

It was then said that we should remand the case back to the High Court for giving proper hearing to the appellant, but we do not think that we should make that order either. All that has happened is that the High Court has made the order in breach of the section and what we are called upon to do is to set aside that order. What further action can be taken in accordance with law is for the High Court to decide.

The result, therefore, is that this order of the High Court is set aside and the appeal is consequently allowed.

Appeal allowed.

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v.

RAM NARAIN PRASAD AND OTHERS

(S. K. DAS, P. B. GAJENDRAGADKAR, A. K. SARKAR,
K. SUBBA RAO and M. HIDAYATULLAH, JJ.)

Election Petition—Corrupt practice—Appeal to vote on grounds of religion—Leaflet issued by party—Construction of—Representation of the People Act, 1951 (43 of 1951), s. 123(3).

The appellant, a candidate set up by the Jharkhand Party, was declared elected to the Bihar Legislative Assembly from the Manoharpur constituency in the district of Singhbhum. He was an Adibasi belonging to 'Ho' community, and the constituency also consisted of electors belonging largely to the Adibasi communities of Hos, Mundas and Oraons. The symbol chosen by the party and allotted by the Election Commission to it was a cock. The cock was not a religious symbol of the Adibasis but it formed an integral part of the religious ceremonies which they performed while worshipping some of their important deities. Cocks were often offered as sacrifices to the deities. The Jharkhand Party issued a leaflet containing an appeal for votes and the appellant and his agents distributed the leaflet among the electorate and made speeches in its terms. The leaflet was in verse wherein the appeal for votes was made by a cock; the relevant portion was as follows:

" Respected sons of men open your eyes, lend your ears
Recognise me and my crow.
In your services and worships
In the Worship of your forest God (Buru)
In Stomach pain and headache
At the time of your distress and miseries

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I am with you even after giving my life. You recover (from illness) even by applying knife at my neck. This thought gives me pleasure. In exchange of this give me chara in the shape of vote I am victorious. Do not forget me, otherwise I tell, ye sons of men will suffer eternal miseries."

The respondent filed an election petition challenging the election of the appellant, *inter alia*, on the ground that in distributing and publishing this leaflet the appellant had committed the corrupt practice of making a systematic appeal to vote on grounds of religion.

Held (Subba Rao, J., dissenting), that the leaflet contained an appeal on the ground of religion and the appellant was guilty of the corrupt practice charged. The reference to the sacrifice of the cock was meant to convey to the electors the obtaining of the pleasure of the deities. When the cock in the leaflet said "give me chara in the shape of votes", what it said in substance was that the giving of such votes would result in pleasing the deities. The concluding words clearly invoked the wrath of the deities on the electorate in case they forgot the cock, *i.e.*, forgot to vote for the party of which it was the symbol. This was clearly an appeal on the grounds of religion, for the substance of it was that it would be an irreligious act not to vote for the party.

Per Subba Rao, J.—The leaflet contains merely an appeal in metaphorical language and really meant that the candidate (or the party) would sacrifice his (or its) life for the cause of the constituency just as the cock sacrificed its life for the happiness of the people, and just as the people suffered eternal miseries if the cock was not fed the constituency would suffer if votes were not given for the candidate (or the Party). Besides, the animal which was sacrificed was not an object of veneration but was only a convenient or conventional sacrificial medium and it could not be said that any reference to a sacrificial bird or animal was a reference to religion.

CIVIL APPELLATE JURISDICTION: Civil Appeal No. 300 of 1959.

Appeal by special leave from the judgment and order dated March 20, 1959, of the Patna High Court, in Election Appeal No. 11 of 1958, arising out of the judgment and order dated May 15, 1958, of the Election Tribunal, Ranchi, in Election Petition No. 416 of 1957.

Nuruddin Ahmad and *Naunit Lal*, for the appellant.

N. C. Chatterjee and *P. K. Chatterjee*, for the respondents.

1959. October 8. The judgment of S. K. Das, P. B. Gajendragadkar, A. K. Sarkar and M. Hidayatullah JJ. was delivered by A. K. Sarkar, J. Subba Rao, J., delivered a separate judgment.

