

(1999) 04 CAL CK 0068
In the Calcutta High Court

Case No : Election Petition Jurisdiction, Election Petition Case No. 3 of 1996

Dr. Manas Bhunia

APPELLANT

Vs

Dr. Makhan Lal Bangal and Others

RESPONDENT

Date of Decision : 07-04-1999

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 6 Rule 15(2), Order 8 Rule 2, Order 8 Rule 3, Order 8 Rule 4, Order 8 Rule 5
Conduct of Elections Rules, 1961 — Rule 94A, 95A
Election Symbols (Reservation and Allotment) Order, 1968 — Section 16A
Evidence Act, 1872 — Section 101, 102, 106, 123(3), 137
Representation of the People Act, 1951 — Section 100(1), 100(2), 117, 123, 123(2)
West Bengal Panchayat Act, 1973 — Section 98

Citation : (1999) 3 CALLT 281

Hon'ble Judges : Shyamal Kumar Sen, J

Bench : Single Bench

Advocate : Mr. R.K. Lala, Mr. Tapan Chandra Dey and Mr. Jayanta Kumar Das, for the Appellant; Mr. Balai Chandra Roy and MR. Avijit Gangopadhyay, for the Respondent

Judgement

S. K. sen, J.—In the instant Election Petition the petitioner has challenged the validity of the election of Dr. Makhan Lal Bangal. respondent No. 1 who was declared,elected from 216, Sabang Legislative Assembly Constituency in the District of Midnapore, Sub-Division Kharagpur, and has inter alia prayed for a declaration that the election of Dr. Makhanlal Bangal is void and for a further declaration that the petitioner Dr. Manas Bhunia have been duly elected.

2. The margin of win by Dr. Bangal in this election is 825 votes only. The total number of voters in this constituency was 1,26,719 and out of that 1,22.293 voters including the postal ballot voters have cast their vote in the said constituency. It has been pointed out by Mr. Lala, learned Advocate for the petitioner that the percentage of voting in the said Assembly Constituency comes to 96.51 percent and only 3.49 percent voters have not cast their votes. It has also been submitted by Mr. Lala that the huge percentage of voting is a record,

particularly in a remote village of West Bengal and as such should be viewed with suspicion.

3. Dr. Makhanlal Bangal is the Left Front candidate nominated by Biplabi Bangla Congress, a constituent of the Left Front for the last 20 years, who received 60,453 votes Including postal ballots. Dr. Bhunia was a candidate sponsored and nominated by the Indian National Congress. He has received 59,628 votes including postal ballots in the said election. The third candidate Mr. Nagendra Nath Jana of B.J.P. received only 594 votes including postal ballots.

4. The fourth candidate was Mr. Bhusan Mondal nominated by SUCI and filed his nomination paper as an independent candidate who received 453 votes including postal ballots. As SUCI is not a recognised party by the Election Commission of India. Mr. Bhusan Mondal described himself as independent candidate. In the same manner. Dr. Bangal had described himself as independent candidate in the nomination paper although sponsored by Left Front because Biplabi Bangla Congress is also a very small party not recognised by the Election Commission under the Election Symbols (Reservations and Allotments) Order 1968.

5. After the election petition was filed within the prescribed date of limitation under the Representation of People's Act. 1951 (hereinafter referred to as the said Act) although service was effected by the Registrar, Original Side, of this Court to each of the parties i.e. the contesting candidates, only the alleged returned candidate Dr. Bangal filed his written statement. No other party either entered appearance or filed any written statement.

6. On October 8, 1996 after considering the issues suggested on behalf of the petitioner and the respondent No. 1, an order was passed by me whereby the following issues were settled :

(1) Is the election petition maintainable in the present form ?

(2) Is the respondent No. 1. his election agent and/or his election agents is/are guilty of corrupt practices as alleged in paragraph 11 and sub-paragraphs thereunder of the election petition ?

(3) Is the respondent No. 1, his election agents, the Returning Officer, Assistant Returning Officers, counting supervisors, counting Assistants acting as agent of the respondent No. 1 resorted to corrupt practices as alleged in paragraph 27 and sub-paragraphs thereunder of the said election petition ?

(4) Is the election petitioner entitled to a declaration that the election of the respondent No. 1 from the said 216, Sabang Legislative Assembly Constituency void ?

(5) Was the Returning Officer of the said Assembly Constituency biased in favour of the respondent No. 1 ?

(6) Is the election petitioner entitled to a declaration that the petitioner has been duly elected to the said constituency having received majority of valid votes ?

(7) Is the election petitioner entitled to recounting of votes under the supervision of this Court as prayed for in the petition ?

(8) What relief, if may, the election petitioner is entitled to ?

7. After the issues were settled as aforesaid, the learned Advocate for the respondent No. 1 in October, 1996 started his submission on issue No. 1 and submitted that the election petition is not maintainable and he wanted to make submission on the question of maintainability and accordingly the said issue was taken up for hearing. The learned Advocate for the respondent No. 1 also submitted that he would submit written submission and cite authorities on the next date. Thereupon the said election petition was directed to appear as "part-heard" on 3.12.96.

8. On December 3, 1996 the learned Advocate for the respondent No. 1 handed over a copy of the written submission to the court and also to the Advocate-on-Record of the petitioner on the point that the election petition is not maintainable and should be dismissed in limine for the reasons mentioned in his written note of submission. The learned Advocate has also made his oral submission on the basis of his said written submission.

9. On December 3, 1996 an order was passed by me on which it was held that "since on the face of the record there does not appear to be any deviation from the Form No. 25 in the affidavit relating to corrupt practice, issue No. 1 will be decided along with the other issues and the submissions of the respondent will be considered at length." Thereafter the matter was taken up for hearing, on different dates.

10. It may be mentioned that the petitioner examined 9 witnesses (3 of his own witnesses and 6 under sub-poena issued by the Court at the instance of the respondent No. 1) and one typist for a typographical mistake, who were duly cross-examined by the Advocate on behalf of the respondent No. 1. The respondent No. 1 called 9 witnesses (2 of his own witnesses being himself and his election agent, and 7 under subpoena issued by the Court at the instance of the respondent No. 1) who were duly examined by the counsel for the respondent No. 1. Besides the examination of witnesses of both the parties, large number of documents were exhibited, several documents were called for under sub-poena and produced by several authorities including the editors of newspapers. Court records from 6th Judicial Magistrate's Court and Chief Judicial Magistrate's Court, Midnapore, were also produced under sub-poena issued by the Court. Mr. Birendra Kumar Maitra, Minister of West Bengal also gave evidence in this proceeding under sub-poena issued by the Court at the Instance of the petitioner herein.

11. After the evidence was concluded Mr. Balai Roy, learned senior Advocate for the respondent No. 1 raised the question of maintainability of the election petition and alleged that there was non-compliance in the prescribed form being Form No. 25. Mr. Roy also argued the Identical points which were mentioned and

submitted orally and in the written submission on behalf of the respondent No. 1 by his learned Advocate as mentioned hereinbefore and the same was again urged by the counsel for the respondent No. 1 on issue No. 1 after the trial was concluded.

12. The contention of Mr. Lala learned Advocate for the petitioner is that the points urged for dismissal of the election petition on preliminary question of maintainability were all considered before the trial commenced and there is no scope after taking evidence to go into the same question again. He has relied upon the judgment and decision in the case of Quamarul Islam Vs. S.K. Kanta and others, particularly to paragraphs 40 and 41 at pages 1748 and 1749 of the said reports in support of his said contention that after the parties had gone to trial and had led evidence it would not be proper to dismiss the" election petition for defects of absence of full particulars in pleadings. It has been submitted that the Supreme Court has quoted with approval the said excerpts from the judgment of Balwan Singh Vs. Lakshmi Narain and Others, in the aforesaid judgment.

13. The next judgment cited by Mr. Lala is the case of Manohar Joshi Vs. Nitin Bhaurao Patil and Another, It has been argued by him in the aforesaid decision the Supreme Court dealt with identical submissions made by Mr. Ram Jethmalani as has been contended by Mr. Balai Ray, counsel on behalf of the respondent No. 1 and rejected the submission of Mr. Jethmalani and referred to paragraph 21 of the said Judgment which inter alia set out as follows :

" Acceptance of the argument of Mr. Jethmalani would amount to acceptance in section 86 an additional ground for dismissal of the election petition u/s 86 for non-compliance of section 83. There is no occasion to do so, particularly when section 86 in the nature of a penal provision, has to be construed strictly confined to its plain language."

14. Mr. Lala has further submitted that the provision relating to affidavit of corrupt practice is contained in a proviso of section 83 of the Act. He has pointed out that the said provision relating to the affidavit of corrupt practice was brought in as a proviso by an amendment of the said section of the said Act by the Parliament by passing Act No. XXXX of 1962 w.e.f. 20.9.61 which is still a part of the section 83 of the said Act as a proviso. He has further argued that section 86 empowers the High Court to dismiss an election petition at the threshold, only if it does not comply with the provisions of section 81 or section 82 or section 117 of the Act, all of which are patent defects evident on a bare examination of the election petition as prescribed. He has specifically urged that section 83 is not specified as a ground for dismissal of election petition u/s 86.

15. Referring to the aforementioned Supreme Court decisions it has been argued by Mr. Lala that after the parties have gone to trial, examined witnesses, produced and exhibited documents, the election petition cannot be dismissed on the ground of alleged infirmities in the affidavit of corrupt practice of absence of

particulars or corrupt practice and the Court should consider the election petition on merits, shift and weigh the evidence, both oral and documentary, in order to arrive at a finding as to whether allegations relating to corrupt practices or other allegations, if any, contained in the election petition have been proved by the election petitioners. It has been contended by him that in the event, the election petitioner has been able to prove one single instance of corrupt practice either u/s 100(1)(b) or 100(1)(d)(ii), (iii) or (iv), the Court shall declare election to be void subject to the provision contained in section 100(2) thereof. The Court will also declare the petitioner as duly elected "if the High Court is of opinion that (a) in fact the petitioner received the majority of valid votes or (b) that but for the votes obtained by the returned candidate by corrupt practices the petitioner would have obtained a majority of valid votes."

16. Mr. Lala, however, has contended that in any event there is no infirmity, irregularity or deviation in the affidavit of corrupt practice or any absence of particulars in the allegation of corrupt practice in the election petition. He has further contended that there is no such allegation in the written statement with regard to lack of particulars in the petition relating to allegation of corrupt practice. He has further submitted that a vague statement has been made in the written statement that the petition is not maintainable without specifying or even alleging that there is any infirmity, irregularity or deviation in the affidavit of corrupt practice or any absence of particulars of corrupt practice or that the respondent No. 1 ever faced any difficulty in understanding the case of the petitioner or had any difficulty in preparing his defence or stand taken in his written statement. Mr. Lala has submitted that in fact the affidavit of corrupt practice or the particulars of corrupt practice suffers no infirmity at all.

17. Mr. Lala has referred to election petition along with its annexures and written statement of the respondent No. 1 to arrive at a correct conclusion as to the issues and disputes before this Court. He has submitted that no argument or point raised by the counsel for the respondent No. 1 from the bar which has not been taken in the written statement filed by the respondent No. 1 can be taken notice of or looked into by this Court in view of the provisions under Order VIII Rule 2, 3, 4 and 5 of the Code of Civil Procedure.

18. Mr. Lala has submitted that from Rule 2 of Order VIII of CPC it is clear that the defendant must raise by its pleadings all matters which show the suit is not maintainable or that the transaction is either void or voidable in point of law and all such grounds of defence as, if not raised, would be likely to take the opposite party by surprise or would raise issues of fact arising out of the plaint, as for Instance, fraud limitation, release, payment, performance, or facts showing illegality.

19. He further referred to Rule 5 which makes it clear that all facts which are not specifically denied and answered in points of substance, shall be taken to have been admitted and no proof is necessary thereof.

20. Mr. Lala has further pointed out that a close look at the written statement of the respondent No. 1 would prove beyond all doubts that except stating that the election petition is not maintainable as it has not been made as per form prescribed, none of the grounds of objection raised by Mr. Balai Roy from the Bar has been taken by the respondent No. 1 in his written statement filed before this Court. He has also urged that it will also be seen that the allegations of fact made out in the election petition has not been specifically denied by the respondent in compliance with Rule 3 of Order VIII of the Code of Civil Procedure, nor any answer has been made out by the respondent No. 1 in answer to the allegations made by the election petition in compliance with Order VIII Rule 4 of the Code of Civil Procedure. Therefore, in terms of Rule 5 of Order VIII it would be clear that the allegations of fact made out in the plaint remains unchallenged without being denied specifically or by necessary implications and therefore stands to be admitted under the said Rule and no proof is necessary of the said allegations made in the petition.

21. Objection has been raised with regard to the affidavit of corrupt practice that the same is not in accordance with Form 25 and as such the petition is not at all maintainable.

22. It has further been argued by Mr. Lala that Form 25 of the conduct of Election Rules is not applicable in respect of the High Courts where the Election Petition rules have been framed. He has further submitted that the High Court at Calcutta being a Chartered High Court having Original Side jurisdiction Election Petition Rules 1967 was specifically framed making inter alia : Rules for the Calcutta High Court Original Side applicable mutatis mutandis whereunder the form of affidavit of corrupt practice as has been framed by the Full Court If this Court has been set out in Appendix-I.

23. Mr. Lala has further pointed that there are several differences between the Form set out in the Election Petition Rules 1967 of the High Court and Form 25 of the Conduct of Election Rules 1961. The said Form of the Appendix-I of the Election Petition, Rules have been framed keeping in view of the structural differences of the Original Side of this court where original side still exists and is functioning in full vagour. It will be seen upon comparison of the two affidavits that there Is a difference in the language in sub-paragraph (b) of the said affidavits. The difference is on the last line of the affidavit being Appendix -I of the Election Petition Rules that the said Form in Appendix-I in the last line states "...Schedule annexed thereto are based on information received and believed to be true", whereas Form 25 under Rule 95A of the Conduct of Election Rules says "..... Schedule annexed thereto are true to my Information."

24. According to Mr. Lala the election petitioner was bound to and has followed the Form set out in appendix-I of the Election Petition Rules/adding therewith the words contained in Form No. 25 as well.

25. He has further submitted that there was and/or is no infirmity in the said

affidavit of corrupt practice which would be proved beyond all doubts. Therefore, once more the Court is entitled to conclude that there is no deviation from the prescribed Form of the corrupt practice by the petitioner from the Form prescribed and set out in Appendix-I of Election Petition Rules, 1967.

26. According to Mr. Lala there being no deviation from the prescribed Form of corrupt practice this Court should not accept the contention of the learned Advocate for the respondent that the election petition is not maintainable on the ground that the affidavit of corrupt practice is not in proper form.

27. The second objection raised by Mr. Balai Roy, learned Advocate for the respondent, with regard to infirmity in the election petition is that each corrupt practice and each electoral offence has been set out as true to knowledge and true to information which, according to him, is not possible since the same paragraph cannot be true to knowledge and based on information. In this connection, Mr. Roy has relied upon the judgment and decision in the case of Dr. (Smt.) Shipra v. Shanti Lal Khoiwal reported in AIR 1996 SC 1691.

28. The said decision does not apply. On the contrary unreported decision in Biren Moitra's case applies.

29. Mr. Balai Roy, learned Advocate for the respondent No. 1 has further referred to the verification and to the portion of the affidavit of corrupt practice wherein it has been alleged that 985 votes have been smuggled and has submitted that smuggling in 985 votes as alleged therein is not a corrupt practice although it has been alleged as corrupt practice and the same is a gross error in the affidavit. In support of his contention that the election petition is not maintainable, Mr. Roy has submitted as follows :

i) in the eye of law there is no proper affidavit according to Order XIX Rule 3 of Civil Procedure Code.

ii) Notice u/s 99 of the Representation of People's Act should have been given to the "collaborators" i.e. Debashis Bose. Dipak Sarkar, Hem Bhattacharyya, Ranjan Mishra. Amalesh Bose.

iii) in paragraph 11(a) of the petition, no fact has been affirmed, misleading affirmation.

iv) in respect of paragraph 11 (b) no pleading that the candidate believed it to be true. Dipak Sarkar may have complained on genuine basis.

v) Paragraph 11(c) is incomplete charge of corrupt practice. No allegation that the same was done with knowledge and consent or by any of the agent of the respondent No. 1. No evidence of nexus between Dipak Sarkar and respondent No. 1. No evidence that distribution of Ganashakti by Chitta Bera influenced any voter. Court can never come to the conclusion that Chitta Bera did it "as an agent" of the respondent No. 1.

30. With regard to the objection that there is no proper affidavit according Order

XIX Rule 3 of the Civil Procedure Code, it is necessary to consider Order XIX Rule 3 which has been referred to by the learned Advocate for the petitioner. The said Order XIX Rule 3 provides as follows :

"Affidavits shall be confined to such facts as the deponent is able of his own knowledge to prove, except on interlocutory applications on which statements of his belief may be admitted provided : Grounds have been stated."

31. While considering the said objection. I must take into account that Representaion of People's Act, 1951 and the Rules made thereunder is a complete Code in itself, and provisions of the CPC only applies where there is no such provision made in the Act or Rules made thereunder. Section 87(1) of the said Act also makes it clear. Conduct of Election Rules 1961. section 94A has prescribed the form of Affidavit to be filed with Election Petition where corrupt practice has been alleged by the petitioner in the petition. Election petition Rules 1967 of the High Court at Calcutta replaced the Form of Affidavit under Form 25 of Conduct of Election Rules, 1961 with the Form set out in appendix-I of the said High Court Rules. In the High Courts where Rules have been framed by the High Court particularly where the Election Petition is heard in High Court where Original Side exists and also in other High Courts where Rules exists the Election petitioners are bound to comply with the affidavit prescribed in the High Court Rules and not according to Form 25 nor as stated in Order XIX Rule 3 of the Code of Civil Procedure.

32. In this connection judgment and decision of the Supreme Court in the case of Krishan Chander Vs. Ram Lal, relied upon by learned Advocate for the petitioner may be taken note of. In the aforesaid decision it was held that there is nothing in the Form 25 or Form prescribed in Appendix-I of the High Court Rules (which is similar to Form 25) which requires the petitioner to state the source or sources of his information in the said affidavit. Obviously, that must be so, because Indian Evidence Act being applicable in the trial of election petition, it is elementary that evidence should never be pleaded in the pleadings of the parties. Had it not been so, in an Election Petition if all evidences are pleaded, in a given case an election petition could run into several hundred pages inclusive of such annexures which was neither the intention of the legislature while enacting Representaion of People's Act. 1951 nor the framers of CPC or Indian Evidence Act.

33. It is also clear from the said decision of the Supreme Court where there are specific Rules made under the said Act which govern the election petition, no other Rules are applicable nor is the disclosure of source of information is a requisite under Order 6 Rule 15(2) of the CPC Code. In view of the aforesaid decision, the said objection taken by the learned counsel for the respondent No. 1 cannot be sustained.

34. The other objection taken on behalf of the respondent No. 1 that notice u/s 99 of the said Act should have been given to the "collaborators" i.e. Debashis

Bose, Dipak Sarkar, Hem Bhattacharyya, Ranjan Mishra. Amalesh Bose etc.

35. It may be noted that the word "collaborator" is a concept of Criminal Law. Nowhere in the said Act or Rules framed thereunder the word "collaborator" could be found either in the Act or in the Rules. Therefore, the concept of a "collaborator" is a foreign concept so far as the said Act and Conduct of Election Rules 1961 are concerned. An election is tried under the said Act and not under Criminal Procedure Code or Indian Penal Code.

