

S U P R E M E C O U R T O F I N D I A

RECORD OF PROCEEDINGS

CIVIL APPEAL NO.2804 OF 2005.

HISPREACHERING SON SHYLLA

Appellant (s)

VERSUS

LAMBOR MALNGIANG AND ANR.

Respondent(s)

Date: 09/11/2006 This Appeal was called on for hearing today.

CORAM :

HON'BLE THE CHIEF JUSTICE

HON'BLE MR. JUSTICE C.K. THAKKER

HON'BLE MR. JUSTICE R.V. RAVEENDRAN

For Appellant(s)

Mr. Manish Goswami, Adv. for

M/s. Map & Co., Advs.

For Respondent(s) Ms. Seema Bengani, Adv.

Mr. Pragyan Pradeep Sharma, Adv.

Ms. Anshul Singh, Adv.

Dr. Kailash Chand, Adv.

UPON hearing counsel the Court made the following

O R D E R

The appeal is dismissed with costs in terms of the signed order.

Tyagi)
Registrar

(Subhash Chander)
Court Master

(V.P.
Assistant

[Signed Order is placed on the file]

IN THE SUPREME COURT OF INDIA

CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO.2804 OF 2005

Hispreachering Son Shylla

.....Appellant

Versus

Lambor Malngiang & Anr.

.....Respondents

O R D E R

This appeal has been filed under Section 116A of the Representation of the

People Act, 1951 (for short 'the Act) to challenge the judgment of the
High Court

whereby the Election Petition filed by the appellant was dismissed. Challenge in the

Election Petition was to the election of respondent no.1 to the 26-Nongk
rem (ST)

Assembly Constituency. The appellant was also one of the candidates who contested

the election. Respondent no.1 was declared elected by a margin of 82
votes. The

polling had taken place on 26th February 2003. The election result was declared on 01st

March 2003.

The Election Petition was filed alleging corrupt practices by th

e elected

candidate-respondent no.1. According to the averments made in the Election Petition,

on 24th February 2003 the election petitioner, viz., the appellant was holding an

election meeting rally of his party at Lad Nongkrem village attended by almost 3000

persons. In the said meeting, certain persons informed the appellant that Shri Elvis

Kharumnuid, General Secretary of the Nongkrem Circle of the Khun Hynniewtrep

National Awakening Movement, handed over a

bunch of papers to him to distribute the same to the people

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who were attending the election rally of the appellant. Those were general notices

issued under the seal and signature of the Branch Manager of Ka Bank Nongkyndong

Ri Khasi Jaintia, Smit Branch. The notices were in Khasi language and thereby

farmers were sought to be informed that the loan given in Loan Mela for cultivation

must be repaid at once. It is further pleaded that on 12th March 2003, i.e., after the

election, persons named in the Election Petition informed the appellant that at two

incidents had taken place on 20th February 2003 and 24th February 2003. In the

incident dated 20th February 2003, the persons attending were induced by the elected

candidate that he will get rid of their loans once for all. It is further alleged that the

inducement of respondent no.1 resulted into making the Smit Polling Station his

strong-hold and resulted in his securing 626 votes as against 429 votes of the appellant

and the difference of 197 votes materially affected the result of the election and tilted

the balance in favour of the first respondent. Somewhat similar allegation about the notices has been made while describing the incident of 24th February 2003. It is also alleged that the notices that were distributed were printed by respondent no.1 in collusion with respondent no.2, the Bank Manager with the calculated move to prejudice the prospect of the election of the appellant. The averment is that the

notices were issued and published at the instance of respondent no.1 containing false statements. In fact, no notices were issued, is the averment. The Election

Petition further alleges that

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respondent no.1 is also guilty of procuring the assistance of Government servant for furtherance of the prospects of his election as defined under Section 123(7) of the Act.

The Election Petition also states that on 24th February 2003, the election

agent of the appellant submitted a complaint to the Returning Officer protesting

against the acts of respondent no.1 which was followed by another complaint

submitted by the appellant himself on 11th March 2003 but no steps were taken by the Returning Officer.

Besides the aforesaid averments about distribution of notices and inducement given to the voters, it is also alleged that respondent no.1 promised the

family members of the persons named in paragraph 16 of the Election Petition that if

they cast vote in his favour, he would replace their thatched house by

a new one

immediately after the election and also that he distributed money to about 63 voters who agreed to cast their votes in his favour.

On the basis of the pleadings, eight issues were framed but the relevant for our purposes are Issue nos.3 to 8 which read as under :

"(i)

(ii)

(iii) Whether the farmers borrowing loans from the Bank were induced to go in favour of the respondents no.1 on a promise that respondent no.1 shall repay their loans if he is elected.

(iv) Whether the notices annexed to the Election petition were caused to be printed by the respondent no.1 in collusion with respondent no.2 thereby amounting to corrupt practices as defined under Section 123(iv) of the R.P. Act.

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(v) Whether the respondent no.1 and 2 have published the notices with the intention to induce the voters to vote for the respondent no.1 which constituted corrupt practice as defined under Section 123(vii) of the R.P. Act.

(vi) Whether the notices annexed to the Election Petition were printed at the instance of the authorities of the Bank and not by way of collusion between the respondents no.1 and 2.

(vii) Whether any inducement by respondent no.1 to get the voters in his favour by inducing the voters that they will get rid of the loan if he is elected and by this inducement in the polling station at Smit, the respondent no.1 has secured 626 votes and the election petitioner has secured 429 votes which

created a difference of 197 votes and whether this has materially affected the result of the election.

(viii) Whether the respondent no.1 has committed any corrupt practices to constitute bribery within the meaning of Section 123(i) of the R.P. Act."

The High Court considered Issue nos.3 and 7 together. Likewise, Issue nos.4,5 and 6 were also considered together. The finding of the High Court on these issues is against the appellant and consequently, the Election petition was dismissed.

In support of Issue Nos.4,5 and 6, five witnesses were examined. Their testimonies have been considered by the High Court and on basis thereof, the High

Court has answered these issues against the appellant. Learned counsel for the

appellant has also taken us through the evidence of some of the witnesses relevant for decision of Issue Nos.4 and 5. Some of the reasons given by the High Court may not be entirely correct but we find no infirmity in the conclusion on Issue nos.4, 5 and 6. It may also be noted that though

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specifically averred in the Election Petition that the election agent of the appellant

made a complaint to the Returning Officer on 24th February 2003, no such complaint was proved by the appellant. It is also necessary to note that while deciding the issue of corrupt practice, the factor whether it has materially affected the election is of no relevance. This observation is necessary in view of the finding of the High Court that there is no allegation in the Election Petition that distribution of notices has materially

affected the election. Be that as it may, the conclusion of the High Court on these

issues cannot be faulted.

In respect of Issue no.8, the High Court has considered the evidence of the material witnesses relevant to the issue, namely, P.Ws 3,4,7 and 9 beside P.W.1, the

election petitioner himself. The finding of the High Court on this issue cannot be

faulted as well. Similar is the position with regard to the finding on Issue nos.3 and 7.

The result is that we find no substance in this appeal which is accordingly dismissed

with costs.

J1.

.....C

[Y.K. SABHARWAL]

.J.

.....

[C.K. THAKKER]

.....J.

[R.V. RAVEENDRAN]

New Delhi.

November 09, 2006.