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SARKAR J.—In the General Elections of 1957, the appellant was returned to the Bihar Legislative Assembly from the Manoharpur constituency in the district of Singhbhum. He is an Adibasi belonging to the 'Ho' community. The electors for that constituency largely belonged to the Adibasi communities of Hos, Mundas and Oraons. There are also people from Madhya Pradesh and other people belonging to communities other than Adibasis, there. The Hos and Oraons speak their own respective languages and the non-Adibasi population is largely Hindi speaking. It may be that some members of the Adibasi communities speak Hindi also.

The appellant had been set up as a candidate by the Jharkhand party and was supported by that party in the election. The object of that party is to have a separate administrative unit for what it calls the Jharkhand area. This is an area consisting of parts of Bihar, Orissa, Bengal and Madhya Pradesh and is inhabited largely by Adibasis. It is not the object of the Jharkhand party to have a separate State for the Adibasis alone but its object is to include in Jharkhand all people of whatever community, living in that area and the membership of the party is open both to Adibasis & non-Adibasis.

The symbol chosen by the party for the election was a cock. This symbol was recognised by the Election Commission.

Besides the appellant, there were five other candidates contesting the election from the Manoharpur constituency. Among them was respondent No. 1, Ram Narain Prasad Yadab who is a Hindu and does not belong to any Adibasi community. He is the only contesting respondent in this appeal and may hereinafter be conveniently referred to as the respondent.

After the results of the election were declared, the respondent filed an election petition for an order

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declaring the election of the appellant void on the grounds mentioned in it and made all the contesting candidates parties to it. The petition was dismissed by the Election Tribunal. An appeal by the respondent to the High Court at Patna from the decision of the Tribunal succeeded. The appellant has now come up to this Court in further appeal.

Only one of the grounds on which the election petition was based has been canvassed before us. We shall therefore concern ourselves in this judgment with that ground alone. It is said that the appellant published and distributed among the electors of the constituency two leaflets, being exhibits I and II in this case, containing appeals for votes on grounds of religion and thereby committed the corrupt practice of systematic appeal on grounds of religion under s. 123(3) of the Representation of the People Act, 1951. It is also said that the appellant himself and through his agents solicited votes by reading over and explaining the contents of the leaflets and by making speeches appealing to religious sentiments and thereby committed the aforesaid corrupt practice. If these corrupt practices are proved, the election of the appellant has to be set aside.

The Tribunal held that the Jharkhand party had got the leaflet printed and that Ex. I contained an appeal for votes to the electorate on grounds of religion but Ex. II did not. The Tribunal however held that the onus of proving that the leaflets were distributed and the speeches made, was on the respondent and this onus he had failed to discharge. In this view of the matter the Tribunal dismissed the petition.

The High Court held that both the leaflets contained appeals on religious grounds. It agreed with the Tribunal that the Jharkhand party had got the leaflets printed. In the High Court's view the Tribunal was wrong in holding that the respondent had not proved that the leaflets were distributed and the speeches made. The High Court having considered the evidence for itself came to the conclusion that it was sufficient to prove that the leaflets had been distributed and the speeches made by the appellant

and also by his agents at his instance or with his knowledge and consent. The High Court therefore set aside the order of the Tribunal and declared the election of the appellant void.

The first question that we will consider is whether the leaflets contained an appeal on grounds of religion. It seems to us that the leaflet, Ex. II, does not contain any appeal on grounds of religion. As however, we have come to the conclusion that the leaflet, Ex. I, contains such an appeal, we think it unnecessary to state the reasons why we have come to a conclusion different from that of the High Court in regard to the leaflet Ex. II.

The leaflet Ex. I is in these terms :

In the box of the Jharkhand Party is printed
the symbol of Cock.

Put your votes in the box with Cock symbol. 'O'
rise ye children of men—

Respected sons of men open your eyes, lend your
[ears

Recognise me and my crow.