36. Section 100(1)(b) of the said Act envisages corrupt practice committed by (a) a returned candidate or (b) his election agent or (c) by any other person with the consent of the returned candidate or his election agent. Section 100(1)(d)(ii) envisages committing of corrupt practices in the Interest of returned candidate "by an agent" other than his election agent. In such a case where the corrupt practice is committed by a returned candidate or "by his agent", no consent of either the returned candidate or his election agent is required to be pleaded or proved. All that the law requires" is that the petitioner must in that case show that the election result so far as the returned candidate is concerned has been "materially affected", nothing else. If one such instance can be shown, the election of the returned candidate must be set aside and declared as void.

37. Therefore it would be clear that nowhere either in section 100 or section 100(1) the word "collaborator" has been used. Even in the written statement filed by the respondent No. 1. the word "collaborator" has not been used or no such stand has been taken by the respondent in defence of his case. In fact in the Election Petition, the entire case is based on the fact that it was the respondent No. 1 who committed the corrupt practices through his agent, which is in consonance with the Act and Rules framed thereunder.

38. It is settled principle of law that a principal is liable for the act of the "agent" even in the Law of Contract. Sale of Goods Act and in any other civil law, all such persons like Debasis Bose, Dipak Sarkar, Hem Bhattacharyya, Ranjan Mishra, Amalesh Bose, Chitta Bera, the R.O.A.R.O. Basudev Bag all acted as "agent" of the respondent No. 1 in furtherance of the interest of the returned candidate so that he could wrongfully and illegally win the said election. As stated earlier, no question of consent in cases of agents acting in the interest of the returned candidate is to be pleaded or proved. All that is required to be pleaded and proved in such cases is that the "result of the Election is materially affected". Therefore, the argument of the learned Advocate for the respondent No. 1 cannot be said to have any basis.

39. It has been argued on behalf of the petitioner that in case of "agents" question of naming these agents u/s 99 does not arise for the reason that they acted " as agents " of the respondent No. 1 in furtherance of his interest in the election and therefore it is the respondent No. 1 who is vicariously liable for the act and conduct of his own "agent" as principal for the "agents".

40. I am of the view that the said submission of Mr. Lala, learned advocate for

the petitioner, cannot be said to be without any basis. In fact the said position becomes clear on interpretation of section 100(1)(b) and 101(d)(2).

41. Section 99 of the Act may also be taken note of in this connection under which it is not necessary to disclose the names of the agents, since they are acting on behalf of the principal. Moreover, section 99 speaks of "other orders to be made by the High Court". It is obvious that section 99 speaks of not "original order" to be passed by the High Court but "other orders" to be made by the High Court at the time of making an order u/s 98 of the said Act. In this connection sections 98 and 99 of the said Act are quoted hereinbelow :

"98. Decision of the High Court--At the conclusion of the trial of an election petition the High Court shall make an order-

- (a) dismissing the election petition; or
- (b) declaring the election of all or any of the returned candidates to be void; or
- (c) declaring the election of all or any of the returned candidates to be void and the petitioner or any other candidates to have duly elected."

"99. Other orders to be made by the High Court- (1) At the time of making an order u/s 98 the High Court shall also make an order-

- (a) where any charge is made in the petition of any corrupt practice having been committed at the election, recording-
 - (i) a finding whether any corrupt practice has or has not been proved to have been committed at the election, and the nature of that corrupt practice; and
 - (ii) the names of all persons, if any, who have been proved at the trial to have been guilty of any corrupt practice and the nature of that practice; and
- (b) fixing the total amount of costs payable and specifying the persons by and to whom costs shall be paid;

Provided that a person who is not a party to the petition shall not be named in the order under sub-clause (ii) of the clause unless-

- (a) he has been given notice to appear before the High Court and to show cause why he should not be so named, and
- (b) if he appears in pursuance of the notice, he has been given an opportunity of cross-examining any witness who has already been examined by the High Court and has given evidence against him, of calling evidence in his defence and of being heard.

(2) In this section and in section 100, the expression "agent" has the same meaning as in section 123".

42. It may also be noted that the original order to be passed by the High Court is contained in section 98 of the said Act which makes it absolutely clear that" at

the conclusion of the trial of an election petition the High Court shall make the order provided in sub-section (a) or subsection (b) or sub-section (c) of section 98 of the said Act. It also appears from section 98 that these orders can be passed only when the trial has been "concluded" and not before and question of passing any order under sub-sections (a) or (b) or (c) of section 98, cannot conceivably be passed by the High Court until and unless High Court comes to the definite finding as to the merit of the application. To make it more explicit "Explanation" provided u/s 86 of the said Act makes it clear that as a special case under a deeming clause that "where an election petition is dismissed for failure to compliance of sections 81 or 92 or 117 of the Act at the threshold the order of such dismissal shall be "deemed" to be an order made under clause to provide for the deeming clause u/s 86 to make it a special provision otherwise it would have meant the order could only be made u/s 86 also at the "conclusion" of the trial. The other two orders that could be passed under sub-section (b) or (c) of section 98 of the said Act. It would be clear from a plain reading of the said sub-sections that the said orders cannot be passed unless the trial of the election petition has been concluded that too upon hearing of the case on merits.

43. Section 99 makes it clear that an order u/s 99 can only be passed at the time of making an order u/s 98 i.e. at the "conclusion" of the trial of the Election Petition. In sub-section(2) of section 99 it has been provided that in section 99 and in section 100 the expression "agent" has the same meaning as in section 123 of the said Act. Explanation to section 123 sub-section(1) provides that in section 123 the expression "agent" includes an election agent, a polling agent and any person who held to have acted as "agent" in connection with the election with the consent of the candidate. It has been held by the Assam High Court. Rajasthan High Court and finally by the Supreme Court reported in Samant N. Balkrishna and Another Vs. V. George Fernandez and Others, inter alia as follows :

" In the case from Rajasthan, the Rule laid down was that the association of persons or a society or apolitical party or its permanent members who set up a candidate, sponsors his cause, and worked to promote his election, may be aptly called as agent for the election purposes. In such cases where these persons commit corrupt practice unless the exception in section 100(2) apply, the returned candidate should be held guilty.

44. It is well settled in view of several decisions of the Supreme Court that the question of giving notice to Debasis Bose, Hem Bhattacharyya, Dipak Sarkar, Anindya Kar. Basudeb Bag, Kushol Mitra as "collaborators" all and each of whom acted as agent of the respondent No. 1, cannot and does not arise. Respondent No. 1 is responsible for act and conduct of all and each of his "agent" vicariously or otherwise and it is the respondent No. 1 who committed the corrupt practice through his agents. Therefore, argument u/s 99 of the Act to say the least is fallacious and based on misconception of the said Act, Rules and scheme of the said Act.

45. It has also been contended by Mr. Balai Roy and Mr. Abhijit Gangopadhyay, learned Advocates on behalf of the respondent No. 1 that in paragraph 11(a) of the petition no fact has been affirmed and the same is only a misleading affirmation.

46. Mr. Lala has submitted that such objection can only be decided at the time of hearing of the matter on trial.

47. In my view, the contention of Mr. Lala cannot be brushed aside. The question really requires consideration on merit from the point of view of pleading and requirement of law considered along with the evidence which has been adduced in the case and proof obtained during trial.

48. With regard to objection-IV, namely paragraph 11(b) there is no pleading that the candidate believed it to be true and as such it has been argued by learned Advocate for the petitioner that Dipak Sarkar may have complained on genuine basis.

49. I am of the view that this point can also be conveniently dealt with while discussing the merits of the case hereinafter.

50. Dealing with the said objection Mr. Lala, learned Advocate for the petitioner has contended that the said point can only be considered at the time of the hearing on merit. He has also referred to ground No. II of paragraph 32 of the petition wherein it has been alleged that the respondent No. 1 and his election agent, his workers, supporters and cadres, members of the CPI(M) acting as agents of respondent No. 1 published and spread statement of facts which were false knowing it to be false. In this connection section 123(4) of the Representation of the People's Act which has been referred to by the learned Advocate for the petitioner may be considered. In terms of the aforesaid section requirement is not as to whether "the agent" who has spread such false statement believed it to be true but as to whether the returned candidate against whom the allegation has been made "believed it to be true or not". Therefore, this Court is not concerned as to whether Dipak Sarkar or Hem Bhattacharyya or other agents of the respondent No. 1 believed the statement true or not. The Court has to see whether the respondent No. 1 believed it to be true or did believe it to be false and whether the said statement is relating to the personal character or candidature of any candidate "being a statement reasonably calculated to prejudice the prospect of that candidate's election". Therefore, it would be crystal clear that the argument as to whether Dipak Sarkar believed it to be true is an objection raised out of misreading and misunderstanding of the law on the subject and has been made without going through the petition.

51. Objection-V raised on behalf of the respondent No. 1 relates to incomplete charge of corrupt practice as alleged in paragraph 11(c) of the petition and it had further been submitted on behalf of the respondent No. 1 that no allegation has been made that the same was done with knowledge and consent by any of the agents of the respondent No. 1. It has further been submitted that no allegation

of nexus between Dipak Sarkar and respondent No. 1 has been made. No evidence has been adduced that distribution of Ganashakti by Chitta Bera influenced any voter and as such Court can never come to the conclusion that Chitta Bera did it as an "agent" of the respondent No. 1.

52. Learned Advocate for the petitioner, however, disputes the validity of the said objection in view of the Supreme Court judgment noted already. He has further submitted that the respondent No. 1 was set up by Biplabi Bangla Congress, a constituent of the Left Front for last 20 years of which the CPI(M) was dominant or major partner of constituent and the respondent No. 1 was a candidate sponsored by Left Front and CPI(M) cadres, entire machinery of CPI(M) worked in support of furtherance for the win of the respondent No. 1, each of these persons namely Dipak Sarkar, Hem Bhattacharyya and others only acted as agents of the respondents No. 1 to promote and in furtherance of the prospect of the respondent No. 1. He has further submitted that in view of the principles laid down by the Supreme Court it is not necessary in such cases to prove any nexus between Dipak Sarkar and respondent No. 1 because the facts, documents and evidences rip open the connection between respondent No. 1, a CPI(M) worker, Chitta Bera as election Agent, Dipak Sarkar & Others working as agents of respondent.

53. It appears to me that the said argument advanced on behalf of the petitioner by Mr. Lala cannot be said to be without any basis. There cannot be any dispute that the respondent No. 1 was nominee of the Biplabi Bangla Congress, a constituent of the Left Front for the last 20 years and in fact in course of hearing the said position has been admitted by advocate for respondent No. 1 also. Objection as to maintainability falls and that issue is decided in favour of the petitioner.

54. In respect of objection relating to paragraph 11(c) the same also appears to be unsubstantiated by the correct appreciation of facts because each and every ingredient of corrupt practice by the respondent No. 1 are required to be proved at the time of hearing on merit.

55. Having considered the question of objection as to the maintainability of the Instant election petition. In my view the said objection fails and can not be sustained. I now propose to deal with the merits of the case. It may be noted that the High Court's power to pass an order in an Election Petition is contained in section 100 of the said Act, so far as the grounds relevant for the purpose of this case is contained in section 100(i)(b) and section 100(1)(d) (ii), (iii) and (iv) of the said Act. It is also necessary to remember in this connection the provisions contained in section 100(2) of the said Act,

56. Section 100(1)(b) of the said Act is also relevant for the purpose. The said section relates to "any corrupt practice committed by a returned candidate or his election agent or by any other person with the consent of the returned candidate or his election". It therefore appears that the statute envisages three categories

of persons who could commit corrupt practice, namely (a) a returned candidate (b) his election agent or (c) by any other person. In last category of cases under (c) aforesaid if the petitioner wants relief from this Court, the petitioner must prove that the corrupt practice has been committed with the consent of the returned candidate or his election agent.

57. Section 100(1)(d)(ii) also appears to be relevant for the purpose. The statute envisages so far this sub-section is concerned if "any corrupt practice is committed in the interest of the returned candidate by an agent other than his election agent".

58. It, therefore, appears on persusal of the aforesaid provision of the statute that over and above what has been mentioned in section 100(1)(b), one more category of person is added in this sub-section namely by an agent. Therefore it would be clear that the statute envisaged that corrupt practice could be committed by the returned candidate through an agent also. It is important to note that the important feature of the sub-section is that in this sub-section "the consent of the returned candidate" or "his election agent" is not a requirement at all, but when any corrupt practice is committed "in the interest of the returned candidate" by an agent, the petitioner has to go a step further and satisfy the Court that the result of the election in "so far as it concerns a returned candidate has been materially affected by corrupt practice committed" in the interest of the returned candidate by an agent.

59. The position is same in respect of section 100(1)(d)(iii) and (iv). In all such cases the High Court has been mandatorily directed by the legislature to declare the election of the returned candidate to be void.

60. It is also necessary, in my view, to consider the provision of section 100(2) of the said Act in its proper perspective that in cases of commission of corrupt practice by an agent if in the opinion of the High Court, a returned candidate is guilty of corrupt practice committed by an agent, other than his election agent, and the High Court is satisfied (a) that no such corrupt practice was committed at the election by the candidate or his election agent and every such corrupt practice was committed contrary to the orders of the returned candidate (by an agent) and without the consent of the candidate or his election agent (b) that the candidate and his election agent took all reasonable means for preventing the commission of corrupt practices at the election and that in all aspects the election was free from any corrupt practice on the part of the candidate or any of his agents, the High Court may not declare the election as void.

61. It is clear from sub-section (2) of section 100 that once the petitioner is able to prove that any corrupt practice has been committed by an agent in the interest of the returned candidate which has materially affected the result of the election so far as the returned candidate is concerned, the returned candidate must prove positively before the Court that (a) all such corrupt practices have been committed "by an agent" contrary to his orders and without the consent of

the candidate or his election agent and that the candidate and his election agent took all reasonable means for preventing the commission of corrupt practice at the election and that in all other aspects the election is free from any corrupt practice on the part of the candidate or any of his agents. The aforesaid ingredients are required to be proved by the returned candidate to the satisfaction of the High Court, once the petitioner has been able to discharge his responsibility regarding the proof of corrupt practice. This view has been consistently taken in several judgments culminating in a judgment of the Supreme Court of India. The first of such cases was reported in Nani Gopal Swami Vs. Abdul Hamid Choudhury and Another, The Supreme Court at page 203 of the said judgment on the right side column in continuation of paragraph 3 held *infer alia* as follows :

"Section 100 provides that where a corrupt practice has been resorted to by a returned candidate or his election agent or by any other person with the consent of the returned candidate or his election agent, the Tribunal shall declare the election of the returned candidate to be void. As Abdul Bari in this case is not alleged to be an election agent but merely an agent of the respondent, it is argued that the Court will have to see whether the act complained of against Abdul Bari, if it is found to be true, was a corrupt act done with the consent or at the instance of the respondent Abdul Hamid Chowdhury. Reliance has been placed on the language of section 100 sub-section (1) clause (b) of the Act.

Direct evidence of consent of the candidate to a corrupt act done by his agent in most cases may not be available, and for obvious reasons it would be unwise to insist upon the production of direct evidence in every case. Here again, the consent of the candidate to the act complained of or to his acceptance thereof has to be inferred from the facts and circumstances proved in the case. In my opinion, where the corrupt practice is attributed to an "agent" and not to "any other person" as provided in sub-section (1), Clause (b) of section 100, the case strictly falls under sub-section (2) of the section.

The case, however, of the 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, however, corrupt practice in the course of election proceeding 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 subsection (2) of section 100 strengthen the above inference.

This sub-section assumes that the returned candidate himself is guilty of the corrupt practice done by an "agent" unless he satisfies the Tribunal about condition mentioned in any of the clauses of that sub-section, in order to escape the guilt; in each case the Tribunal may decide that the election was not void. One of the conditions in the sub-section is that the candidate is to satisfy the

Tribunal that the questionable practice of his agent was contrary to his orders and without his consent or that of his election agent".

62. It, therefore, appears that the burden under such circumstances is thrown on the candidate to prove the want of consent and the act being done by the agent contrary to the orders; in the case of an isolated act done by any other persons the burden lies on the person alleging corrupt practice to prove that it was done with the candidate's consent or that of his election agent. The opening words of sub-section (2] are " if a returned candidate is guilty by an agent other than his election agent, or of any corrupt practice.....", this appears to me congruent and natural interpretation of the provisions contained in different sub-section of section 100 of the Act.

63. The same principle was followed again in the case of Inder Lal Yugal Kishore Vs. Lal Singh Mukund Singh and Others, In paragraph 20 of the said judgment the Division Bench of the Rajasthan High Court held as follows :

The Tribunal appears to be in error in thinking that express consent of the contesting respondent had to be proved before he could be held liable for the acts of the General Secretary of the District Congress Committee and the Publicity Secretary of the Nagar Congress Committee and since there was no direct evidence on the point that Sugan Chand Jain was appointed an agent in writing by the respondent No. 1 or orally in the presence of any person, the Tribunal held that the said respondent could not be responsible for the acts of those persons.

This in our opinion, is a complete misconception of the legal principle and we regret to say that the Tribunal did not properly appreciate the decision which was delivered by me as Chief Justice of the High Court of Assam in Nani Gopal Swami Vs. Abdul Hamid Choudhury and Another, on which the Tribunal observed that 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 his permanent members who set up a candidate, sponsored his cause and work to promote his election may be aptly called, "the agent" of the candidate for election purposes. Thus the District Congress Committee, Chittorgarh and the Nagar Congress Committee with their Secretaries and Publicity Secretaries were all agents of the contesting respondent Sri Lal Singh.

Therefore, it must be held that the publications in this case were by the agent of the respondent No. 1 and we cannot believe that the respondent No. 1 was unaware all along about the activities of Sugan Chand who was mainly responsible for the work of publicity on his behalf in respect of his candidature. The law provides that in such cases unless any of the exception mentioned in sub-section (2) of section 100 of the Act are found to exist, the Tribunal should assume that the returned candidate was guilty of corrupt practice of his agent and declare the election void."

64. In the case of Samant N. Balkrishna and Another Vs. V. George Fernandez and Others, the Supreme Court upheld the same principle enunciated in the aforesaid judgment by the Rajasthan High Court. In paragraph 41 of the said judgment, the Bench presided over by Hidayatullah. Chief Justice held inter alia as follows :

"In the case from Rajasthan, the rule laid down was that the association of persons or a society or a political party or its permanent members, who set up a candidate, sponsored his cause, and work to promote his election, may be aptly called the agent for election purposes. In such cases where these persons commit corrupt practice unless the exception in section 10(2) apply the returned candidate should be held guilty. We shall consider this question later."

65. The said question was discussed in details in paragraph 45 of the said judgment which is set out hereinbelow :

"There is no doubt that consent need not be directly proved and a consistent course of conduct in the canvass of the candidate may raise a presumption of consent."

66. In the Instant case, the CPI(M) workers undertook upon themselves to conduct the entire election campaign for respondent No. 1 and all and each of them were his "agents" only.

67. The question arises what is the meaning of the word "agent". Sub-section (2) of section 99 provides that in section 100 the expression "agent" has the same meaning of as in section 123. Section 123 provides as follows :

"Explanation (1). 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."

68. It is clear from the principles laid down in the aforesaid decision of the Supreme Court as well as Assam and Rajasthan High Court which is mentioned hereinbefore. It is necessary to examine the petition meticulously in the light of the aforesaid decisions.

69. It may be noted that the said judgment of the Supreme Court in the case of Samant N. Balkrishna and Another Vs. V. George Fernandez and Others, has been consistently followed at different occasions right upto the case of F.A. Sapa Etc., Etc., Vs. Singora and others, The principles laid down in the said decision therefore still hold the field.

70. It appears on proper analysis of the petition that the returned candidate contested the said election as an independent candidate belonging to Biplabi Bangla Congress sponsored/supported by "Left Front" and the same has been pleaded in paragraph 3 of the petition. It must be remembered that the Left Front did not set up any other candidate except the respondent No. 1 from Biplabi Bangla Congress in the said election.

