shell, a sloka from Bhagwad Gita written at the top of the poster and below the photograph of N.T. Rama Rao his

clarion call to the voters to defeat the deceitful Congress which had sold away the nation. The clear implication and the innuendo of the poster was also pleaded in para (xxvii) of the election petition as under :

"..... It is further respectfully submitted that the said poster depicted the Telugu Desam Supreme as an Avtar or an incarnation of God who has appeared on the soil of Andhra Pradesh to destroy the evil and save the people. The inscription on the poster as stated above is from the Bhagavadgita. The clear and unambiguous impression which is left on the reader of the poster is that the said Supreme of Telugu Desam is an avatar of Lord Krishna. The bulk of the electorate are made to believe that in voting for respondent No. 1 they would be voting for the Avatar of God who has come to destroy the evil and save the people and that if they vote against him, they would be doing something against the wishes of God and would be incurring the displeasure and wrath of God. Such posters were pasted through out the constituency. ."

A photograph Ex.A-7 of the above poster proved to have been taken by the photographer Chowdary Vaikuntarao (PW-14) was produced as evidence and the other witnesses examined were Narayana Rao Dharmana (PW-1) (election petitioner). Miryabilli Ramagao Naidu (PW-10), Maddela Papparao (PW-11), Votti Mukhalingam (PW-12) and B. Ramana (PW-13). Another witness K. Veerabhadra Rao (PW-9) was disbelieved by the High Court and, therefore, we are excluding his testimony from consideration. It is significant that no evidence was led in rebuttal by the appellant who failed to examine even himself as a witness to deny the allegations made against him. The High Court has accepted the evidence led by the election petitioner and found the alleged corrupt practice under Section 123(3) of the R.P. Act Proved against the appellant.

We have been taken though the evidence adduced in the present case and find no reason to disagree with the High Court on the view it has taken of the evidence. The contents of the poster pleaded in the election petition are evident from the photograph Ex.A-7. The contents of that poster unambiguously amount to an appeal on the ground of the religion of the candidate of the Telugu Desam Party, the appellant. The clear meaning of its contents is that N.T. Rama Rao is an incarnation of God worshipped by the Hindus who is seeking votes for his candidate, the appellant, who is a Hindu at the election to conquer the evil in the form of the Congress Party; and for the sake of Hindu religion to which the appellant belongs, the voters should vote for the appellant, candidate of the Telugu Desam Party which is led by incarnation of God worshipped by the Hindus. This is what the poster clearly meant and this is how it was understood by the voters. The only question for consideration now is the responsibility of the appellant for the canvassing done by the medium of these posters.

There is evidence led of the witnesses examined in support of the election petition that the appellant himself got these posters pasted on the walls at different places in the constituency on 17.11.1989. The act of canvassing through the medium of these posters pasted on the walls at

different places in the constituency has been attributed directly to the appellant himself by the PWs whose testimony has been rightly accepted by the High Court. There is nothing in their cross-examination to disbelieve their version. Moreover, there is no evidence in rebuttal thereof, inasmuch as even the appellant did not enter the witness box to deny the allegations made against him. The un rebutted evidence led in support of the election petition is sufficient to prove that the act of putting up these posters at different places in the constituency as alleged has been duly proved. As indicated earlier, the contents of the poster amount to an appeal by the candidate (appellant) for votes on the ground of his religion. An identical poster was similarly construed also in *Mullapudi Venkata Krishna Rao vs. Vedula Suryanarayana*, 1993 Supp (3) SCC 504, even though in the facts of that case the responsibility of the returned candidate could not be proved by evidence and his denial of the allegation being accepted, the allegation of corrupt practice in that case was held to be factually not proved. The position in the present case is different, inasmuch as the appellant's responsibility has been held to be clearly proved.

For the above reasons, no infirmity can be found in the impugned judgment of the High Court. Consequently, the appeal fails and is dismissed with costs.