In your services and worships

In the Worship of your forest God (Buru)

In stomach pain and headache

At the time of your distress and miseries

I am with you even after giving my life. You recover (from illness) even by applying knife at my neck. This thought gives me pleasure. In exchange of this give me chara in the shape of vote I am victorious. Do not forget me, otherwise I tell, ye sons of men will suffer eternal miseries. Crow of Cock, Cock crowed, rise now, open Your eyes, be prepared for duty. Yours only Cock.

The leaflet Ex. I which will hereinafter be referred to simply as the leaflet, was in Devnagri script but the language used was the 'Ho' language. It is said to be in verse. The first sentence is the heading of the leaflet and it is said that it does not form a part of the verse contained in it, but nothing turns on that.

It will have been seen that the leaflet is largely concerned with a cock. It is said that the leaflet by

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referring to the cock appealed to the religious sentiments of the Adibasis. It is not in dispute that cocks are very frequently offered as sacrifices by the Adibasis to their deities.

Before proceeding to discuss the leaflet we have to refer to the findings of the Courts below as to the religious practices of the Adibasis. Both the Courts below have arrived at the conclusion that the cock is not a religious symbol of the Adibasis but it forms an integral part of the religious ceremonies which they perform while worshipping some of their important deities. We will set out here from the judgment of the High Court how a cock is found to be an integral part of the religious ceremonies :

“ One of the recognised modes of worship of these deities or some of them is that cocks are sacrificed before these deities to get happiness and to get rid of miseries. A cock is kept tied for two days without any food and on the day of the sacrifice it is taken to the *Puja asthan* where some rice is put and after prayers to the Bongas, namely, the deities, for getting happiness and to get rid of miseries, the cock is placed near the rice. If the cock pecks at rice, the Adibasis consider their Bongas to be pleased. They thereafter sacrifice the cock. If the cock does not peck at the rice, they consider their deities to be displeased and prayers are offered until the cock pecks at the rice when it is sacrificed.

It also appears from the District Gazetteer quoted in the judgment of the Tribunal that according to the belief of the ‘ Hos ’,

“ All the spirits if not by nature malignant—and they generally are malignant—require continual propitiation by means of sacrifices, the belief being that unless such offerings are made to them, they are a power for evil. Illness, for instance, is usually regarded as due to the influence of some Bonga ; and the more serious and continued the disease, the greater the value of the animal that must be sacrificed. First, they sacrifice a fowl, and then if the offering does no good, a goat. If a goat

fails to procure relief, they increase the size of the sacrificial animal, immolating one after the other, a sheep, a calf, a cow and a buffalo to appease the ill will of the spirit . . .”

The facts stated in the District Gazetteer have been accepted by the Courts below as setting out correctly the religious practices and sentiments of the Adibasis.

Coming now to the terms of the leaflet, it is clear that it is meant to be an appeal to the electorate. There is no doubt that the electorate appealed to was primarily that part of it which consisted of the Adibasis. It further seems to us that the appeal was made in the name of the cock. It ends, ‘Yours only cock’. It uses the words ‘me’ and ‘I’ at several places and they clearly refer to the cock. It was suggested that in some places the words refer to the appellant. We find it impossible to accept the suggestion as such a reading would not fit into the context at all. It would thus appear that the leaflet purported to be an appeal by the cock, stating that it served the community even at the cost of its life and that in exchange for these services “chara”, that is, food in the shape of vote should be given to it, which could only mean, in the box with the cock symbol, that is, to the Jharkhand party candidates including the appellant.

From what we have earlier said about the religious ceremonies of the Adibasis, it would appear that the pleasure of the deities is indicated through the cock taking the food that is given to it and that the deities only thereafter accept the sacrifice of the cock. Therefore, when the leaflet stated that food should be given to the cock in the shape of votes what was meant was that the deities would be pleased if votes were cast in the box with the cock symbol. Further, the reference to the religious ceremonies involving the sacrifice of the cock and the alleviation of pain and miseries thereby, is clearly a reference to religion. If the meaning was not what we have stated earlier, it is difficult to understand why it was necessary to refer to the religious ceremonies for the happiness of

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the community involving the sacrifice of cocks. It is important to remember that cocks are sacrificed only after they have pecked at the food spread before them, that is, only after the pleasure of the deities is indicated through the cocks pecking at the food. That puts it beyond doubt that by referring to the sacrifice of the cock the obtaining of the pleasure of the deities was sought to be conveyed. When the cock in the leaflet said 'give me chara in the shape of vote', what it said in substance was that the giving of such votes would result in the deities being pleased. In our view, any other interpretation would make the leaflet insensible.