71. The parties which constitute the Left Front in West Bengal has been specifically mentioned and pleaded in paragraph 6 of the petition where it has been specifically stated that Biplabi Bangla Congress was a constituent member of Left Front and the said Left Front was and/or is in power and has been running the Government headed by Mr. Jyoti Basu of the CPI(M) as the Hon"ble Chief Minister. It has also been stated in the said paragraph that many members of the said "Left Front" being members of the said political party mentioned hereinbefore were and/ or are also occupying the post of Ministers in the Government of West Bengal.

72. It also appears that in paragraph 7 of the petition it has been specifically pleaded that an organization of Government employees subservient to the political interest of the said Left Front were activated by the said political parties and/or the Ministers being the members of the Left Front and the said organization of the Government Employees was known as Co-ordination Committee of the Government of West Bengal and/or the Co-ordination Commute. The members, supporters, activists, cadres and sympathisers of the CPI(M) who were and/or are the dominating group and/or a party in the said Left Front and members, sympathisers, activists of other parties of the Left Front as aforesaid in order to use the machinery and resources of the Government of West Bengal in the political interest of the said parties and/or to perpetuate the political interest of the constituent members of the said Left Front installed and/or placed and/or positioned a large number of Government employees, all members of the said Co-ordination Committee, an outfit of CPI(M) of the Government employees and other Left Front outfits in various important and crucial Government posts, inter alia, and including at the election office of the Chief Electoral Officer, West Bengal inter alia and including the office of the Returning Officer of 216 Sabang Legislative Assembly Constituency wherefrom the petitioner contested the said election.

73. Mr. Lala has submitted that Sri Birendra Kumar Moitra, an Hon"ble Minister in the Left Front Government in West Bengal was summoned under subpoena to give evidence regarding the statement contained in his written statement. The xerox copy of the said written statement filed by Sri Moitra in the case of Mustaque Alam v. Birendra Kumar Moitra (Bishu Babu) being Election Petition No. 12 of 1996 was proved and It was stated by Moitra to be true and correct and has been exhibited as Ext. "JJJ". The said written statement admits that large number of Government employees are Left Front supporters and the said employees are put in positions to conduct the election of the State.

74. It has accordingly been suggested that regarding Left Front and dominance of CPI(M) of the Left Front has not been denied in the written statement filed by the respondent No. 1. It has further been submitted that under Order 8 Rules 2, 3, 4 and 5 of the CPC the said statements and / or allegations made by the petitioner in his petition stands admitted for absence of specific denial as warranted under the said provisions of the CPC and the ratio of the judgment of

the Supreme Court mentioned earlier. It will, therefore, appear clearly that members, supporters and workers of the CPI(M) were acting as "agents" of the respondent No. 1 in the said election.

75. Some of the corrupt practices classified in particular category have been mentioned in paragraph 11 and sub-paragraphs. The other category of corrupt practices have been pleaded in paragraph 27 and details of some other corrupt practices have been mentioned in paragraphs 28, 29 and 30 of the parties. The difference between the particulars of the paragraph 11 and sub-paragraphs thereunder and paragraph 27 and sub-paragraph thereunder is that one relates to the corrupt practices committed by the respondent No. 1 or his election agent outside the counting hall, whereas the pleadings contained in paragraph 27 and sub-paragraphs thereunder and those contained in paragraphs 28, 29 30 and 31 are corrupt practices committed by the Returning Officers, Counting Agents, Counting Supervisors as agent of the respondent No. 1 in the counting hall and/or related to the counting process.

76. It has been specifically alleged in paragraph 32 that the result of the said election in so far as it concerns the returned candidate being respondent No. 1 has been materially affected by corrupt practices committed in the interest of the returned candidate by his agents being the members, supporters, activists, cadres of CPI(M) and members of the Co-ordination Committee and various outfits of the Left Front controlling the members of the staff of the Government of West Bengal with the consent and knowledge of the respondent No. 1 and the said election should be set aside and declared void. The other pleadings regarding improper reception and the result of the election being materially affected has also been pleaded in the said paragraph 32 which paragraph, in fact, governs the entire gamut of the allegation contained in the petition relating to corrupt practices committed by the agents of the respondent No. 1 herein. It is the case of the petitioner that these Government Officers were also acting as "agents" of respondent No. 1 in the said election.

77. It therefore appears that the petitioner was aware of the distinction of the provisions contained in section 100(1)(b) and section 100(1)(d)(ii) which related to the commission of corrupt practice by an agent of the returned candidate which materially affected the result of the election. In fact, paragraph 32 covers all the allegations of corrupt practices committed by the agents of the respondent No. 1. The language of the said paragraph itself will make it amply clear only a close reading of the paragraph is required.

78. Paragraph 11 and its sub-paragraphs is prefaced with a clear pleading that the corrupt practices mentioned in the said preface was committed by the person named therein as agents of the respondent No. 1. It would therefore be clear that the said preface governs every sub-paragraph starting from sub-paragraphs (a) to (g) of paragraph 11 and to avoid prolixity and repetition, it should be deemed to have been pleaded as a preface before beginning each of the said sub-paragraphs of paragraph 11. It would, therefore, follow that the entire thrust of

the petition was that each of these persons acted as agents of respondent No. 1 while committing these corrupt practices and in terms of the aforesaid three judgments cited earlier, the respondent No. 1 is vicariously liable for the act and conduct of his agents unless and until the respondent No. 1 is able to prove to the satisfaction of this Court to be able to take the benefit of ingredients of sub-section (2) of section 100. In this particular case that question does not arise at all because not a single scrap of paper has been disclosed by the respondent No. 1 nor a whisper of any such evidence came from the respondent No. 1 nor a single line of pleading can be found in the entire written statement for which the respondent No. 1 or his election agent be able to obtain the benefit of sub-section (2) of section 100. Therefore, it logically follows that once the petitioner is able to satisfy the Court from the documentary and oral evidences which unerringly points to the commission of corrupt practices pleaded in the petition in the aforesaid paragraphs by the said agents of the respondent No. 1 and if it could further be shown by the petitioner that the result of the election was materially affected nothing more need to be done to set aside the election. In case of commission of corrupt practice by an agent it must have been observed by now that question of consent by the candidate or his election agent does not arise, and if the result of the election is materially affected, it is not even necessary to go to the provisions of section 100(1)(b) of the Act where also consent of the candidate is implied or can be gathered from circumstantial evidence which can be found galore from the documentary and oral evidences in this case. In view of the aforesaid even if section 100(1)(b) is applied, the case of corrupt practice will stand proved to the hilt in the case.

79. It is necessary to scrutinise paragraph 11(a) to (q) of the petition. On careful scrutiny of the said paragraphs it would be clear that apart from the corrupt practices mentioned with regard to the counting hall in paragraph 27, sub-paragraphs 28, 29, 30, 31 and 32 other allegations of corrupt practices mentioned in paragraph 11 and sub-paragraphs thereunder can be broadly divided in three categories (i) undue influence (ii) making a false statement as to the personal character and conduct of the petitioner, and (iii) obtaining, procuring, abetting or attempting to obtain, to procure the assistance of the gazetted officers, members of the Police force, Revenue Officers, Counting Officers, Counting Assistants and Returning Officers to commit the said corrupt practices. All these corrupt practices have been alleged to have been committed by the agents of the respondent No. 1 to benefit and ensure win of the respondent No. 1 in the said election. It should be borne in mind while discussing these corrupt practices committed by the agents that the margin of difference between the returned candidate and the petitioner was only 824 votes, which means that had the petitioner obtained only 450 votes out of these 824 votes in his favour but could not and/or did not get because of and/or as a result of commission of corrupt practice by the respondent No. 1's agents, then the petitioner would have won the election. The relevance of these analysis relates to as to whether the result of the election because of commission of these corrupt

practices by the agents of the respondent No. 1 has materially affected the result of the election of the respondent No. 1.

80. It is clear from the direct and circumstantial evidence both documentary and oral adduced in this proceeding that there is every possibility of the voters being influenced in view of series of corrupt practices and if only 450 voters out of 1,26,719 voters were influenced, the result would have been different. It is also important to note that 985 votes were counted in excess and the Assistant Returning Officer who was in-charge of counting of this Legislative Assembly Constituency counting, the Joint Block Development Officer who was another Assistant Returning Officer in respect of the other counting hall and even the Returning Officer could not account for or explain about the presence or counting of said excess votes and how these excess votes unlawfully came to be counted in the counting hall. It is also apparent that such form of counting of votes leading to the excess of 985 votes was certainly not done for the benefit of the petitioner and anybody with a common sense will be able to find out these excess votes came to be counted in the counting hall when the margin of difference was between the petitioner and the returned candidate was only 824 votes and the petitioner required only 450 votes to win the said election.

81. In this connection, the judgment and decision in the case of Samant N. Balkrishna and Another Vs. V. George Fernandez and Others, may be taken note of. In the aforesaid decision the Supreme Court observed as follows :

" It is for the Hon''ble Court to infer from all the circumstances, evidences, documents both oral and documentary to come to the conclusion as to whether the result of the election because of commission of series of corrupt practice came to be materially affected."

82. It has been argued by Mr. Lala, learned Advocate for the petitioner that all corrupt practices are "unfair means" whether they are committed in the counting hall or outside the counting hall. Therefore, mentioning of the word "unfair means" which is the genus of the three kinds of species of corrupt practices is sufficient, according to him, for the purpose of pleading of corrupt practice mentioned in paragraph 11 of the petition.

83. It has also been argued that in the grounds of paragraph 32 each of the ingredients, namely, undue influence and others have been pleaded. In Ground No. V the factum and ground of smuggling of 985 votes in terms of section 123(7) has been pleaded. In paragraph 33, it has been specifically pleaded that but for the manipulation, rigging and corrupt practice committed in the said petition, the petitioner in fact has received majority of votes polled in the said election as would be found in the recounting if done under the supervision of this Court.

84. It appears that the petitioner has pleaded in details the particulars of each of these corrupt practices in the sub-paragraphs of paragraph 11 and sub-paragraphs of paragraph 27 and in paragraphs 28, 29, 30, 31 and 32 including

the grounds. Therefore the arguments advanced on behalf of the respondent No. 1 cannot be accepted.

85. Therefore, the contention of the respondent No. 1 that the petition is incomplete and do not contain the statutory ingredients of the requisite corrupt practice, do not appear to be correct.

86. It may be noted that so far as the allegations of corrupt practices are concerned only to the extent of corrupt practice, full particulars are required to be given including as full a statement as possible to the names of the parties alleged to have committed such corrupt practice, the date and place of commission of such practice. The word which is important to note is the names of the parties. In the instant petition the name of the party who has committed the corrupt practice through his agent is respondent No. 1 himself and in each of the particulars of sub-paragraphs 11 and 27 it will be found that the petitioner has specifically and clearly practices through his agents for which according to the ratio of the Supreme Court and the judgments of Assam and Rajasthan High Courts as aforesaid, the respondent No. 1 is vicariously liable for the act and conduct of his agent and respondent No. 1 is guilty of corrupt practices committed by his agents. It is elementary that an act of "in agent" visits the Principal and the Principal becomes vicariously liable for the act of the agent. The second important point to note is the statute wants full particulars as far as possible.

87. In this connection, judgment and decision in the case of Manohar Joshi Vs. Nitin Bhaurao Patil and Another, may be taken note of. In the aforesaid decision latin maxim "Lex Non Cogit Ad Impossibilia" has been quoted which means "the law does not compel a man to do that which he cannot possibly perform." The said dictum has been noted in the aforesaid decision at paragraph 9 and 15. The said ratio was also noted by the Supreme Court in the case of Gajanan Krishnaji Bapat and another Vs. Dattaji Raghobaji Meghe and others, where it has been stated that Court should not insist on proof to such an extreme extent that it becomes well nigh impossible to prove (by the petitioners) to defeat and frustrate the provisions of the Act.

88. Learned Advocate for the petitioner has also relied upon the judgment and decision in the case of Quamarul Islam Vs. S.K. Kanta and others, which may be taken note of. In the aforesaid decision it was infer alia held at paragraph 40 and 41 as follows:

" 40. Allegation that election petition suffering from absence of full facts and particulars of alleged corrupt practices - objection raised at late stage after parties have gone to trial and evidence led, it is liable to be rejected."

"41. However, evidence led to prove corrupt practice has to be more strictly scrutinised in such case."

89. In this particular case, it appears that each of the corrupt practices alleged

by the petitioner have been pleaded in details giving name of the parties i.e. respondent No. 1 who have committed such corrupt practices and date and place of the commission has also been given in each case and evidence has also been led to that effect both oral and documentary.

90. On proper scrutiny of the allegations contained in paragraphs 11(a) to (q) it would appear that the name of Mr. Debasis Bose has been given to show as the preface of paragraph 11 would make it clear that he acted "as an agent" of the respondent No. 1 and the time and the place has also been given. In a paragraph it is usual that while narrating a particular facts, a portion could be true to the knowledge of the deponent and the other portions of the same paragraph could be information received by him about related events "as information believed by him to be true". There is nothing unusual in mentioning of a paragraph both as true to knowledge and as information received by the petitioner and believed by him to be true in the affidavit of corrupt practice annexed to the petition. Inasmuch as different parts of the same paragraph could state different aspects of the facts relating to the knowledge of the petitioner and also some part which he received as information and believed to be true the affidavit of corrupt practice will truly reflect the same and nothing more is required to be read into it. For example, that the said Mr. Debasis Bose was a Revenue Inspector in the employment of Government of West Bengal and was acting as an agent of respondent No. 1 with his consent for procuring votes for the respondent No. 1 by undue influence is true to the knowledge of the petitioner. On the other hand, in the same paragraph the threat, direction given by Mr. Debasis Bose, the said Revenue Inspector which continued informally every day thereafter until the date of election was an information received by the petitioner and believed by him to be true. Similarly the meeting held between 13-00 hours and 15-00 hours on 8th April. 1996 inside the office premises of the Revenue Inspector and Debasis Bose asking all his understaff to vote in favour of respondent No. 1 was information received by the petitioner and believed by him to be true. Since the statute requires the ingredients mentioned in section 83(b) to be pleaded in respect of corrupt practices, and not the evidence. therefore, it was neither necessary nor warranted to plead as to who gave the information to the petitioner or the names of the witnesses in the said sub-paragraph. It was for the respondent No. 1 to refute the said allegations by calling Debashis Bose, once the petitioner proved allegations by documentary and oral evidence.

91. In answer to question No. 100 the election petitioner has referred to the said letter being Annexure "G" dated 11.4.1996 which was shown to the petitioner wherein reference was made to wrongful act of Mr. Debasis Bose. The petitioner has answered the said question as follows :

"In the 2nd part of the 1st page of the letter where Mr. S.S. Majhi pointed out the name of Mr. Debasis Bose who is Revenue Inspector, Sabang area of Block Land and Land Revenue Office under G.P. Gram Panchayat Proper. Sabang being G.P. No. 8, who happens to be very famous leader of Co-ordination Committee of

that Block Sabang which comes under my Assembly Constituency from where I contested on behalf of Indian National Congress. The allegations which Mr. S.S. Majhi raised in this letter addressed to Mr. S.K. Magan that Mr. Bose held a meeting on 8.4.1996 inside the office premises between 13.00 to 14.00 hours and instructing the other employees of the office to apply all force for the respondent No. 1 inside the office premises and this is absolutely a violation of the Election Code of Conduct.

92. It is also clear from the evidence adduced in this proceeding that Debasis Bose, the Revenue Inspector was also acting as an agent of the respondent No. 1 at the behest of powerful stronghold of CPI(M) workers, the ruling party in power over the Government employees of West Bengal. It is also admitted in the evidence of Anindya Kar (Question Nos. 257-268 and 566-571) that Debasis Bose did hold a meeting on 8th April 1996 between 13-00 hours to 15-00 hours but tried to save the respondent No. 1 by saying that he obtained an alleged report (which never saw the light of the day before this Court) from that office stating that the said Debasis Bose did not in his speech threaten the said employees with dire consequences directing his understaff to vote for the respondent No. 1. It is not surprising that the said Anindya Kar did not care to obtain any statement from the petitioner who specifically made the said allegation in writing before the BDO/ Assistant Returning Officer and even assuming about the non-existent report (for the sake of argument) it is unbelievable that the Block Land and Land Reforms Officer will admit in writing to the BDO or ARO that corrupt practices were committed in his office by Debasis Bose on 8.4.1996 or almost on every day thereafter so that the High Court could set aside the election of respondent No. 1, a Left Front candidate. The said question regarding enquiry from the petitioner is in answer to question No. 26 of Anindya Kar. According to petitioner, the said evidence was a false and must be so regarded by this Court and the said Anindya Kar must be held to have acted also as agent of respondent No. 1. It was not for the petitioner to call Debashis Bose to deny these allegations after the petitioner made the specific allegation in the said petition which has not been even specifically denied in the written statement and hence stands proved. After the clear evidence of the petitioner and Prof. Sasanka Sekhar Majhi in that regard, it was for the respondent No. 1 to call Debasis Bose if necessary, by issuing a subpoena to deny the said allegations and to rebut the evidence given by the petitioner and Sasanka Sekhar Majhi that he did not make any such speeches on the said day, or thereafter every day informally till the date of election. This was not done deliberately because it will be proved by cross-examination of Debasis Bose. However, because of absence of any specific denial in the written statement, the allegations against respondent No. 1 in this regard stands admitted and no proof is necessary with regard to the said allegations. In any event Debasis Bose was not called and as such adverse inference will be presumed against him. In the circumstances, it must be held that the allegations regarding Debasis Bose stands proved to the satisfaction of this Court and in doing so Debasis Bose acted as agent of respondent No. 1.

93. In this connection unreported decision in the case of Biren Moitra may be taken note of. In the aforesaid case on identical ground it was held by me that the election petition is maintainable and part of the same paragraph may be true t, knowledge whereas other part may be based on information believed to be true.

94. It has been specifically alleged on behalf of the petitioner in paragraph 11(a) of the petition that the petitioner came to know that one Mr. Debasis Bose who happened to be Revenue Inspector of Sabang Block Land and Revenue Office at the material time, a member of the Co-ordination Committee of the Left Front, delivered a speech in a meeting held between 13.00 - 14.00 hours on April 8, 1996 to the employees of his office inside the office premises asking his under-staff to vote in favour of the respondent No. 1 so that the respondent No. 1 may win the said election. It has also been alleged in the said paragraph that the said Debasis Bose also threatened the said employees that in case it is found that any of his under-staff has not voted in favour of the respondent No. 1 he would have to face serious difficulties in respect of his Job. It was also alleged that the said threat, direction made by Mr. Bose continued informally until the election was over. It has also been specifically pointed out in the said paragraph that the said acts of Mr. Bose was done in furtherance of the prospect to win the said election by the respondent No. 1. It has also been mentioned that Mr. Bose was a Revenue Inspector and was acting as an agent of the respondent No. 1, its consent in procuring votes for respondent No. 1 by undue influence as aforesaid.

Undue influence has been defined in section 123(2) which is as follows :

"Section 123.--Corrupt practices - The following shall be deemed to be correct practices for the purposes of the Act :

(1)

(2) Undue influence, that is to say, any direct or indirect interference or attempt to interfere on the part of the candidate or his agent, or of any other persons with the consent of the candidate or his election agent, with the free exercise of any electoral right, provided that -

(a) without prejudice to the generality of the provisions of this clause any such person as is referred to therein who -

(i) threatens any candidate or any elector, or any person in whom a candidate or an elector is interested, with injury of any kind including social ostracism and ex-communication or expulsion from any caste or community; or

(ii) induces or attempts to induce a candidate or an elector to believe that he, or any person in whom he is interested, will become or will be rendered an object of divine displeasure or spiritual censure, shall be deemed to interfere with the free exercise of the electoral right of such candidate or elector within the meaning of this clause;

(b) a declaration of public policy, or a promise of public action, or the mere exercise of a legal right without intent to interfere with an electoral right, shall not be deemed to be interference within the meaning of this clause."

96. In this letter dated 11-4-1996 addressed to Mr. S.K. Magan, the Chief Electoral Officer, West Bengal, Sri S.S. Majhi, the election agent of the petitioner alleged that Sri Debasis Bose. Revenue Inspector held a meeting of the employees of B.L.L.R.O., within the office during 13.00 - 14.00 hours on 8.4.1996 with an appeal to employ their all strength and power in favour of the respondent No. 1 to win in the election. This is extremely an instance of election offence and vitiates the purity of election.

97. In the said letter various other allegations have been made relating to corrupt practice committed by the respondent No. 1.

98. By another letter addressed to Sri T.N. Seshan, Chief Election Commissioner of India dated 29.4.1996 Sri S.S. Majhi again pointed out the said wrongful acts on the part of the said Debasis Bose. It was specifically alleged in the said letter that Sri Bose, R.I. of Sabang, B.L.L.R.O. office was involved directly in various activities relating to the prospects of Dr. Bangal in the election. He gave strict direction to the employees to cast their votes in postal ballots before him and hand it over to him in unsealed condition. This was only for compelling them to exercise their franchise according to the choice of Mr. Bose. This is highly objectionable work on the part of a Government servant and required immediate action in the interest of true reflection of the people.

99. In this connection unreported decision in the case of Birendra Kumar Moitra may be taken note of. In the aforesaid case on identical ground it was held by me that the petition is maintainable and the same paragraph may be true to knowledge whereas other paragraph may be based on information believed to be true.

100. In this connection the oral evidence of the petitioner so far as question Nos. 100, 112, 655-665 may be considered. It is also necessary to consider the oral evidence of Prof. S.S. Majhi, the agent of the petitioner particularly his reply to question Nos. 54,65-69, 451 and 452 which clearly go to show that Debashis Bose did deliver the speech directing the understaff to vote in favour of the respondent No. 1. Obviously in doing so he was acting as agent of respondent No. 1 and the said act cannot be said to have been done by Debasis Bose in his own interest. Therefore, the evidence unquestionably points to one and one conclusion that the complaint made in Exhibit - G and Exhibit- L stands proved to the satisfaction of this Court, and the respondent No. 1 committed the said corrupt practice of obtaining the assistance of a Revenue Officer and is guilty of corrupt practice u/s 123(7) of the said Act. As stated earlier, it was for the respondent No. 1 to repel the said evidence by pleading in his written statement and calling appropriate witnesses to disprove the said facts, which has not been done.

101. It is also necessary to consider the pleading in sub-paragraph (b) of paragraph 11 of the petition. The allegation therein is that the respondent No. 1 and his election agent caused Mr. Dipak Sarkar, Secretary of the District Committee of the CPI(M), Midnapore to lodge the false complaint mentioned in the said paragraph and in the last few lines of the said sub-paragraph it was made clear that the said corrupt practice was committed by Dipak Sarkar as agent of respondent No. 1 with his consent and knowledge. Even if it is argued (for the sake of argument) that the respondent No. 1 did not give consent for the said act and conduct of Dipak Sarkar, the respondent No. 1 has failed to prove the ingredient of section 100(2) of the Act that all these corrupt practices were committed by Dipak Sarkar as his agent contrary to his orders or he made any effort at all to prevent the commission of these corrupt practices by Dipak Sarkar. Therefore, the respondent No. 1 stands impeached as guilty of the corrupt practices committed by his agent Dipak Sarkar relating to the facts alleged in sub-paragraph (b) of paragraph 11 of the said petition. In this connection, Exhibits-D, U, K, L, E and T should be looked into. Dipak Sarkar has not come before this Court to say that he committed these corrupt practices in his own interest and not as an agent of respondent No. 1.

102. I have considered the report and evidence of Assistant Returning Officer, Anindya Kar and it appears that the complaints alleged to have been made were false as would appear from Exhibit-C, Exhibit-DD. Exhibit DD-1 Exhibit -W and Exhibit-2 and the oral evidence in respect of the aforesaid corrupt practice can also be found as follows :

(1) Dr. Manas Bhunia, question Nos. 50-87, 113, 433-437, 712-728, 824, 883-896, 928, 938 and 939.

(2) Sasanka Sehkar Majhi, Question Nos. 20-4 9 270-276, 371 and 448.

(3) Dr. Makhanlal Bangal, Question Nos. 150-154, 172-183, 210 and 228.

(4) Anindya Kar. Question Nos. 18, 151-194, 212. 235, 250, 254-260, 264-267 and 269-284.

(5) Chittaranjan Bera. Question Nos. 156-171, 410-419.

(6) Nilanjan Chatterjee, Question Nos. 59-74 and 87-99.

(7) Kushal Mitra, Question Nos. 42-115.

103. It appears that the pleading regarding false complaints being made, have been pleaded in paragraphs 11(b), 11(c), 11(d), 11(e), 11(f) and 11(g) respectively of the said petition and these sub-paragraphs have been dealt with in paragraphs 19,20.21.22 and 23 of the written statement. A close look at the allegations made in the petition, in the said sub-paragraphs and the paragraphs mentioned in the written statement will show that knowledge, factum, its falsity has not even been denied in the written statement specifically by respondent No. 1 and therefore under Order 8 Rules 2.3.4 and 5 of the CPC the said allegations

stands admitted. So far as the respondent No. 1 is concerned, any oral evidence to the contrary by respondent No. 1 therefore is bound to be false and should not be taken notice of and be disbelieved by this Court and no further proof is necessary to prove the said allegations of the election petition.

104. Mr. Lala has referred to Order 8. Rules 2,3, 4 of the CPC since the CPC is applicable in case of the election petition. He has further submitted that if the written statement is scanned it will appear that except an evasive general denial and stating that the statements made by the petitioner is "false" untrue and concocted, the allegations contained in the said petition has not been even "denied specifically". It also appears that even no reply was given to the point of substance as warranted by the provisions of Code of Civil Procedure. The said contention of the learned Advocate for the petitioner, in my view, cannot be lightly brushed aside.

105. It appears that in the written statement except there is general denial, no specific denial has been made. All the allegations contained in the petition and as such Order 8, Rules 2,3,4 of the Code of Civil Procedure, in my view, cannot be said to have been complied with. On proper perusal of the written statement it appears that it has not been even denied in the written statement specifically that Hem Bhattacharjee. Dipak Sarkar, Sk. Kaloo and the workers, supporters and activists of CPI(M) were "acting as agents" of the respondent No. 1. It has also specifically not been denied that the false statements or wall writing or spreading of the rumour that the petitioner was a murderer was not within the knowledge of the respondent No. 1 or that the said acts of corrupt practices have not been committed by his agents i.e. active workers of CPI(M) as agents of respondent No. 1. It is also not denied that the CPI(M) machinery of election was engaged in the publicity campaign for the respondent No. 1. It is not specifically denied that the members, supporters, active workers of CPI(M) being the dominant partner of the "Left Front" working "as agent" of the respondent No. 1 not only conducted the entire election of the respondent No. 1 also took active part in the commission of such corrupt practices including deliberate miscounting, mischievous manipulation, smuggling in excess votes and removal of ballot boxes as members of the Coordination Committee as an out-fit of CPI(M) dominated organisation of West Bengal Government Employees, all as agents of respondent No. 1.

106. On the contrary, in paragraph 11 of the written statement of respondent No. 1, it has been specifically admitted in the following manner :

"It is true that the Left Front is in power for more than 19 years and the CPI(M) is the biggest party under the Left Front and the said party has its different wings namely Co-ordination Committee, CITU, etc. but it does not mean that the party workers were called by the Election Commission to champion the cause of the Left Front."

107. It has further been stated and/or admitted in the same paragraph that

"Government employees and the semi-Government employees are requisitioned for the purposes of completion of total election proceeding and therefore no individual party and/or any government have any control over the officers and/or employees particularly appointed and/or engaged and/or mobilised for conducting the election process."

108. With the aforesaid statement of respondent No. 1 the statement made and/or admission made by Mr. Birendra Kumar Moitra (Bishu Babu) a Minister of the Left Front Government in West Bengal in his written statement filed in the case of Mustaque Alam which is exhibited as Ext-JJJ in this proceeding should also be looked into. The relevant portion thereof is quoted hereunder :

"It is also a fact that a large number of members of the said organisation (Co-ordination Committee) including the office bearers are sympathetic to the political philosophy of the ruling "Left Front" Government but the organisation as a whole does not lend support to any political philosophy and/or activity."

" (b) Since a majority of the employees of the Government of West Bengal owe allegiance to the Co-ordination Committee it is no wonder that a substantial section of the Election staff were members of the Co-ordination Committee."

109. It appears that in the entire written statement of the respondent No. 1 nowhere it has been dented specifically that those members of the Co-ordination Committee being the Government employees of West Bengal who were drawn for conducting the election work did not act as an "agent" of the respondent No. 1 as alleged by the petitioner.

110. It may not be out of place to point out in this connection the judgment and decision in the case of R. Puthunainar Alhithan, etc. Vs. P.H. Pandian and others, It appears in the instant case, the principles laid down by the Supreme Court apply since the allegations made in the petition stands admitted in view of the fact that there is no specific denial in the written statement. No further proof either oral or documentary is necessary.

111. It may be noted that an election petition is not like a criminal trial where the accused can always keep mum. In a criminal trial, the accused need not file any written statement or defence statement nor the accused is required to lead any defence evidence.

112. It is settled law that the burden of proof or charge in a criminal case is always on the prosecution but an election petition is not governed under Code of Criminal Procedure but the legislature has specifically directed that the provisions of CPC shall apply and the respondents must file a written statement specifically dealing with the allegations contained in the petition in point of substance and set up his own version to rebut the allegations contained in the petition under Order 8. Rule 2, 3 and 4 of the Code of Civil Procedure. If he does not do so, then the allegations shall be deemed to have been admitted and the same does not require any further proof by the petitioner.

113. In this connection, judgment and decision in the case of Badat and Co. Vs. East India Trading Co., wherein the Supreme Court at page 544 at paragraph 10 inter alia held and observed as follows :

"Have the conditions been proved in the present case ? I shall first take the argument based on the pleadings. Before doing so, it would be convenient to read the relevant provisions of the CPC on the subject, as the argument turn upon the application of those provisions to the pleadings."

114. The Supreme Court in the aforesaid decision after setting out Order 8 Rule 3, 4 and 5 of the CPC held and observed as follows :

"These three rules form an integrated code dealing with the manner in which allegations of fact in the plaint should be traversed and the legal consequences flowing from its non-compliance. The written statement must deal specifically with each allegation of fact in the plaint and when a defendant denies any such fact, he must not do so evasively, but answer the point of substance. If his denial of a fact is not specific but evasive, the said fact shall be taken to be admitted. In such an event, the admission itself being proof, no other proof is necessary.

115. The first paragraph of Rule 5 is a reproduction of Order 19 Rule 13 of the English Rules made under the Judicature Acts. But in Mofussil Courts in India where pleadings were not precisely drawn, it was found in practice that if they were strictly construed in terms of the said provisions, grave injustice would be done to the parties with genuine claims. To do justice between these parties, for which the courts are intended, the rigour of Rule 5 has been modified by the introduction of the proviso thereto. Under that proviso the Court may, in its discretion require any fact so admitted to be proved otherwise than by such admission. In the matter of Mofussil Pleadings, Courts presumably relying upon the said proviso, tolerated more laxity in the pleadings in the interest of justice. But on the Original Side of the Bombay High Court, we are told, the pleadings are drafted by trained lawyers bestowing serious thought and with precision. In construing such pleadings the proviso can be invoked only in exceptional circumstances to prevent obvious injustice to a party or to relieve him from the results of an accidental slip or omission but not to help a party who designedly made vague denials and thereafter sought to rely upon them for non-suiting the plaintiff. The discretion under the proviso must be exercised by a Court having regard to the justice of a cause with particular reference to the nature of the parties, the standard of drafting obtaining in a locality and the traditions and conventions of a court wherein such pleadings are filed. In this context, the decision in *Tildesley v. Harper* 1878(7) Chn. D. 403 will be useful. There, in an action against a lessee to set aside the lease granted under a power, the statement of claims stated that the donee of the power received from the lessee a certain sum as a bribe, and stated the circumstances; the statement of defence denied that the sum had been given, and denied each circumstance, but contained no general denial of a bribe having been given. The Court held, under rules corresponding to the aforesaid rules of the CPC that the giving of the bribe

was not sufficiently denied and therefore it must be deemed to have been admitted. Fry, J posed the question thus : what is the point of substance in the allegation in the statement of claim and answered it as follows :

"The point of substance is undoubtedly that a bribe was given by Anderson to Bildeley, and that point of substance is nowhere met ... no fair and substantial answer is. in my opinion, given to the allegation of substance, namely, that there was a bribe. In my opinion it is of the highest importance that this rule of pleading should be adhered to strictly, and that the court should require the defendant, when putting in his statement of defence, and the plaintiff, when replying to the allegations of the defendant, to state the point of substance, and not to give formal denials of the allegations contained in the previous pleadings without stating the circumstances. As far as I am concerned, I mean to give the fullest effect to that rule. I am convinced that it is one of the highest benefit to suitors in the Court."

116. It is true that in England the concerned Rule is flexible and there is no proviso to it as it is found in the Code of Civil Procedure. But there is no reason why in Bombay on the Original Side of the High Court the same precision in pleadings shall not be insisted upon except in exceptional circumstances. The Bombay High Court in Laxminarayan Ramdayal Vs. Chinniram Girdharilal, construed the said provisions and applied them to the pleadings in a suit filed in the Court of the Joint Subordinate Judge of Ahmednagar. The pleadings sued to recover a sum of money on an account stated. For the purpose of saving limitation they relied in their plaint upon a letter sent by the defendant firm. The defendants in their written statement stated that the plaintiffs suit was not in time and that the suit is not saved by the letter put in from the bar of limitation. The question was raised whether in that state of pleadings, the letter could be taken as admitted between the parties and, therefore, unnecessary to be proved. Bathchelor Ag.C.J. after noticing the said provisions observed :

"It appears to us that on a fair reading of paragraph 6, its meaning is that though the letter put in by the plaintiff is not denied, the defendants contend that for one reason or another its effect is not to save the suit from the bar of limitation. We think, therefore, that the letter, Exhibit 33 must be accepted as admitted between the parties, and therefore unnecessary to be proved."

"The written statement before the High Court in that case was one filed in a court in Mofussil yet the Bombay High Court applied the rule and held that the letter need not be proved aliunde as it must be deemed to have been admitted in spite of vague denial in the written statement. I, therefore, hold that the pleadings on the Original Side of the Bombay High Court should also be strictly construed, having regard to the provisions of Rules 3.4 and 5 of Order VIII of the Code of Civil Procedure, unless there are circumstances wherein a court thinks fit to exercise its discretion under the proviso to Rule 5 of order VIII."

117. On careful perusal of the written statement filed on behalf of the

respondent No. 1, it is clear that the aforesaid ratio laid down by the Supreme Court on four square apply to the said written statement in the instant case where there is no specific denial of any allegations nor answer to the allegations of the petitioner in "point of substance" nor any case made out or set up to counter the allegations contained in the said petition.

118. There is no reason not to apply the aforesaid principles laid down by the Supreme Court in the aforesaid decision relating to pleadings so far as this case concerned. In the circumstances aforesaid, it can be safely concluded from a carefull reading of the written statement that (a) Hem Bhattacharya, Dipak Sarkar, Debasis Bose. Nilanjan Chatterjee. Returning Officer. Aninya Kar, Block Development Officer and Assistant Returning Officer, Kushal Mitra, Officer-in-Charge of Sabang. Police Station, Pradip Das. Joint BDO, Sabang, Hare Krishna Jana. Sabhapati, Sabang Panchayat Samity; Chitta Bera, election agent of respondent No. 1 and Basudeb Bag, Addl. S.P. Burdwan, all acted as agents of respondent No. 1 being the part of election machinery of CPI(M). It is further proved by admission that the political machinery of CPI(M) actively engaged itself not only to propagate for the respondent No. 1 but also ensured win of the respondent No. 1 by commission of several corrupt practices mentioned in the petition as agent of respondent No. 1. It will be seen that none of these allegations have been "specifically" denied by the respondent No. 1 in his written statement nor has been answered in "point of substance" nor any case has been made out or set out in his written statement to counter the said allegations. Inasmuch as question of applying proviso to Rule 5 Order VIII does not arise in this case in the circumstances aforesaid so far this Court is concerned, it would appear that no proof of the said facts are even necessary so far the petitioner is concerned in terms of the aforesaid ratio laid down by the judgment of the Supreme Court.

119. It has been argued by Mr. Lala, learned Advocate for the petitioner that the facts and evidence on record also suggest that the entire CPI(M) machinery at Sabang was actively working, propagation, campaigning and conducting the election of the respondent No. 1 in Sabang Legislative Assembly constituency "as agents" of respondent No. 1. The Left Front has no other candidate in the said Assembly Constituency except the respondent No. 1 whose win the Left Front particularly the CPI(M) machinery ensured at all costs by hook or by crook even by committing corrupt practices and manipulating in the process of counting of votes as agents of respondent No. 1.

120. In this connection, Mr. Lala has referred to the evidence of the respondent No. 1 and his answer to question nos. 79-83 and from question nos. 90-144 wherein he admitted that he was a Left Front candidate and the Left Front tried to make the Left Front candidate a winner according to their "own style" regarding campaign, working of the machinery, resources, mobilisation of the workers, doing work to support and make the Left Front candidate to win the election. It was further admitted by the respondent No. 1 that sometimes the

campaigns were done separately and sometimes it was done jointly. It was also admitted by the respondent No. 1 that there was a Left Front Committee which was looking after the election of respondent No. 1. It was further admitted that there was a District Campaign Committee of the Left Front which determined the guidelines and according to that Guideline various parties carried on their campaign work and published their leaflets. Some campaign was done from another platform and in other way campaign was done locally by the local units. It was also admitted that the Left Front Election Committee conducted a campaign before public for its own candidate down to the level of sub-division, block and then village. It was further admitted that two big meetings were held jointly, one was held at Chandkuri and another was held at Ruinan. These two big meetings were joint meetings. In question No. 126 the respondent No. 1 admitted that programmes were made with the approval of the party i.e., Left Front and he personally carried on some programmes and campaigns and some programmes and campaigns were conducted by the party. So far the Left Front is concerned most of the times Mr. Sunil Chowdhury used to look after so that the campaigns and programmes are done properly to ensure the win of respondent No. 1. In question Nos. 132 and 133 the respondent No. 1 admitted that some campaign he used to conduct in his own way, some campaign he used to conduct according to their instruction and style. In question no. 135 it was admitted that Sunil Chowdhury was really acting as his representative or agent in the Left Front meetings and the decision of the meeting used to be taken after deliberations amongst the Left Front Constituent about the plan, programme and campaign publicity. In question no. 142 it was admitted that the CPI(M) workers worked strictly in committee. particularly in Election Publicity Committee, the workers strictly followed that programme sincerely. In question No. 143 it was further admitted that whatever programme the Election Committee took, it was done with the approval of the respondent No. 1 to make his win a success as a candidate of the Left Front. The evidence in question No. 200-207 given on the next day by the respondent No. 1 would show that the said answers given by the respondent No. 1 are not only tutored but contradictory to the earlier answers hereinbefore mentioned and therefore obviously false.

121. It may be noted that in answer to question No. 311 Anindya Kar, the Assistant Returning Officer admitted that the respondent no. 1 contested the said election as an independant candidate "backed by Left Front."