It is said that all that was meant by the leaflet was that like the sacrificial cock the candidate, that is, the appellant, was prepared to lay his life down for the good of the community. We find no language in the leaflet to convey this meaning. There is nothing to show that the sacrificial cock was being likened to the appellant. Indeed, there is no reference whatsoever to the appellant in the leaflet. We have earlier said that the words 'I' and 'me' do not in the context they are used, refer to the appellant at all.

Then the sentence 'do not forget me otherwise I tell, ye sons of men will suffer eternal miseries' in the leaflet clearly invokes the wrath of the deities on the electorate in case they forget the cock, that is, forget to vote for the party of which it is the symbol, for vote is likened to the food which has to be given to the sacrificial cock and when the Gods are displeased the cock does not take the food. This clearly is an appeal on grounds of religion, for the substance of it is that it would be an irreligious act not to vote for the party. It may be that it would come within the kind of undue influence mentioned in s. 123(2)(a)(ii) of the Representation of the People Act, 1951, if practised on an individual elector. But where, as we shall show later it happened in this case, this kind of appeal is made systematically to a large section of the electors, as when the leaflet is given a large circulation, it would come within s. 123(3) of the Act. It would then be a corrupt

practice of a systematic appeal on grounds of religion. It would seem clear that an appeal that it would be a religious act to vote in a certain manner would be an appeal on grounds of religion. If so, it seems equally clear that an appeal that a failure to vote in a certain manner would be against religion, would also be an appeal on grounds of religion. For these reasons we agree with the view of the Courts below that the leaflet contained an appeal on grounds of religion.

The next question is: Was there a systematic appeal? That depends on the question of fact whether the leaflet was distributed among the electorate or whether speeches were made in its terms or otherwise making an appeal to the electorate on grounds of religion by the appellant and his supporters with his knowledge and consent at certain meetings as alleged in the petition. As we have earlier stated, the Tribunal held that the respondent had failed to prove that the leaflets had been distributed and the speeches made, but the High Court took a different view. Normally, it is the practice of this Court to accept the findings on such questions of fact of the court immediately below. We see no reason here to depart from that practice.

We are further not convinced by the reasons given by the Tribunal for rejecting the evidence led by the respondent on this question. The Tribunal thought that the evidence was discrepant. One of the discrepancies that it was able to detect was as to the number of people who attended the 'Hats' (markets) where the meetings were held in which the leaflets were distributed and the speeches made. But of course it is impossible to give the exact figure of a big crowd consisting of two or three thousand or more people. The other discrepancy pointed out was as to the hour of the meeting. But surely, after the length of time that passed, it would be impossible for any one to remember the precise hour when a meeting was held and if witnesses give hours which are somewhat different, as to when the meetings were held that would not justify the rejection of their evidence. Another reason given by the Tribunal for rejecting the evidence was that it had been stated that the contents

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of the leaflet had been explained and the speeches made in Hindi as well as in the Ho language which the Tribunal thought was unlikely. We see nothing unusual there. There were other communities of the Adibasis besides the Hos. There is no evidence that all the other people understood the Ho language. There were again other communities besides the Adibasis at the "Hats" who did not speak or understand the Ho language. Again the professed object of the Jharkhand party was to include in it all communities living within the Jharkhand area and not to confine the party to Adibasis only. All this may have been the reason why the speeches and the explanations had been in the Hindi language also. As the High Court pointed out, a witness of the appellant himself stated that meetings were held and leaflets were distributed by the appellant and his workers though he did not mention what was said at the meetings or what leaflets were distributed. The High Court rightly observed that the finding by the Tribunal that the leaflet had been printed at the instance of the appellant's party would go to corroborate the evidence of the respondent's witnesses that it was that leaflet which was distributed on behalf of the appellant.