122. It also appears that in question Nos. 48-52 Sri Kushal Mitra the Officer-in-Charge of Sabang Police Station admitted that during the election period in or around May, 1996 he saw Chitta Bera conducting a meeting organised by CPI(M). In question No. 60, the said Kushal Mitra admitted that there were many speakers of CPI(M) who spoke in the meeting, many were addressing the meeting and Chitta Bera was also addressing the meeting and he came to know that he had become Election Agent of respondent No. 1.

123. In question No. 66 the said Mitra also admitted that the persons who are

addressing the said meeting were Amallesh Bose and Chitta Bera. He also admitted in question No. 70 that Ajit Bijuli, Ranjan Mishra, Chitta Bera, Amallesh Bose were present in the meeting and he collected the names. It also appears to be admitted from question nos. 74 and 75 that Hare Krishna Jana also addressed the said meeting organised by CPI(M) and conducted by Mr. Chitta Bose. The said Jana was an important leader of CPI(M) of Midnapore District and was Sabhadipati of Sabang Panchayat Samity. The said Jana was also a counting agent of respondent No. 1.

124. It also clear that a prominent member of CPI(M) i.e. Chitta Bera was not only the election agent of respondent No. 1 but he conducted the meetings, organised the campaigns, kept regular contacts with the CPI(M) as his election agent to work out the publicity campaigns, programmes down to the village level to ensure win of the respondent No. 1 by hook or by crook. In this case by indulging in corrupt practices. a series of which, have been mentioned in the petition in paragraph 11 and its sub-paragraphs (a) to (q) and again in paragraph 27 and sub-paragraphs made thereunder and in paragraphs 28, 29, 30, 31 and 32 the respondent No. 1 and his election agent Chitta Bera wrongfully and illegally ensured win of respondent No. 1.

125. Learned Advocate for the respondent No. 1 has referred to question Nos. 3, 15, 26-29 and 76-136 of Chitta Ranjan Bera to establish that the leaflets wherein it has been clearly stated that Chitta Bera, the election agent of respondent No. 1 was actively engaged in the activity of CPI(M) should not be taken notice of inasmuch as the said leaf-lets had not been proved according to law. and therefore, the Court should come to the conclusion that Chitta Bera had no connection whatsoever with CPI(M).

126. It further appears from the evidence of Chitta Bera that in answer to question Nos. 78 and 79 he clearly stated that he was connected with CPI(M) till 1986-87. Furthermore, in question Nos. 81, 82 and 83 in answer to the Court's question Chitta Ranjan Bera admitted that intermittently he joined some processions of CPI(M) till 1993. In question No. 117 Bera admitted that he was the Secretary of CPI(M) Local Committee till 1986-87 although in question No. 114 he stated that he does not understand what is meant by CPI(M) ideology. In question placed by learned Advocate for the respondent No. 1 deliberate falsehood and utter lies were resorted to by Chitta Bera before this Court on oath that he has no connection whatsoever with CPI(M) after 1993. The said falsehood would be apparent from the evidence of Officer-in-Charge of Sabang Police Station, Sri Kushal Mitra seeing Chitta Bera conducting the meeting in 1996 prior to the election organised and conducted by CPI(M) along with prominent party of India (Marxist) leaders and delivering election speeches from the said meeting in support of respondent No. 1.

127. In question Nos. 5-19 Sri Mrityunjoy Ghosh clearly stated in his evidence that the Ext. XX dated 29.7.1994 was signed by Chitta Bera in his presence in the chamber of Sub-Divisional Officer, Midnapore. In question Nos. 87-93 the

said Mrityunjoy Ghosh in his evidence clearly stated that he knew Chitta Ranjan Bera from his childhood and Chitta Ranjan Bera lives adjacent to his house. Bera is a local leader of the party and even today he runs the party in the locality. He further stated that Bera belongs to CPI(M) right from the beginning and he knows that he is a Local Committee Secretary. He further stated that he is a resident of that place and the responsibility of meeting justice in the locality lies with Bera.

128. Chitta Ranjan Bera in answer to question Nos. 182, 183 himself admitted that he knows Mrityunjoy Ghosh and he is a representative of Congress(I) party in Vemua Gram Panchayat No. 10. In question No. 190 the said Chitta Bera however stated that he could recollect presently whether he was present in the said meeting alleged to have been held on 25.7.1994. The answers to question Nos. 191 and 192 are also on the same line. The exhibit XX suggests that the S.D.O. himself recorded in his chamber on 25.7.1994 that Chitta Bera attended the said meeting as a representative of CPI(M). It also appears in answer to question No. 198 that the said Bera himself admitted that he went to attend the meeting on 10.3.1993 as a member of Santi Committee on behalf of the CPI(M) held in the chamber of B.D.O., Sabang. He further admitted in answer to the said question that upto the Panchayat election held in 1993 he was associated with CPI(M) although in earlier questions he stated that he was not associated with CPI(M) or took part in the activities of CPI(M) after 1986-87 excepting joining few of their processions which is totally inconsistent. In answer to question No. 199, he admitted that he was passively associated with CPI(M). In answer to question No. 206 in cross-examination, he stated that B.D.O. Sabang wrote a letter dated 16.3.1993 to him because he was associated with CPI(M) procession till 1993.

129. In answer to question Nos. 208-212. 233, 241, 242, 243. 246, 247-270 he tried to shift the blame on B.D.O.. Sabang and tried to create an impression that the B.D.O. Sabang made a mistake recording his attendance as representative of the CPI(M) which he attended upon receipt of the notice which cannot be believed. It appears from analysis of the evidence of Chitta Bera that his evidence regarding his association with CPI(M) is not believable and the same is only an attempt to extricate the respondent No. 1 from the corrupt practices committed by the respondent No. 1 through the machinery, workers, supporters and activists of CPI(M). It is significant that the respondent No. 1 himself in his evidence as cited earlier clearly admitted that CPI(M) workers, machinery, supporters and activists were working under a joint programme to ensure win as a Left Front candidate. It is clearly established from his evidence and also from several exhibits that the machinery of the CPI(M), its numerous workers, cadres, activists and supporters were all working for respondent No. 1 as his agents and that the said corrupt practices committed by CPI(M) workers and leaders are no more than the works of the agents of respondent No. 1 and for each such corrupt practice and/or act of the agents of respondent No. 1 and as such the respondent No. 1 is vicariously liable and is guilty of corrupt practices.

130. It will be evident from the evidence of Kushal Mitra O.C. Sabang P.S. mentioned in the earlier paragraph that as late as in May, 1996 during the election period, the said Chitta Bera was seen conducting the election meeting organised by CPI(M) and was addressing the said meeting along with Amalesh Bose. Hare Krishna Jana. Ajit Bijuli and Ranjan Mishra, all hardcore members and/or supporters, workers and leaders of the CPI(M). Therefore, his denial and/or feeble attempt to dissociate himself from the CPI(M) is nothing but a false after-thought alibi to throw dust in the eyes of the Court and a desperate attempt to wriggle out of the situation by telling a deliberate white lies before this Court. It must be noted further that it is the evidence that in the case filed by Mrityunjay Ghosh inter alia against Chitta Bera where an attempt was made to murder the said Advocate of this High Court as well as practising Midnapore Judges" Court by the said Chitta Bera and others, in spite of a non-bailable warrant issued by the learned Sixth Judicial Magistrate, Midnapore, the Officer-in-Charge of Sabang Police Station, the same Sri Kushal Mitra and the entire Police force of Midnapore District did not deliberately arrest the said Chitta Bera, although he was acting as an election agent of respondent No. 1 and covered the entire election of Sabang Legislative Assembly in front of the eyes of the entire Police force as election agent of respondent No. 1. Chitta Bera was also present in the counting hall for nearly 60 hours as election agent of respondent No. 1 with an identification badge and photograph, who also appeared before this Court and gave evidence for several days in front of the entire police force present in the counting hall and in the High Court. It appears from the evidence that the said Chitta Bera was a powerful leader of CPI(M) of Midnapore District, that the entire Police force of Midnapore did not dare to arrest him and/or even dared to ignore an order passed by the judiciary to arrest him and produce before the said court for trial. The reckless Chitta Bera and the entire police force were so daring that the said police force submitted a false report to the learned Sixth Bench of Judicial Magistrate. Midnapore that the said Chitta Bera was absconding and could not be found to be arrested although the said Chitta Bera was freely moving about and working as election agent for respondent No. 1 for months in front of their eyes.

131. It also appears that only proposer required in the nomination form to be filed by the respondent No. 1 in this election as a Left Front candidate, it was Chitta Bera of CPI(M) and none else and none else who was the proposer for respondent No. 1 and none else not any member of Biplabi Bangla Congress. It is clear from the evidence that Hare Krishna Jana and Pran Krishna Pal being admittedly important leaders of the CPI(M) of the said District were counting agents of respondent No. 1 besides Chitta Bera, a hardcore CPI(M) leader, and was conducting the said counting on behalf of respondent No. 1. This evidence clearly proves beyond all reasonable doubt that the entire CPI(M), workers, machinery, leaders of the district and particularly Sabang area was working as agents of respondent No. 1. It has further been admitted by respondent No. 1 in his evidence that Biplabi Bangla Congress is a very small party and it hardly has any existence, organisation or machinery in the said area and the entire

organisation and conducting of the election machinery was done by the CPI(M) party workers, machinery and leaders for his election.

132. It appears from the report of Anindya Kar read with Daily Ganashakti published in April 13, 1996 and publication of Aajkal on 23.4.1996 which go to show that the allegations of the petitioner as made in sub-paragraph (b) of paragraph 11 of the petition regarding Dipak Sarkar acting as agent of respondent No. 1 cannot be said to be without any basis. The said publications in the newspapers are corroborated by the report of Anindya Kar "as false statement" made by the respondent No. 1 through his agent Dipak Sarkar. It may be noted that it was admitted by the respondent No. 1 himself that the said statements as published were not only false but he did not believe them to be true.

133. In this connection, judgment and decision in the case of Kankar Rao v. Vicky Patil reported in (1984) 6 judgment Today 345 may be taken note of. In the aforesaid decision it has been held that it is very difficult to prove the state of mind of the other side that he believed it to be false.

134. It, however, appears that in this particular instance since it is admitted by respondent No. 1 that he did not believe it to be true and still believe the said statement made by Dipak Sarkar to be false it should be enough for our purposes to satisfy the conscience of the court to do justice. A close look at the section itself will make the point absolutely clear.

135. The relevant sub-section relating to the said corrupt practice is contained in section 123(4) which is set out hereinbelow :

" The publication by a candidate or his agent or by any other person with the consent of a candidate or his election agent of any statement of fact which is false and which is either believe to be false or does not believe it to be true in relation to the personal character or conduct of any candidate or in relation to the candidature or withdrawal of any candidate being a statement reasonably calculated to prejudice the prospects of that candidate's election."

136. The word "he" in the said sub-section clearly envisages that the criteria is whether the respondent No. 1 believed the said statement to be false or did not believe to be true. It is irrelevant for the purpose of the said section as to whether Dipak Sarkar, acting as agent of respondent No. 1, believed it to be true or false will be clear from a close reading of the said sub-section itself. There is no doubt that the said statement was in relation to the personal character and conduct of the petitioner, and the said statement was reasonably calculated to prejudice the prospects of the petitioner's election inasmuch as the said allegations were made with only and one motive to denigrate the petitioner trying to bribe the voters by giving blankets, bicycles, molasses, etc. as stated in the sub-paragraph (b) of paragraph 11 of the petition. Therefore, the said ingredients regarding respondent No. 1 committing the said corrupt practice stands proved by cogent and clinching evidence. The exhibits in respect of the

said sub-paragraph are Exhibit I,G,V,D,U,K,L,E,T,C.DD,DDI,B1,B2 and JJ. The oral evidences are :

Dr. Manas Bhunia : Q. 50-87, 113. 433-437, 712- 728,824,883-896,928, 938-939:

Sasanka Maji : Q. 20-49, 270-276, 371-416. 417- 448:

Dr. Makhan Lal Bangal : Q. 150-154. 172-183, 210-228;

Anindya Kar : Q.18, 151-194, 212. 235-250, 254- 260, 264-267, 267-284;

Chitta Bera : Q. 156-171, 410-419;

Nilanjan Chatterjee : Q. 59-74. 87,99.

Kushal Mitra : Q. 42-115;

Pleadings : - Petition : 11(b), (c), (d), (e), (f), & (g).

137. Specific allegation has been made in sub-paragraph (c) of paragraph 11 of the petition against Dipak Sarkar or Hem Bhattacharyya acting as agent of respondent No. 1 to the following effect :

"The petitioner states that on or about April 20, 1996 Mr. Dipak Sarkar. District Secretary of the CPI(M) made another false complaint to the Returning Officer that in the home of Bishnupada Chaulia of Sabang and in Chowdhury Rice Mill of Boral Village within the said constituency, some dress, garments and bicycles have been stored by the petitioner for distribution among electors for procuring the votes of the voters of the said constituency."

138. The said allegations stand proved by the report of the said conducted by the Assistant Returning Officer and the police force in the house of Bishnupada Chaulla of Sabang and Chowdhury Rice Mill of Boral Village of that constituency. The report was proved and exhibited which was submitted by the Assistant Returning Officer stating that the said statement and complaint was false and it is admitted by the respondent in his evidence that he did not believe the said allegations to be correct and believed it to be false. The oral evidence in this connection have already been referred to.

139. It is also clear from the publication made in the newspapers and texts thereof that Dipak Sarkar and Hem Bhattacharyya were acting as agents to ensure win of the respondent No. 1 and not for their own interest. Therefore, it is an exercise in futility to argue that the said Dipak Sarkar or Hem Bhattacharyya may have committed the said corrupt practices in his own interest and not in the interest of the respondent No. 1. There is no scope of any conjecture in this regard. It is clear that the entire operation of spreading a canard of false statement denigrating the petitioner was carefully planned after deliberation in the Left Front meetings, arranged and given publicity by the agents of the respondent No. 1 as shown from the evidence of respondent No. 1 so that the image of the petitioner can be brought down in the eyes of the voters of Sabang

Assembly constituency to ensure that the respondent No. 1 could win the said election wrongfully and illegally. The exhibits in this regard have been quoted earlier in the preceding paragraph. The oral evidences have also been quoted in the earlier preceding paragraph.

140. In sub-paragraph (d) of paragraph 11 of the petition, elaborate particulars of the aforesaid facts regarding raids conducted by the Assistant Returning Officer and necessary consequent pleadings with regard thereto in respect of the incident specifically referred to herein. Allegations regarding corrupt practice initiated by Hem Bhattacharyya as agent of respondent No. 1 and commission of corrupt practice of respondent No. 1 with regard thereto through his agents have been pleaded in details in sub-paragraph (e) of paragraph 11 of the petition. The said allegations have been proved from the letters being exhibit I and V that Hem Bhattacharyya was making the complaint and in writing and on behalf of the respondent No. 1 as a member or chief of the Election Campaign Committee of respondent No. 1. The oral evidence in this connection has already been discussed.

141. Sk. Kaloo was also set up by the said agent Hem Bhattacharyya falsely to substantiate the said false allegations which subsequently upon raid by the Assistant Returning Officer and police was found to be false. Denial of the knowledge of the entire incident by the respondent No. 1 is not only unbelievable but can be termed as downright white lies will be proved from the fact that his own evidence as quoted earlier which clearly shows that each programme was planned by the District Publicity Committee of the CPI(M) after joint deliberations with the respondent No. 1 and/or his representative and chalked out and thereafter executed according to the said plan. It is also evident from the said exhibits that Hem Bhattacharyya acted as agent of respondent No. 1 while making the said complaint to the Assistant Returning Officer which was promptly attended by him and police by raiding the houses of the Congress workers to find out with promptitude as to whether the petitioner could be further denigrated publicly by taking videography so that his chances to win the said election could be finally destroyed by cutting across his image as a bribe-giver and as a dishonest person. Details of particulars of the said incident has been pleaded in sub-paragraph (f) of paragraph 11 of the petition of the said facts have been proved beyond all reasonable doubt before this court by the evidence of the petitioner. Sasanka Sekhar Majhi and Anindya Kar and documentary evidence exhibited in this proceeding as aforesaid.

142. Referring to allegations of corrupt practices alleged in sub-paragraph (g) of paragraph 11 of the petition, it was stated that wide publicity through the Bengali Daily Aajkal and in a newspaper which the mouthpiece of the organ of CPI(M) being Dainik Ganashakti and from All India Radio was given. The said newspapers have been proved and exhibited in this proceeding. The said facts have not even been denied in the written statement of the respondent No. 1 and therefore stands admitted in this proceeding. Specific allegations have also been

made with regard to omission of performing their duties by the Chief Election Commissioner and the District Election Officer particularly Assistant Returning Officer and Returning Officer with regard to the said corrupt practice. It was proved and exhibited in this proceeding that scores of letters written to Mr. T.N. Seshan, Mr. M.S. Gill, Mr. S.K. Magan and the Returning Officer remained unheeded and no steps were taken to stop the denigration of the petitioner's image before the voters during the election period. The exhibits are Ext. B-1. B-2. F and G. The Postal receipt is Ext. EE. The oral evidence are the petitioner - question nos. 25-34, 90-111, 112-123, 331-332, 520-532 and 574-580. Sasanka Sekhar Majhi, Question Nos. 50-69, 288-323. Nilanjan Chatterjee, Question Nos. 1-11. 129-236, 141-152 and 232-237.

143. It has been specifically alleged in sub-paragraph (i) of paragraph 11 of the petition that welfare work was undertaken by the Panchayat Samity during the election period after the notification was issued declaring the date of election.

144. The Notification No. 437/6/96/PLN-III/1355 dated 23rd February, 1996 issued by the Election Commission of India to all the Chief Secretaries of all States forbids *inter alia* to announce any "financial grant" in any form of promises thereof. In sub-paragraph 2 of the said letter the Election Commission of India forbids such "financial grants" which would influence the electors by way of announcement of various types of welfare measures and other concessions as well as officially sponsored image building exercise highlighting the achievement of the government at the Centre and the States through publicly paid print or electronic media. It further directs that the political party both national and State parties must follow the spirit of Model Code of Conduct. The documentary evidence with regard to the violation of the said Model Code of Conduct are contained in exhibits H,I,J,K,L,RR and TT. The oral evidence with regard to the said violation of Model Code of Conduct are :

Dr. Manas Bhunia : Q. Nos. 124-163,443-448,863-882. 1118-1122;

Sasanka Sekhar Majhi : Q. Nos. 70-94. 453-470;

Amal Panda : Q. Nos. 2-8 and 23-30;

Babulal Maity : Q. Nos. 24-38, 83-88. 91 95 and 113-116;

Anindya Kar : Q. Nos. 27-35, 51-55 and 552-561;

Hare Krishna Jana : Q. Nos. 241-265.

145. It was urged by the petitioner that the projects in respect of the welfare work to have been undertaken was "ongoing project" and therefore could be undertaken by the Gram Panchayat and Gram Panchayat Samities. The said Gram Panchayat and Panchayat Samities are controlled by the CPI(M). It further appears from the Model Code of Conduct that what is forbidden by the Model Code of Conduct as announcement of any "financial aid", grant or promises in respect of any project of welfare work and as such there is no question of any

welfare work being ongoing or new in said circular. It is apparent from Exhibit RR and SS that such "financial grant" was given as late as 25.3.1996 after announcement of the date of election by the Gram Pradhan of Gram Panchayat No. 13. The said Gram Panchayat granted and paid Rs. 75,000/- in total to the several Panchayats all over the said constituency is admitted by Hare Krishna Jana, Sabhapati, Sabang Panchayat Samity in answer to question nos. 241-265.

146. It is, therefore, clear that the said Model Code of Conduct was deliberately violated with impunity by the CPI(M) controlled by the Gram Panchayat and Panchayat Samities acting as agents of the respondent No. 1 to carry on with an image building exercise of the Left Front candidate being the respondent No. 1 herein. The Returning Officer. Nilanjan Chatterjee however stated that the Model Code of Conduct is not statute and not meant for being observed or complied with or taken into account by the election officers being Returning Officer and Assistant Returning Officers. The aforesaid statement and/or evidence of the Returning Officer cannot be accepted as Returning Officer being in-charge of the entire election is bound to see that the Model Code of Conduct is not violated and is observed by the candidates in letter and spirit. In fact, as would appear from the evidence of Anindya Kar that some of the said welfare works were stopped by him which was being done in violation of Model Code of Conduct.

147. It was further alleged that section 16A of the Election Symbols (Preservation and Allotment) Order, 1968 prescribed suspension, cancellation and withdrawal of recognition of the political party who failed to observe the provisions of the Model Code of Conduct or show defiance by its conduct or otherwise to follow the provisions and lawful directions and instructions of the Election Commission given from time to time.

148. It has further been submitted on behalf of the petitioner that the respondent No. 1 and its agent CPI(M) being the constituent of the Left Front wherein Biplabi Bangla Congress is also a member through its controlled Gram Panchayat Samities in defiance of the lawful order of the Election Commission failed to observe the lawful direction given by the Election Commission with impunity and audacity carried out the welfare works granting financial aid after the declaration of the election as aforesaid as agents of the respondent No. 1 and the Election Commission should suspend, or withdraw or cancel the registration of the said two political parties and appropriate observation should be made by the Court in the judgment in this regard.

149. It has further been argued on behalf of the petitioner that for the purpose of the Election Petition it is sufficient to state that assistance of the BDO, a Government servant, Pradhan and Upa-Pradhan of Gram Panchayat and Gram Samities all of Government officers were obtained and procured by the respondent No. 1 through his election agent, a CPI(M) leader to violate the provisions of section 123(7) and section 100(1)(d) of the said Act.

150. Learned advocate for the petitioner referring to the exhibits H,I,J,K,L,RR,SS,

and TT and the oral evidence of the petitioner, S.S. Majhi, Amal Panda, B.L. Maity, A.K. Kar. H. Jana and has submitted that it is apparent that the said act and conduct of the respondent through his agent has materially affected the result of the election so far as the respondent No. 1 is concerned and to the prejudice and detriment of the petitioner.

151. In sub-paragraphs (j) and (k) of paragraph 11 of the petition the petitioner has specifically referred to several wall writings made on behalf of and by the agents of the respondent no. 1 imputed dishonesty and integrity on the part of the petitioner. The said wall writings mentioned the petitioner as a land thief and has also alleged that the petitioner performed Sraddha ceremony of his mother out of Hawala money. There was no case pending against the petitioner in respect of such allegations relating to land or Hawala episode as alleged. The petitioner has specifically stated in the said paragraphs that the CBI has also not made any investigation on any alleged Hawala deal against the petitioner and the respondent No. 1 or his agent being CPI(M) activists knowing the same to be false wrote such wall writings in several places in his constituency named in the petition, and thereby committed corrupt practice within the scope of section 123(7) of the Representation of the People's Act, 1951.

152. The only defence on behalf of the respondent No. 1 by the learned Advocate regarding the said wall writings appears to be that Sasanka Sekhar Majhi in answer to question no. 181 is alleged to have stated that the said wall writings were done or started before the declaration of election and therefore the same does not fall under the corrupt practice.

153. It, however, appears that the learned Advocate for the respondent No. 1 omitted to show or to draw attention to the part of the answer of Sasanka Sekhar Majhi in the same question that the said wall writings were existing from 6.4.96 till the election was over in the said constituency.

154. In question no. 101. the election petitioner referring to the second paragraph of the letter dated 11.4.1996 in clearest possible terms stated that the agents, supporters and workers of respondent No. 1 made scores of wall writings in different villages particularly in Temathani, Bhutunia, Chankuri, Benadighi and Murarichak area, all within the said Assembly constituency and even after repeated protests to the concerned authority-in-charge did not pay any heed and did not take any action in respect of the said offending wall writings. The petitioner referring to the letter being Ext. L dated 29.4.1996 written by Sasanka Sekhar Majhi stated in answer to question no. 155 to 203 that the said wall writings were done by the activists, cadres and workers of CPI(M) and the workers of Biplabi Bangla Congress and he has personal knowledge of it. The petitioner identified each of the places of wall writings from the photographs and also mentioned the name of the photographer who was instructed by him through Sasanka Sekhar Majhi to take the said photographs. The said photographs have been taken by Frabir Dixit and has been marked as exhibits in the proceeding.

155. Mr. Prabir Dixit, the photographer took the said photographs and the same has been recorded in his evidence in question Nos. 5-20, 31-75, 77-84, 88-91 and 95-106. The said photographs were taken by the said photographer between 8.4.1996 and 10.4.1996. Question Nos. 41 and also in question Nos. 47 and 48, the said photographer also identified the said photographs and proved its negatives and the same have been exhibited before this Court as Exts. 8. These were taken after the date of notification of date of election. Therefore, it would be evident from the evidences of the photographer of an independent witness, that the said wall writings along with several hundreds similar wall writings were in existence on 8.4.1996 in the walls of different villages wherefrom these photographs were taken within the Sabang Assembly Constituency, all after the date of notification of date of Election Commission till the election was over.

156. It is well known that there is a gap of time between announcement of election date and date of issuance of notification for election by the Election Commission of India, as soon the election is announced, political parties nominate their candidates and it becomes known to the opponent political parties as to who the candidate will be in their respective constituency particularly if the candidate is sitting MLA of the said constituency. During the election held in May 1996 it was already known to the respondent No. 1, the Left Front candidate and the entire CPI(M) machinery that the petitioner being the sitting MLA of Sabang Assembly Constituency and the Chief Whip of the Congress Party and was an important leader of the Indian National Congress and would be the Congress candidate for the said constituency. Inasmuch as the CPI(M) machinery starts working even prior to date of notification formally by the Election Commission for the Left Front candidate even the wall writings start and the same continues till 48 hours before the date of election so far as the Left Front candidate is concerned. The motive for such thousands wall writings in Assembly constituency is only one so far as the Left Front is concerned to ensure win of the Left Front candidate by denigrating, defaming, by spreading false informations about the main opponent candidate and in the instant case Sabang Assembly Constituency was no exception to it. Scores of wall writings were started by the agents of respondent No. 1 even before the formal announcement of date of election by the CPI(M) and Biplabi Bangla Congress workers particularly writing false informations about the petitioner and it continued till 48 hours before the date of election in the whole Sabang Assembly Constituency.

157. When Sasanka Sekhar Majhi stated in his evidence that he saw workers of CPI(M) writing these wall writings just before the declaration of the date of election and maximum wall writings existed from 6.4.1996 till the election was over, he was telling only the truth about the manner and the promptitude these wall writings are done and displayed throughout the period of election by the respondent No. 1 through his agent. As stated earlier, the Court does not demand from the petitioner to prove or perform feat which is impossible to perform which would otherwise, if demanded, will frustrate the spirit of the Act and defeat the provisions of the Election Law. The evidence of the photographer

will clearly prove that the said wall writings were all existing between 8.4.1996 to 10.4.1996 which is after the election process has started and the petitioner became a candidate in the said Assembly constituency.

158. It is well settled proposition that all matters relating to evidence need not have to be pleaded. What is required to be pleaded has been provided in section 83 of the Representation of People Act. Since the said Act only demands the names of the parties, the date and place of commission of such corrupt practice with full particulars are only to be given, the question of pleading evidence to be given by the witnesses is neither required nor warranted to be pleaded in the petition under the law. The petitioner has pleaded full particulars of the said corrupt practices, the name of the party who committed the corrupt practice i.e., the respondent No. 1 through his agents and the places where the said corrupt practices were committed by displaying the said wall writings as full particulars as possible. Neither the name of the agents as to who painted those wall writings are required to be given in the pleadings nor are necessary to be given in evidence inasmuch as in an Assembly constituency or in a Parliamentary Constituency where elections are held covering large areas, it is impossible for the petitioner or his election agents to stand and see as to which of the painter-workers of the CPI(M) or Biplabi Bangla Congress has painted which of such wall writings which are usually done at the dead of night or early morning. It is enough to show that the said wall writings were made by the agents of respondent No.1 to denigrate the petitioner and to ensure win of respondent No. 1 in the said election. The Supreme Court judgment although not cited or referred to, was dealing with a newspaper publication in "Samana" published prior to the date of election. The wall writings displayed at the walls in the constituency in thousands in Sabang area by CPI(M) workers and agents of respondent No. 1 stand in a totally different footing than a newspaper publication made prior to the date of notification of the election. A publication of an article in the newspaper does not remain displayed and is not intended to remain displayed before the eyes of the voters throughout the period of election to influence the voters to the prejudice of the election petitioner. A publication in the newspaper is obliterated from the minds of the people soon after it was read and soon forgotten and it is not remembered until it is spoken or read or mentioned repeatedly or mentioned in the election meetings held by the parties subsequently. Wall writings are of different nature than such publications in newspapers. The wall writings are intended to remain displayed even after the date of announcement of the election throughout the period of election till the election is over and it continues to influence the people continuously throughout the period of election to the prejudice and detriment to the election petitioner bringing the same squarely within the ingredients of section 123(4) of the said Act. Therefore, it is no gain saying that the Court should not take any notice of the display of the wall writings which very much remained in existence and displayed during the period of election until the date of the election and was a statement reasonably calculated to prejudice the prospects of that candidate's

election. Furthermore, until and unless the steps envisaged in section 100(2) have been taken by the returned candidate i.e. the respondent No. 1 it must be held conclusively that the respondent No. 1 accepted the said wall writings made by his agents and obtained the benefit intended by such displays to the detriment and prejudice of the election petitioner. It would be crystal clear from the aforesaid discussion that the ratio referred to in the Supreme Court judgment does not apply in the facts and circumstances of the instant case. It is interesting that the ratio referred to hereinabove in the case of Subhash Desai Vs. Sharad J. Rao and Others, the Supreme Court upheld the decision of the High Court of Bombay setting aside the election on the ground that the respondent in the said election petition was guilty of corrupt practice for publication of another news item in "Samna". In paragraph 23 of the same judgment of the Supreme Court held as follows :

"If the publication is held to be false and it is established that it was the appellant who published the same believing it to be false or not believing it to be true, then for the other two ingredients, relating to the personal character or conduct and it was calculated to prejudice the prospects of the election of the respondent, not much evidence is required. During the election tempo, because of the serious nature of the charge levelled against the respondent, in respect of his conduct, the effect of the said publication on his election prospects can be easily assumed. It cannot be disputed that the publication must have pre-Judicially affected the election prospect of the respondent, because he is alleged to have entered with the workers, dancing and shouting "Allah Ho Akbar", during the solemn religious ceremony of Mahaprasad Sankalpasiddhi Ganesh Mandir. This publication has direct reflection on the character and conduct of the respondent, at whose instance a pandemonium was created, in the temple of Sankalpasiddhi Ganesh, during Mahaprasad ceremony."

159. In paragraph 25 of the said judgment the Supreme Court further held as follows :

The object of sub-section (4) of section 123 is not only to protect any candidate at the election from character assassination and vilification, but to maintain the purity and fairness of the election. The framers of the Act were conscious of the fact that some candidate or his agent or persons on his behalf may publish facts in respect of the personal character of the candidate concerned, which are false, with an object to malign such candidate in public during the election in order to affect his prospect at the election. The momentum, the mood and the emotional upsurge during the elections are well known and even small things in normal times may not assume much significance, have serious consequences during the election and affect the minds of the electors and in some cases may be a decisive factor to seal the fate of one candidate or the other. Sub-section (4) of section 123 maintains delicate balance between the freedom of speech of an individual, the interest of the public to get full information about the candidate concerned, but not to affect the prospect of the candidate concerned by publishing facts

about his personal character or conduct which are false."

160. In view of the principles decided in the aforesaid decision of the Supreme Court, the wall writings of the said photographs should be considered in its totality and effect and it will appear that the said wall writings were a publication of statement of facts, which were false, which the appellant believed it to be false or did not believe it to be true. In this connection, answers to question Nos. 259-262 of the respondent No. 1 may be considered, in relation to personal character and conduct of the respondent No. 1 calculated to prejudice the prospect of the election of the respondent. It will be found that the said wall writings appearing in the said photographs being Exhibits before this Court are clear proof of each of the ingredients aforesaid and are clinching evidences of commission of the corrupt practice of the respondent No. 1 through his agents i.e. the workers, activists, supporters, and cadres of the CPI(M) and workers of Biplabi Bangla Congress.

161. Considering the evidence of the respondent No. 1 particularly in respect of answers to question Nos. 259-262 it appears that not only he did not believe the said statement contained in the wall writings to be true but he admitted that the said statement of a personal statement and not a political statement relating to the Election Petitioner. It is clear from the evidence on record that the election agent of respondent No. 1 was himself a hardcore CPI(M) leader who coordinated the entire election work as an election agent of the respondent No. 1. Therefore, there is hardly any need of requiring any further proof or express consent for such publication from the respondent No. 1. It appears that such wall writings have been made with the implicit consent of the respondent No. 1 which is apparent and clear as has been explained in several decisions of the Supreme Court, as also of the Assam and Rajasthan High Courts referred to hereinbefore. In the instant case, the petitioner and his agent. S.S. Majhi clearly stated in the evidence that they were questioned on numerous occasions by his voters about such false imputations and they felt embarrassed in answering such delicate questions in view of the prominent display of wall writings all around Sabang Legislative Assembly Constituency in thousands. It is interesting further to note that none of the witnesses called by respondent No. 1 or summoned under subpoena on his behalf has even denied the existence of such wall writings in hundreds remaining displayed throughout the period of election till the date of the election. It will be further strengthened from the contemporary records being Exts. F and H that the petitioner and S.S. Majhi protested against such wall writings to the election authorities on 11-4-1996 but no attention was paid nor any action was taken with regard to the said atrocious wall writing displayed in hundreds all over the said constituency. This will be further established from Ext. H, a letter written by election agent of the petitioner dated 18-4-1996 to Mr. M.S. Gill, Joint Election Commissioner of India.

162. The said allegations regarding wall writings were dealt with in paragraph 26 of the written statement. In the said paragraph nowhere it has been specifically

denied that the said wall writings were not in existence and remained displayed throughout the period of election till the date of election all over the said constituency. It is also not specifically denied that the agents of the respondent No. 1 being the workers, supporters, activists and cadres of CPI(M) wrote and/or painted the said wall writings. It has not been denied in the said paragraph that the respondent No. 1 did not have any knowledge of the said wall writings or were not aware of the said wall writings or did not consent expressly or impliedly to the said wall writings done by the CPI(M) workers as his agents to remain displayed till the date of the election denigrating the image of the election petitioner. Under Order VIII Rules 2.3 and 4, the said allegations stand admitted inasmuch as the same has not been specifically denied in point of substance and stands proved. No further proof is, in fact, required in respect of the said allegations.

163. In the absence of such denial, the allegations, it is clear, that the respondent No. 1 is guilty of corrupt practices u/s 123(4) of the said act having committed the said corrupt practices through his agents, i.e. the workers, supporters, activists of the CPI(M) and workers of the Biplabi Bangla Congress stands uncontradicted in view of the principles laid down by the Supreme Court decision already noted, it will stand proved that so far as the result of the said election is concerned, the voters were materially affected by such false imputations made by the respondent No. 1 against the petitioner.

164. In sub-paragraphs (1) and (m) of paragraph 11 of the petition it has been specifically alleged that a false rumour was spread by the respondent No. 1 through his agents i.e. the workers of CPI(M) that the petitioner was a murderer of CPI(M) worker while a bicycle procession of about 100 workers was passing through Bonai Village of the said constituency on 1.5.1996. The mechanism for spreading the said rumour was engineered by the CPI(M) cadres, workers, and leaders at the instance of the respondent No. 1. his agents so that the petitioner may be branded as a "murderer" before the voters immediately before the said election which took place on 7.5.1996 i.e. only six days before the said election. In fact, the said agents of the respondent No. 1 i.e. the CPI(M) workers held several condolence meetings at several places of the said constituency including at Chandkuri village within the said constituency. The District Election Officer, Returning Officer and Police Officers having scented that the said situation may get out of control because of spreading of such false rumour by the agents of the respondent No. 1 against the petitioner and the tension prevailing in the area which was becoming more and more difficult to control, because of nefarious activities of CPI(M) workers and anti-socials carrying sophisticated arms camping at CPI(M) offices; a meeting was called through BDO. Sabang being the Assistant Returning Officer of the said constituency of all political parties. Mr. Ajay Kumar. I.P.S., a probationary Officer-in-charge of law and order situation of the said constituency was also present in the said meeting besides the representatives of all the political parties and important functionaries of the said constituency. In the said meeting of all political parties held. CPI(M) representatives admitted to

have spread the said false rumour of murder against the petitioner and apologised for the same in the presence of all parties present. It was also agreed by all political parties that the CPI(M) workers and leaders will go to the spots where they have spread such rumour that the petitioner is a murderer and will tell the voters that the said rumour was false and no CPI(M) workers have been killed at all, far less by the petitioner. The said resolution was recorded in Bengali vernacular in a document being Ext. M and 7 before this Court. No such publicity was given at all by either the respondent No. 1 whose representatives as constituent of Left Front were also present in the said meeting. Besides the CPI(M) representatives and the respondent No. 1 or CPI(M) agents did not tell the voters that none was killed nor the petitioner has murdered any CPI(M) worker and the said statement was falsely spread against the petitioner by CPI(M) agents of respondent No. 1. In fact, the respondent No. 1 and his agents continued to spread such false rumour relating to the personal character and conduct of the petitioner throughout the period of election even after the said party meeting and all party resolution to the detriment and prejudice of the petitioner. The documentary evidence with regard thereto has been mentioned hereinabove, the oral evidence in respect thereto can be found as follows :

- (a) Dr. Manas Bhunia - Q. Nos. 203, 204, 224, 1076-117:
- (b) Sasanka Sekhar Majhi - Q. Nos. 137-164, 496 511;
- (c) Amal Panda - Q. Nos. 9-19, 38-47;
- (d) Babulal Maity - Q. Nos. 5-23, 47-63, 73-82, 89, 90, 98- 112 and 117-134:
- (e) Dr. Mahkanlal Bangal - Q. Nos. 301-305, 313-342 and 397-403:
- (f) Chitta Ranjan Bera - Q. Nos. 32, 33, 146-155, 420-426:
- (g) Anindya Kar - Q. Nos. 56-72, 81-88, 382-388.397 and 406-414;
- (h) Pradip Kumar Das - Q. Nos. 91-107, 123-131,
- (i) Kushal Mitra - Q. Nos. 152-175. 196-228. 501-504.
- (j) Nilanjan Chatterjee - Q. Nos. 153-173.

Exhibits in details record the particulars of the said incident as exts GGG. OO, QQ.

165. It is evident from the evidence both oral and documentary that the respondent No. 1 and his agents i.e. the CPI(M) workers deliberately indulged in spreading false statements against the petitioner depicting him as a murderer before the voters only six days before the election. The said acts and conduct are clearly contrary to the all party resolution taken in the meeting in the presence of important functionaries of the district to repel false statements against the petitioner.

166. The effect of spreading such a false rumour branding the petitioner as a murderer should be considered in the light of the decision of the Supreme Court

in the case of Babulal v. Sajjan Singh and Another reported in (1970) SCC 303. In the aforesaid decision after considering the evidence in details produced in that case, the Supreme Court upheld the decision of the High Court setting aside the election on the ground that Motilal and Hazarilal (two of the agents of the appellant in that case) has spread a rumour (that the petitioner therein was murderer) which relates to the personal character and conduct of the first respondent which was calculated to prejudice his prospects at the election and the appeal of the appellant. Appeal of the returned candidate in the Election Petition before the High Court was dismissed by the Supreme Court.