In view of all this, there remains no reason to doubt that part of the evidence of the respondent's witnesses which states that the leaflet was orally explained and speeches were made on its lines. This evidence clearly shows that it was said in the course of the speeches that the cock wanted that votes should be cast in favour of the appellant and that the Gods would be pleased thereby. It would thus appear that even if a different view is taken of the meaning sought to be conveyed by the leaflet than what we have earlier said it bears, there is ample evidence of a systematic appeal being made for votes orally by the appellant or at his instance and with his knowledge by his supporters on grounds of religion. This, as held by the High Court, would by itself amount to a corrupt practice by the appellant and would render his election liable to be avoided.

We, therefore, agree with the view taken by the High Court. The appeal is accordingly dismissed with costs.

SUBBA RAO J.—I have had the advantage of reading the judgment prepared by my learned brother, Sarkar, J. I regret my inability to agree with him.

The facts are fully stated in his judgment and I need not restate them here. The High Court gave two findings: (i) by issuing Exs. I and II, the appellant made an appeal to the electorate to vote for him on grounds of religion; and (ii) on behalf of respondent No. 1 various meetings were held in different parts of the constituency wherein appeals were made on the basis of Exs. I and II. I do not understand the second finding to mean that the appeals so made were different from those disclosed in Exs. I and II. To state it differently, the first finding related only to the contents of the appeals, and the second finding was confined to the systematic nature of the appeals. Indeed the learned Judges in considering the question of systematic appeals observed that there was bound to be some differences in the account which each witness gave regarding what he had seen and heard in those meetings, and, therefore, they accepted the witnesses' version that various meetings were held wherein Exs. I and II were read over and explained in Hindi. I will, therefore, proceed on the basis that what was read in the meetings was only the contents of Exs. I and II.

The only outstanding question, therefore, depends upon the construction of the contents of Exs. I and II. At the outset Ex. II can easily be eliminated from consideration, for, that document does not contain any appeal to vote on grounds of religion. The learned Counsel for the appellant and the respondents, therefore, rightly concentrated their attention on Ex. I. As the argument turns upon the contents of that document, it would be as well that I read it. Ex. I reads as follows:

In the box of the Jharkand Party is printed the symbol of Cock.

Put your votes in the box with Cock symbol 'O'
rise ye children of men —

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Respected sons of men open your eyes, lend your ears, recognise me and my crow.

In your services and worships

In the worship of your forest God (Buru)

In stomach pain and head-ache

At the time of your distress and miseries

I am with you even after giving my life. You recover (from illness) even by applying knife at my neck. This thought gives me pleasure. In exchange of this give me chara in the shape of vote. I am victorious. Do not forget me, otherwise I tell, ye sons of men will suffer eternal miseries. Crow of Cock, Cock crowed, rise now, open your eyes, be prepared for duty, yours only Cock.

Before considering this document it may be convenient to read the relevant provisions of the Representation of the People Act, 1951, (hereinafter called the Act).

S. 123: The following shall be deemed to be corrupt practices for the purposes of this Act:—

* * *

(3) The systematic appeal by a candidate or his agent or by any other person, to vote or refrain from voting on grounds of caste, race, community or religion or the use of, or appeal to, religious symbols or the use of, or appeal to, national symbols, such as the national flag or the national emblem, for the furtherance of the prospects of that candidate's election.

The material part of the section relevant to the enquiry prohibits systematic appeal to vote or refrain from voting on grounds of religion. This section defines corrupt practices which invalidate an election. Being a penal section, it must be strictly construed. This hits at canvassing of votes for, or against, a candidate on grounds of religion. A may ask B to vote for him on the ground that A and B belong to the same religion. C may ask B to vote for A on the ground that both A and B profess the same religion, or C may ask B not to vote for D on the ground that D belongs to a religion different from that of B. These are direct appeals to religion as a ground of preference.

But there may also be an appeal which indirectly but by necessary implication invites votes on grounds of religion. What is essential, therefore, is that the appeal should, expressly or by necessary implication, seek votes on grounds of religious affinity or religious conflict.