167. In the instant case, evidences already quoted and noted would prove that the said rumour was spread that the petitioner was a murderer by CPI(M) workers as agents of the respondent No. 1 to the prejudice the prospects of the petitioner. The Court should disbelieve the evidence of the respondent No. 1 feigning ignorance about the said incident and consequence relating thereto.

168. It also appears from the evidence of Kushal Mitra, the Officer-in-charge of Sabang Police Station that he stated in his evidence that he met Chitta Ranjan Bera in front of the said all party meeting room immediately before the said meeting held on 2-5-1996. The said Bera was not an ordinary person but an important leader of the CPI(M) party of the said area and the election agent of the respondent No. 1. The said evidence clinch the proof that the respondent No. 1 and/or his election agent was fully aware about the said incident, the said resolution and sprading of the false rumour of the respondent No. 1 and his agents as aforesaid. The evidence of Anindya Kar was recorded in question Nos. 436 and 437. The said Anindya Kar clearly stated that in the next day of the said incident before the commencement of the meeting at the Block Office he had asked Mr. Chitta Bera regarding the alleged incident of murder. He did not remember whether Mr. Bera was present in the meeting or not but he has put such question to the CPI(M) leaders who were present in the meeting and when asked by Anindya Kar neither Chitta Bera or the CPI(M) leaders present at the meeting on 2-5-1996 could satisfactoraly reply to the said authorities regarding the alleged murder having taken place and they have subsequently admitted that a strong rumour has been spread regarding the alleged incident of murder and a resolution was also adopted in the said meeting on 2-5-1996 that the CPI(M) leaders would hold public meetings at different points and would publicly state that no such murder had actually taken place. He further stated in question no. 441 that the responsibility of effecting such publicity lies with those persons who were CPI(M) leaders and who had come and reported such incident of murder to Sabang Police Station and they have committed and accepted in the said meeting of 2-5-1996 that they would hold public meetings at different points of the constituency and would publicise that no murder had actually taken place. In question no. 443 Aninya Kar stated that although some public meetings were held by CPI(M) party men but the facts were placed in a distorted manner and/or in such a fashion that denial was not made straightway as to the false rumour having been spread of alleged murder of CPI(M) worker. It further stated in the

same answer that according to him no adequate action was taken by the administration.

169. It is also clear from the evidence of Anindya Kar that Chitta Bera, the election agent of the respondent No. 1 was very much involved with spreading of the said false rumour and no steps in reality or in fact was taken to dispel the said rumour from the minds of the voters that no such murder was ever committed by the petitioner or any of his workers and the petitioner is not a murderer. This would prove without any shadow of doubt that the respondent No. 1 is guilty of corrupt practice u/s 123(4) of the said Act through his election agents and on this ground alone apart from others, this election should be set aside. Further that the protection of section 100(2) is also not available to respondent No. 1 because he also did not make any attempt to repel spreading of such false rumour of murder against the petitioner in any manner whatsoever although it was promised by his agents in all party meeting to do so.

170. It is also apparent from the facts on record that large number of voters were persuaded by CPI(M) agents of respondent No. 1 by holding meeting and condolence meeting that the petitioner was a murderer and it has been alleged that such spreading of false rumour materially affected result of the said election so far as the returned candidate is concerned in his favour against the petitioner.

171. It has been alleged in sub-paragraph (n) of paragraph 11 of the petition that the respondent No. 1 and/or his agents and his workers, supporters and sympathisers as agents of the respondent no. 1 with his consent and knowledge deliberately created a terror and impression in the villages of the said constituency amongst numerous voters of the Congress continuously threatening that any one voting for the petitioner could be easily detected by them inasmuch as they are in power and control election office and retaliatory action will be taken against such persons who may choose to disobey the command of the dominant ruling party, the CPI(M). It may be noted that series of incidents which took place during the election and on the day of the election on 7-5-1996 clearly suggests that the allegations of the petitioner in said sub-paragraphs (n) of paragraph 11 of the petition are not without any basis. In fact, the same appear to have been corroborated by contemporaneous letters written and exhibited in this proceeding. In this connection, the oral evidence of the petitioner and Sasanka Shekar Majhi may also be considered. The exhibits along with the said oral evidence would go to prove the said allegations made in the petition.

172. The allegations in sub-paragraphs (o) and (p) of paragraph 11 of the petition relate to the assistance obtained by the respondent No. 1 from Basudeb Bag, Addl. S.P. Burdwan in deliberate violation of the order of Election Commission of India for manipulating the ballot boxes by taking them to an unknown place nearly 80 Kms away from the polling station along with the Presiding Officer and the seal of the Election Commissioner and reaching of the said ballot boxes by the Presiding Officer of the said polling booth to the receiving centres alone at the dead of night and depositing the same at the ballot

boxes receiving centre at Kharagpur on the next day at 5-40 a.m. in the morning. It also relates to the incident of obtaining a certificate from the election agent of the petitioner forcibly, by the Returning Officer certifying that the said two ballot boxes are intact. Obtaining assistance and/or procuring assistance from a police officer and Presiding Officer is a corrupt practice committed by the respondent No. 1 in violation of the provisions of section 123(7) of the said Act. It is also a deliberate violation with impunity of the lawful circular of Election Commission forbidding transfer of election related officers particularly senior level police officers like S.P. without permission and approval of Election Commission, in case where any such transfer is found unavoidable and absolutely necessary. The said letter of the Election Commission is numbered 434/1/ES.013/94/MCS/100 dated 7th September, 1994 issued by the Election Commission to all the Chief Secretaries of the States and Union Territories and also Chief Electoral Officers of all States and Union Territory in usual course of business. No one has come forward to deny the receipt of such order. The said fact alone will prove that the respondent No. 1 was reckless in obtaining and procuring the assistance of senior level police officers like Basudeb Bag, the Addl. S.P., Burdwan transferring him to the Sabang Police Station in the District of Midnapore for one day only, on the day before the date of election, in order to manipulate the ballot boxes in the manner as stated in the petition, exhibits and the oral evidence given by several witnesses. The factum of such transfer and the posting of Mr. Basudeb Bag, Addl. S.P., Burdwan posted at Durgapur even admitted by Basudeb Bag himself in his evidence before this Court. It was also admitted by Basudeb Bag that even when he was occupying the position of Addl. S.P. Burdwan whose duty is to plan and to organise the police force of the whole district, in the case, Durgapur, District Burdwan, was doing mobile patrol duty at an insignificant block level village at Sabang in Midnapore District, Kharagpur sub-division taking the Officer-in-Charge of the Sabang Police Station, Sri Kushal Mitra along with him. The evidence of his mischief carried on in respect of the ballot boxes would be evident from the fact that although the Presiding Officer came out with Police at about 7p.m. from the Polling Booth on 7-5-1996 the Presiding Officer deposited the said ballot boxes on the next day at 5-30 a.m. on 8.5. 1996 alone to the Returning Officer and other polling officers were deliberately left out at Sabang. It is further on record that the said Polling Officers of the Polling Station who were left in the lurch of Sabang by the Presiding Officer and the police i.e. Basudeb Bag and Officer-in-charge, Sabang Police Station made a written complaint to the Returning Officer on the next day i.e. 8-5-1996 that their Presiding Officer was taken away by Police in a jeep from near about polling Station along with ballot boxes and the seal of the Election Commission leaving all the Polling Officers in the lurch and they had to face the wrath of the people in the area. The said Polling Officers did not even know as to where the said Presiding Officer was taken or as to where those ballot boxes were taken, as a result of which the local people attacked them and they took shelter in a shop room till police came and rescued the said polling staff. The exhibits in this regard are, Exhibit-3, Exhibit-4 and Exhibit-FF. The oral evidences

are of Dr. Manas Bhunia-Question Nos. 254-310, 942-975, 978-991, 1127-1133; Sasanka Sekhar Majhi, Question Nos. 165-179, 182-184, 185-197, 477-478, 519-521, 523-540; Anindya Kar. Question Nos. 474-482, 566-567; Dr. Makhan Lal Bangal, Question Nos. 53.342, 343, 344, 348-350; Kushal Mitra Question Nos. 370-381, 483-499; Basudeb Bag Question nos. 1-14.27-37, 102-105, 117, 141-150 and 161; Nilanjan Chatterjee Question nos. 189-194, 221-228. The aforesaid exhibits and oral evidence will prove the allegation beyond all reasonable doubts with clinching proof and contemporary evidences specially when read with no denials specifically in the written statement.

173. From the particulars alleged in paragraph 27(1) of the petition, it appears that the Returning Officer refused to accept the postal ballot at 8 a.m. in the morning on 9.5.1996 i.e. the date of counting, although the counting did not start much later and the Returning Officer was bound under the law to accept them particularly because of late delivery of postal ballots to the incumbent voters as has been revealed in the evidence of Returning Officer and Kushal Mitra, Officer-in-Charge. Sabang Police Station that he collected - 250/350 postal ballots himself from Post Office in the night of 9.5.1996. According to the petitioner and Sasanka Sekhar Majhi it started at about 12-30 p.m. to 1-00 p.m. According to the Returning Officer it started at about 9 a.m. According to Anindya Kar it started at about 1 P.M. According to Pradip Das joint B.D.O. and A.R.O it started at 8 A.M. Surprisingly enough the Returning Officer in his answer to question Nos. 178-181 stated that when the ballot boxes of polling station no. 146 of Sabang Legislative Assembly Constituency (lost ballot boxes) was received by him at the receiving centre at the early hours of the morning then the counting was going on which admittedly started on 9-5-1996 and continued through 10-5-1996 and ended on 11-5-1996.

174. It appears that the Returning Officer tried to support the case of Dr. Makhan Lal Bangal and tried to take shelter under cover of the presence of all the persons in the counting hall i.e. at the time of counting on 9-5-1996.

175. It appears in his evidence that the Returning Officer did not state the correct facts because the certificate given by Sasanka Sehkar Majhi would show that the said Certificate was granted at 5-40 a.m. on 8-5-1996 and not 9-5-1996 when the counting started.

176. The complaint made by the Polling Officers also would show that the said complaint was made to the Returning Officer on the next morning of the polling date i.e. 8-5-1996 and not 9-5-1996 i.e. the date of counting.

177. It is apparent from the evidence on record that the Returning Officer and his evidence is one sided and was intended to benefit the respondent No. 1. The facts relating to removal of two ballot boxes by one Manick Chakraborty, a counting staff who, it is alleged, is a committed CPI(M) supporter, has been specifically mentioned in sub-paragraphs (i), (ii), (iii), (iv), (v), and (vi) (Issue No. 3) of the petition.

178. Apart from the specific allegations in the pleading, it appears from the evidence on record that the said Manick Chakraborty about 12-30 A.M. on 10-5-1996 removed two ballot boxes full of polled ballots, who was caught by the petitioner running after him in the corridor of counting hall and produced before the Returning Officer instantaneously. It is in the evidence that the Returning Officer made no enquiry as to which polling station the said polled ballot papers belonged to or what is the total number of ballot papers that were in the two ballot boxes which was sought to be removed by the said Manick Chakraborty nor any enquiry was made as to whose favour the votes were cast in the said ballot papers and in what condition the ballot papers were being removed from the counting hall by Manick Chakraborty, and no attempt was made by the Returning Officer to find out the reason for such clandestine removal by the said Manick Chakraborty nor checking was made in the strong room in respect of the other ballot boxes being removed from the counting hall with polled ballots by the said Manick Chakraborty or others working as agents of respondent No. 1. although repeatedly demanded by the petitioner and members of the Co-ordination Committee and various outfit of the Left Front controlling the members of the staff of the Government of West Bengal, with the consent and knowledge of the respondent No. 1. It has also been pleaded that the result of the said election has been materially affected by improper reception, refusal and rejection of several thousands votes and by noncompliance of the provisions of the said Act or Conduct of Election Rules 1961 and/or orders made under the said Act. From the discussions aforesaid, it appears that in view of the aforesaid corrupt practices by the respondent No. 1 through his agents, there was every possibility that the petitioner could have certainly received more than 450 votes and would have won the said election.

179. In this connection judgment and decision in the case of Samant N. Balkrishna and Another Vs. V. George Fernandez and Others, may also be considered. It was held inter alia in the aforesaid judgment that "the petitioner may prove a corrupt practice by the candidate himself or his election agent or someone with the consent of the candidate or his election agent in which case he need not establish what the result of the election would have been without the corrupt practice. If the petitioner does not prove a corrupt practice by the candidate or his election agent or another person with the consent of the returned candidate or his election agent, but relies on a corrupt practice committed by an agent other than an election agent, must additionally prove how the corrupt practice affected the result of the poll. Unless he proves the consent to the commission of the corrupt practice on the part of the candidate or his election agent he must face this additional burden.

180. To establish corrupt practice by an agent other than election agent avoiding the election, the consent on the part of returned candidate to the commission of corrupt practice must be proved. There is no doubt that the consent need not be directly proved. The principles of law is settled that consent may be inferred from circumstantial evidence but the circumstances must point unerringly to the

conclusion and must not admit of any other explanation.

181. It is clear that lot of manipulations have been made including removal of ballot papers, ballot boxes, full of polled ballot papers, smuggling in of 985 excess votes in the counting hall which took place through the agents of the respondent No. 1 and in their persons. In fact, no heed was paid to any of the protests made by or on behalf of the petitioner which would unmistakably show the 111 motive and procuring assistance of the said R.O.. A.R.O.s and counting staff making all out efforts to ensure win of the respondent No. 1, at his behest in the said election and to defeat the petitioner forcibly by including in corrupt practices and manipulation in counting of votes. In this regard the evidence regarding the recounting petition should be also considered by this Court. The oral evidences in this regard are of Dr. Manas Bhunia, question Nos. 352-367, 383-403, 977-1177. The petition for recounting has been exhibited as Ext. P and the rejection order by the R.O. has also been exhibited. The oral evidence of Sasanka Sekhar Majhi in question Nos. 215, Anindya Kar. Question Nos. 205-207. The R.O.'s prejudicial activity in favour of the respondent No. 1 would be amply proved by the oral evidence of Dr. Manas Bhunia, Question Nos. 498-505, 781-793, 835-840, 824-834, 849-862, 985-993, 999-1011, 1139-1141; Sasanka Sekhar Majhi, Question Nos. 360-367. These points relate to issue No. 4 as framed by this Court.

182. The said submissions and/or allegations which have been shown to be proved cannot be said to be without any substance.

183. It appears on perusal of pleadings and also of the evidence on record that the entire act and conduct of the said Gazetted Officers and Police Officers were with the consent and knowledge of the respondent No. 1 or his election agent. It has been shown at the appropriate places as to how the election agent of respondent No.1 have procured the assistance of A.R.O.s. in commission of corrupt practices by the respondent No. 1.

184. From the documentary evidence it will be proved beyond all doubt that inspite of repeated complaints, appeals, and requests made by and on behalf of the petitioner, no heed was paid at all to the grievances and even attempt to kill the candidate by the authorities was not taken notice of by the law and order authorities. The oral evidences in this regard are of Dr. Manas Bhunia, Question Nos. 35-41, 48, 100-112, 124-135, 254-310, 342-361, 485-508, 545-552, 581-586, 591-595, 597-601, 644-649, 655-665, 842-854, 876, 882, 961-971, 981-1003, 1060-1066, 1069-1075, and 1145. Sasanka Sekhar Majhi, Question Nos. 318-323, 360-370; Anindya Kar. Question Nos. 179-208, 217-222, 223-250, 254-268, 324, 389-393, 414, 516-527; Dr. Makhanlal Bangal. Question Nos. 404-415. Nilanjan Chatterjee Question Nos. 59-74, 106-114, 131-136, 141-152, 167-176, 182-185, 189-194, 236-243. Chitta Ranjan Bera. Question Nos. 440-446; Kushal Mitra, Question Nos. 239-266, 274-298, 301-313, 319-334, 345-348; Basudeb Bag, Question Nos. 3-6, 27-41, 93, 102-105, 117-135, 150-156. Another interesting fact come out in the evidence. It is

admitted position that Hare Krishna Jana, an important leader of C.P.I, was Sabhapati, Sabang Panchayat Samity, worked as counting agent of respondent No. 1. It would be clear that u/s 98 of West Bengal Panchayat Act the said Hare Krishna Jana was a public servant and also a Gazetted Officer of Government of West Bengal and drew his salaries, perquisites, daily allowances, car facility, all expenses from the funds of Government of West Bengal. This evidence above is enough proof that the respondent no. 1 procured the assistance of a public servant and Gazetted Officer to win the said election who while holding the said post worked as counting agent of respondent No. 1.

185. It may not be out of place to mention that an Election petition is not a litigation between two candidates but it is a litigation where entire voters of the constituency and may be the whole State act as spectators as to how the election is conducted. This view has been laid down by the Supreme Court in several decisions.

186. It also appears from the evidence on record that the election agent of respondent No. 1 Chitta Ranjan Bera is an accused in an attempted murder case and non-bailable warrant of arrest have been issued by the learned 6th Judicial Magistrate. Midnapore against him. For the last two years the said Bera has not been arrested by the police authorities of whole of Midnapore District although the said Bera with impunity is carrying his atrocious activities as discussed earlier in details not only in Sabang but in the whole Midnapore District even gave evidence for several days before this Court. The oral evidence in this regard is of Dr. Makhanlal Bangal. Question Nos. 319-348; Mrityunjoy Ghosh. Question Nos. 35-44, 83, 85-91, and the documentary evidence are Ext. AAA, Ext. ZZ, Ext. YY, Ext. BBB, Ext. CCC, Ext. DDD, Ext. EEE and Ext. FFF. All the said Exhibits have been produced by the respective authorities under subpoena before this Court and are unimpeachable evidences. No wonder that such a criminal, an accused in a case of attempted murder of a lawyer, was appointed an election agent of Dr. Makhanlal Bangal to win the said election against Dr. Manas Bhunia.

187. It is clear from the several exhibits and oral evidences that but for the votes obtained by the returned candidate by corrupt practice which is only 450 votes out of 1,26,719 votes, the petitioner would have won the said election. It has also been laid down by the Supreme Court that proof of a single corrupt practice committed by the candidate or his election agent or by any other person with the consent (which could be also implied, or the knowledge of his agent is fatal to the election Samant N. Balkrishna and Another Vs. V. George Fernandez and Others, It is further held that if the election petitioner has been able to prove to the satisfaction of this Court that but for the votes obtained by the returned candidate by corrupt practices through his agents, the High Court has been mandatorily directed to declare the election of the returned candidate to be void and declare the petitioner to have been duly elected. The petitioner in this case has with clinching evidence and cogent proof with unimpeachable evidence proved as to how the election petitioner has been prevented from getting only

450 votes more than that what he has received by commission of series of corrupt practices and manipulation in counting of votes including smuggling in 985 votes in the counting hall to ensure win of the respondent No. 1, be declared elected from 216 Sabang Legislative Assembly Constituency.

188. In the cases of Gajanan Krishnaji Bapat and another Vs. Dattaji Raghobaji Meghe and others, the Supreme Court taking into account its earlier judgment in the case of Jyoti Basu and Others Vs. Debi Ghosal and Others, held and observed in paragraphs 12, 13, 14 and 5 at pages 2291, 2292 as follows :

" 12. The right to elect and the right to be elected are statutory rights. These rights do not inhere in a citizen as such and in order to exercise the right certain formalities as provided by the Act and the Rules made thereunder are required to be strictly complied with. The statutory requirements of election law are to be strictly observed because the election contest is not an action at law or a suit in equity but it is a purely statutory proceeding unknown to the common law. The Act is a complete code in itself for challenging an election and an election must be challenged only in the manner provided for by the Act. In Jyoti Basu and Others Vs. Debi Ghosal and Others, this Court observed :

" A right to elect fundamental though it is to democracy is anomalously enough neither a fundamental right nor a common law right. It is pure and simple a statutory right. So is the right to be elected. So is the right to dispute an election. Outside of statute there is no right to elect, no right to be elected and no right to dispute and election. Statutory creations they are and therefore, subject to statutory limitation. An Election petition is not an action at Common Law nor in equity. It is a statutory proceeding to which neither the common law nor the principles of Equity apply but only those rules which the statute makes and applies. It is a Special Jurisdiction and a special jurisdiction has always to be exercised in accordance with the Statute creating it. Concepts familiar to Common Law and Equity must remain strangers to Election Law unless Statutory embodies. A court has no right to resort to them on considerations of alleged policy because policy in such matters as those relating to the trial of election disputes, is what the statute lays down. In the trial of election disputes. Court is put in a straight jacket".