This section is not obviously intended to prevent appeals in picturesque or metaphorical language drawing analogies from mythology, religion or folklore. When most of the voters are illiterate, the candidate or his agent can attract and enthuse the audience or drive home his points only by parables, similes or metaphors drawn particularly from religious lore which most of the people understand and appreciate. A distinction must, therefore, be drawn between canvassing on grounds of religion and seeking of votes in graphic or picturesque language with analogies from religious lore: to illustrate, a candidate may appeal to the electorate consisting of persons professing different religions, say Hindus, Mohammadans, Christians etc., to vote for him and say that he would sacrifice his life in the cause of his constituency just like Christ sacrificed his life to redeem the world. He may also say that like Rama, the virtuous, who killed Ravana, the *rakshasa*, the embodiment of evil, he would, if elected, put down corruption, nepotism and the like in Government. He may even say that he would sacrifice himself as a goat before Kali to bring happiness and prosperity to his constituency. All these similes are drawn from religion, but they do not embody an appeal, directly or indirectly, to vote for the candidate on grounds of religion.

Coming to the offending document, let us see whether it contains an appeal to vote on grounds of religion. The appeal was intended to be made to an electorate comprising of voters of many religions, though an appreciable part of it were Adibasis. The appeal might have been read at the meetings by persons who were not Adibasis to an audience which might or might not have contained Adibasis. The symbol of cock was allotted without objection by the

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Election Commissioner to Jharkhand Party, which admittedly consisted of member other than Adibasis. The appeal is couched in poetic and picturesque language. It opens with the statement that the symbol of the Jharkhand Party is the cock and the said symbol is printed on the box of the Party. It then exhorts the voters to put their votes in the said box with the cock symbol. Then there is the exhortation to the voters to open their eyes and recognize the box and its cock. Then comes the appeal by parable. The cock symbol on the box and the sacrificial cock are not kept distinct, and the address is made in a metaphorical language. If literally understood it means that the cock on the box sacrifices its life with pleasure to relieve the distress of the people, such as their stomach and head aches, and therefore it asks them to give it food in the shape of vote; and tells them that if no such food is given, the people will suffer eternal miseries. If literally understood, this part of the appeal does not convey any sense. On the other hand, if the metaphor involved in the poem is expanded, it can only mean that "I, the cock in the box", i.e., the candidate or the Party, will sacrifice his or its life for the cause of the constituency, just like the cock sacrificing its life for the happiness of the people; and, just like the people who suffer eternal miseries if the cock is not fed, the constituency will suffer if votes are not given for the candidate or the Party. It may be noticed that no specific mention of Adibasis or their religion is made in the document. At the worst the document is capable of two interpretations: the one gives it an understandable content, and the other imputes to it a confusion of ideas involving a corrupt practice. Under such circumstances, I would prefer to read the document in a way beneficial to the elected candidate and to uphold his election rather than to impute corrupt practice to him on doubtful considerations and set aside his election.

There is also another aspect of the case and that is; what is the religion of the Adibasis? They are a backward community and they do not appear to have any highly evolved religion. Presumably, they are

all Hindus. "The peculiarity of the Hindu religion is its universality. Along with its worship of gods, goddesses, and even of trees and snakes, there exists vedant philosophy which raises man himself to Godhood." These Adibasis, who are Hindus, appease different spirits alleged to govern different diseases and misfortunes, by sacrifices, which range from a cock to a buffalo, depending upon the magnitude of the calamity expected to be averted. It is well-known that not only Adibasis but also many other backward communities in India sacrifice animals to appease spirits and deities. The animal which is sacrificed is not an object of veneration, but only a convenient or conventional sacrificial medium. It cannot, therefore, be said that any reference to a sacrificing bird or animal is a reference to religion. It would be rather enlarging the scope of the disqualification if we should hold that a reference to a sacrificial bird or animal is canvassing on a ground of religion of Adibasis; for, such sacrifices are common not only among the Adibasis but also among many other backward communities.

For the aforesaid reasons, I hold that Ex. I does not contain an appeal by the appellant for votes on grounds of religion.

In the result, the order of the High Court is set aside and the election petition is dismissed with costs.

ORDER OF COURT

In accordance with the opinion of the majority this appeal is dismissed with costs.

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