13. "Though the election of successful candidate is not to be interfered with lightly and the verdict of the electorate upsets this court has emphasised in more than one case that one of the essentials of the election law is to safeguard the purity of the election process and to see that people do not get elected by flagrant breaches of the law or by committing corrupt practices. It must be remembered that an election petition is not a matter in which the only persons interested are the candidates who fought the election against each other. The public is also substantially essential part of a democratic process. It is equally well settled by this court and necessary to bear in mind that a charge of corrupt practice is in the nature of a quasi criminal charge as its consequence is not only to render the election of the returned candidate void but in some cases even to

impose upon him a disqualification for contesting even the next election. The evidence led in support of the corrupt practice must therefore not only be cogent and definite but if the election petitioner has to succeed he must establish definitely and to the satisfaction of the Court the charge of corrupt practice which he levels against the returned candidate. The onus lies heavily on the election petitioner to establish the charge of corrupt practice and in case of doubt the benefit goes to the returned candidate. In the case of an election petition based on allegations of commission of corrupt practice the standard of proof is generally speaking that of criminal trials which requires strict proof of the charge beyond a reasonable doubt and the burden does not shift."

14. "By this proposition, however, we should not be understood to mean or imply that the returned candidate is absolved from his liability to bring forth evidence on the record to rebut the case of the petitioner and to particularly prove such facts which are within his special knowledge (section 106 Evidence Act). Though the nature of allegations in cases alleging corrupt practices are quasi criminal and burden is heavy on him who assails an election but unlike in a criminal trial where an accused has liberty to keep silent, during the trial of an election petition the returned candidate has to place before the Court his version and to satisfy the Court that he had not committed the corrupt practice as alleged in the petition and wherever necessary by adducing evidence besides giving his sworn testimony denying the allegations. However, this stage reaches if and when the election petitioner leads cogent and reliable evidence to prove the charges levelled against the returned candidate as only then can it be said that the former has discharged his burden. That necessarily means, that if the election petitioner fails to adduce such evidence which may persuade the Court to draw a presumption in his favour the returned candidate will not be required to discharge his burden by adducing evidence in rebuttal. While on this point it will be also pertinent to mention that the election petitioner has established the charge by proof beyond reasonable doubt and not merely by preponderance of probabilities as in civil action. In *Surinder Singh Vs. Hardial Singh and Others*, this Court held it as :

"Very well settled and uniformly accepted that charges of corrupt practices are to be equated with criminal charges and proof would be not preponderance of probabilities as in civil action, but proof beyond reasonable doubt and if after balancing the evidence adduced there still remains little doubt in proving the charge its benefit must go to the returned candidate. Various tests have been laid down by the High Courts and by this Court to determine the extent of proof required to establish a corrupt practice. The most well accepted test however is that the charge must be established fully to the satisfaction of the Court. While insisting upon the standard of strict proof beyond a reasonable doubt the courts are not required to extend or stretch the doctrine to such an extreme extent as to make it well nigh impossible to prove any allegation of corrupt practice and as was said in *S. Harcharan Singh Vs. S. Sajjan Singh and Others*, " such an approach would defeat and frustrate the very laudable and sacrosanct object of

the Act in maintaining purity of the electoral process."

15. " We are in respectful agreement with the above view, some times direct evidence about the commission of corrupt practice may not be forthcoming or available and in that case the charge may be proved by producing circumstantial evidence. But the courts, in such cases insist that each of the circumstances put together must point unerringly only to the hypothesis of the commission of the corrupt practice by the returned candidate and must not be capable of any other hypothesis consistent with the innocence of the returned candidate."

189. Section 123(4) of the Representative of the People's Act 1951 provides as follows :

Section 123. Corrupt practices--The following shall be deemed to be corrupt practices for the purposes of this Act :

1)

2)

3)

4) The publication by a candidate or his agent or by any other person with the consent of a candidate or his election agent of any statement of fact which is false and which he either believes to be false or does not believe to be true in relation to the personal character or conduct of any candidate or in relation to the candidature, or withdrawal, of any prospects of that candidate's election".

190. It has been specifically mentioned in sub-paragraphs (d) of paragraph 11 of the petition that Dipak Sarkar. District Secretary of CPI(M) lodged false complaints in respect of character, integrity, honesty, reputation and prestige of the petitioner and resorted to corrupt practices so that the voters in the area may believe in the said false statement and turn against the petitioner as a corrupt and dishonest person to vote in favour of the respondent No. 1 and against the petitioner, thereby implying that the respondent No. 1 was aware of the fact that it was false complaint and the statement and speaking knowing the same to be false and believing the same to be untrue caused the same complaint to be made so that the voters in the area may be misled and turn against the petitioner and vote in favour of the respondent No. 1. This allegation in my view, is sufficient cause so as to constitute corrupt practice interms of section 123(4) of the said Act.

191. Referring allegations made in sub-paragraphs (e) and (f) of the paragraph 11 of the petition with regard to distribution of blankets and other materials. It has been specifically alleged in paragraph 11(f) that it was obvious that the said ill design master-minded by the CPI(M) and its member of the District Secretariat Hem Bhattacharjee as agent of respondent No. 1 were bent upon to assassinate the personal character and integrity of the petitioner and spread a canard against the petitioner personally amongst the innocent and mostly illiterate voters of the

said area so that they might be misled by believing the said false statement that the petitioner was trying to win the said election by procuring votes by giving bribes of rice, molasses, pulses, blankets, bicycles and other materials and the petitioner was a dishonest person.

192. The said allegations clearly goes to show that Hem Bhattacharya as agent wanted to assassinate the personal character of the petitioner and spread a canard against the petitioner personally amongst the innocent and mostly illiterate voters so that they may be misled on believing false statement and as such the same implies that he was aware that both the said allegations relating to personal character and distribution of articles are false. He wanted to spread the same to mislead the innocent voters. Therefore, it is not correct to suggest that no allegation was made that the person who made the statement or lodged the complaint knowing it to be false or believing the same to be untrue.

193. In fact in sub-paragraph (g) the paragraph 11 of the petition it has been stated that the same has been published in newspaper Aajkal and also announced in All India Radio to humiliate and insult the petitioner. It has also been specially alleged that giving publicity of such false statement in the manner as aforesaid was and/or is a corrupt practice resorted to by the respondent No. 1 and by the said Hem Bhattacharjee as agent of the respondent No. 1 to further the prospect of win of the respondent No. 1 in the said election. It is on record that the investigation was made on such allegation when the same was found to be false.

194. In Gangi Reddi's case reported in 22 ELR 261 the Supreme Court considered the question of burden of proof in a petition in the case of corrupt practice u/s 123(4) and held as under :

"Burden of proof has two distinct meaning viz. (i) the burden of proof as a matter of law and pleading and (ii) the burden of proof as a matter of evidence. Section 101 of the Evidence Act deals with the former and section 102 with the latter. The first remains constant and the second shifts.

In an election petition the burden of proving that certain statements alleged to have been published by the respondent were false and that the respondent believed them to be false or did not believe them to be true is in the first sense, on the petitioner, but if the petitioner examines, himself and states that he has not committed the alleged acts and proves circumstances indicating a motive on the part of the respondent to make false allegations against him, the Court is entitled to accept his evidence. If it does so, the onus would shift to the respondent to prove the circumstances if any to dislodge the assertions made by the petitioner, and if the respondent has failed to put before the Court any facts to establish either that the petitioner did in fact commit the alleged acts of violence in the past or to give any other circumstances which made him "bona fide" believe that he was so guilty the Court is entitled to say that the burden of proving the necessary facts had been discharged by the petitioner."

195. On considering the aforesaid Supreme Court decision the Madhya Pradesh High Court in the case of Khubchand Baghel Vs. Vidyacharan Shukla and Others, held and observed as follows :

"It is altogether beyond question that no tribunal or Appellate Court should in the absence of very strong reasons interfere with the results of any election. Consequently, there should be very strong reasons why a tribunal or a court which does not see or hear any of the electors and ascertain the reasons of their choice should disturb the results. This automatically puts on the petitioner, or the appellant as the case may be, what is usually called the burden of proof. Cases do not usually turn on the burden of proof, for the very simple reason that the parties concerned almost always lead evidence on all crucial issues, and there is very rarely if ever, a situation where the balance is so even that the decision depends upon the burden. When the contesting defeated candidate makes a statement that the elected candidate has done this or that act of moral turpitude, the burden is no doubt on the elected candidate, to prove that he has not committed it, and the statement is not true and has been made with knowledge that it is false. But to prove something that is logically negative, he is only to begin by taking the oath and ascertaining that he has not done it. or that he has surrounded himself with circumstances, that put him on explanation. In the latter event it becomes now the turn of the elected candidate to give his explanation or rebut. Thus the burden so called as it were moved from side to side, all the time, the initial burden of establishing the case, that is, the burden u/s 101 of the Evidence Act lies on the elected candidate. It may be that there is a burden properly so called of providing a statement that is logically negative, but the manner of proving it is a mere denial".

196. In the case of Sudhir Laxman Hendre Vs. Shripat Amrit Dange and Others, was held that " there is a distinction between the provisions of cl.(b) and cl. (d) (11) of sub-section (1) of section 100. If it is proved that a corrupt practice has been committed by a returned candidate, or his election agent or by any other person with the consent of a returned candidate or his election agent, then the Tribunal has to declare the election of the returned candidate to be void. But if the corrupt practice has been committed in the interests of a returned candidate by a person other than the persons mentioned in cl.(b) of sub-section (1) of section 100, then it must be shown that the result of the election in so far as it concerns the returned candidate has been materially affected, before the Tribunal is empowered to declare the election to be void."

197. When a corrupt practice is committed by a returned candidate or his election agent, then the question of consent does not arise, but if it is committed by "any other person" which expression would include a polling agent, then it must be shown that the corrupt practice has been committed with the consent of the returned candidate or his election agent.

198. Where on account of the wrong information given to the Polling Officer that two of the candidates had withdrawn from the election, their ballot boxes were

not kept till 11.30 A.M. at one of the polling booths but there was no evidence to show that the information was given either by the returned candidates or their election agents or by any other person with their consent and the defect in the election at the particular booth had not materially affected the result of the election, the election cannot be declared invalid either under cl. (b) or under cl. (d)(ii) (iii) (iv) of section 100(1).

199. What will constitute corrupt practice u/s 123(4) has also been discussed in the aforesaid case. The Bombay High Court in this connection held inter alia as follows :

"In order to bring the case within the ambit of section 123(4) the petitioner must prove firstly, that there has been a publication by a candidate or his agent or by any other person of a statement of fact; secondly, the statement of fact must be false; thirdly the publisher must either believe it to be false or must not believe it to be true; fourthly, the statement must be in relation to the personal character or, conduct of the candidate or in relation to his candidature. withdrawal or retirement from contest; and lastly, it must be a statement reasonably calculated to prejudice the prospects of the candidate's election.

Adverse criticism, however severe, however undignified or ill-mannered, however regrettable it might be in the interests of purity and decency of public life, in relation to the political views, position, reputation or action of a candidate, would not bring it within the mischief of the statute. The Court in such matters cannot judge these with ability in so far as they are political statements not calculated to attack the personal character or conduct of any rival candidate. Further, what is objectionable is a false statement of fact and not a false statement of opinion, however unfounded or however unjustified. It is only when the person beneath the politician is sought to be assailed and his honour. Integrity and veracity is challenged and such a statement is false that it could be said that a false statement of fact about his personal character and conduct has been made; and once it is established that such a statement was made, the question whether there was malice or not is immaterial. In ascertaining the true nature of the statement made, the Court will have to take into consideration all the surrounding circumstances including the occasion when it was published or made, the person against whom it was made, the person publishing it or making it, the audience or readers to whom it is addressed, as also the precautions or care taken by the publisher to verify the truth or otherwise of the statement challenged.

If letters are published in newspaper containing statements which are derogatory to persons mentioned in those letters, the editor cannot escape responsibility for what is contained in those letters. It may be that the letters might contain the views of the readers and if it is made clear, as is generally done, that the views expressed in the readers' letters are not necessarily the views of the paper, then no doubt such letters may stand on somewhat different footing. But if the letters contain statements of facts which are false, then it could not be said that the

editor would not be responsible for what is stated in those letters.

Describing a candidate as really not independent but as being supported by other parties or prominent persons of other parties would not amount to an attack on his personal character."

200. In the aforesaid decision, the expression "agent" as appears in Explanation 1 to section 123 has also been considered. The Bombay High Court in this case considered observation of Blackburn J., quoted in Rogers on Elections which is as follows :

"A candidate is responsible generally, you may say, for the deeds of those who to his knowledge for the purpose of promoting his election, canvass and do such other acts as may tend to promote his election, provided that the candidate or his authorised agents have reasonable knowledge that those persons are so acting with that object. Parker in his "Election Agent and Returning Officer" has stated as follows :

It is not necessary, in order to prove agency, to show that the person was actually appointed by the candidate; it is sufficient to show the conduct or connection of the parties, the recognition by the candidate of the acts of the person alleged to be an agent, or the absence of any disavowal of such acts. The various acts proved to establish agency may such, taken singly, be insufficient, and yet taken as a whole, may be held to prove agency conclusively. Where the agency cannot be distinctly proved, it may be inferred or implied from the acts of the candidate and from other facts and circumstances.

Every instance in which it is shown that either with the knowledge of the candidate, or of his appointed agents, a person acts at all in furthering the election for him, or in trying to do so, in some evidence to show that he is an agent; and if a person assumes to act for a candidate, and the latter accepts his services, he makes such person his agent. To establish agency, therefore it may be unnecessary to show that the election agent himself knew of and accepted services, voluntarily tendered knowledge and acceptance by other persons in control of the election, may be sufficient."

201. In this connection, paragraph 23 of the aforesaid judgement the Bombay High Court held as follows :

"These passages and the observations of English Judges on the legal aspect of agency in elections would appear to support Mr. Dhabe's contention. Reference may also be made to Schofield's Parliamentary Elections, Second edition, pages 201 to 205 where after quoting numerous passages from decisions in election cases, it is observed that though the law of agency as applied to election petitions has been differently expressed by different learned Judges, all agree that the relation is not the common law one of principal and agent, but the candidate may be responsible for the acts of one acting on his behalf, though such acts are beyond the scope of the authority given, or indeed in violation of

express injunction. In our opinion, this would represent the correct legal position regarding agency in elections."

202. It was also held in the aforesaid decision that a member of the candidate's election committee was held to be an agent. Relevant observations from the said judgment as appear in paragraph 25 of the said case inter alia set out as follows :

"The finding of the Election Tribunal that Mr. Atre could be regarded as an agent for the purpose of addressing meetings has not been challenged before us and it seems that it cannot be so challenged because admittedly a political campaign by way of public meeting was being carried on behalf of the candidates who had admitted Samyukta Maharashtra Samiti tickets. The question is whether Mr. Atre could be also regarded as an agent of the two successful candidates when he carried on propaganda in his paper Maratha on behalf of Samyukta Maharashtra Samiti candidates. It has been admitted by Mr. Lalji Pandse, the election agent of Mr. Dange, that there was a joint office of the Samyukta Maharashtra Samiti for propaganda on behalf of the candidates. Mr. Atre, as we have already seen, has also stated that the propaganda was carried on in the Maratha which was his sole proprietary concern, on behalf of the Samyukta Maharashtra Samiti candidates and he was accordingly carrying on propaganda in favour of Messrs Dange and Manay also. He was a member of the Samiti of which Mr. Dange was the chairman. Now being a member of the candidate's election committee has been held to be strong evidence of agency. See Halsbury's Laws of England third edition. Vo. 14, page 171, para 404. In the case of elections, as we have already seen, the expression "agent" has to be given a wider interpretation and in our judgment, therefore the Tribunal's view that Mr. Atre was not an agent of Messrs. Dange and Manay with regard to election propaganda is not correct. We must, therefore, hold that so far as Exhibit p-1, the letter by Sudhir Chavan, appearing in the Maratha of 14-2-1957 is concerned, there was a publication by an agent of the candidate and the portion A-3 objected to in that letter contains a false statement in relation to the personal character of the petitioner Hendre. The evidence would also indicate that Mr. Atre could not have believed the statement to be true, and that statement was undoubtedly calculated to prejudice the prospect of the petitioner's election. We must, therefore, hold that so far as the portion A-3 in Exhibit P-1 is concerned, there has been a corrupt practice within the meaning of section 123(4) of the Act."

203. In the aforesaid decision, the Bombay High Court also dealt with the question of consent of candidate of election agent u/s 100(2)(b) and held publication in newspaper carrying on propaganda of particular party cannot bind candidate set up by that party unless it is proved that there was either implied or express consent of candidate or his election agent.

204. Judgment and decision of the Supreme Court in the case of T.K. Gangi Reddy v. M.C. Anjaneya Reddy and Ors. reported in 22 ELR 260, though not cited by any of the parties, appears to be relevant in the instant case. On the question of burden of proof that certain statements alleged to have been published by the

returned candidate were false and the said respondent, returned candidate, believed them to be false or did not believe to be true. The aforesaid decision was rendered by the Supreme Court in an appeal of certificate granted by the High Court of Mysore against the order of the said High Court setting aside the order of the Election Tribunal dismissing the petition filed by the first respondent to set aside the election of the appellant. In the said case, the said matter arises out of an election held in March, 1957 to the Mysore Legislative Assembly from the single member constituency of Chintamani in Kolar District. The appellant and the respondents 1 to 3 contested the seat. Polling took place on 4th March, 1957, and the results were announced on 10th March, 1957. The appellant, who got the largest number of votes was declared elected. The first respondent called in question the election of the appellant by an election petition on various grounds. One of the grounds was that exhibits P-3 and P-4, two leaflets, were published and circulated on 26th February, 1957, either by or at the instance of the appellant with false allegations attacking the personal character and conduct of the first respondent and, therefore, the election was void u/s 100(1)(b) of the Representation of the People Act, 1951. The appellant filed objections to the petition, but the other respondents did not take any interest in the proceedings. In the objection filed by the appellant, he denied that he either published or circulated the said leaflets and also pleaded that the allegations in the said documents did not amount to corrupt practice within the meaning of section 123(4) of the Act. The Election Tribunal held that the said leaflets did not contain allegations affecting the personal character and conduct of the first respondent and that there was no evidence to establish that they were published and distributed directly or with the consent of the appellant. On the basis of that finding the Election Tribunal dismissed the petition. On appeal, the High Court, on a consideration of the evidence, did not accept the finding of the Election Tribunal and it came to the conclusion that exhibits P-3 and P-4 contained allegations false to the knowledge of the appellant attacking the personal character and conduct of the first respondent. The High Court further held that the said leaflets were published and distributed by the appellant or others with his consent. These findings would be enough to dispose of the appeal before the High Court, but the High Court went further and held on the evidence that R.Ws. 39 and 41 were the agents of the appellant and that they published and distributed the leaflets, and that, therefore, even if the publication and distribution of the leaflets was not with corrupt practice within the meaning of the section 100(1)(b) of the Act. In the result the order of the Election Tribunal was not set aside and the election petition was allowed, declaring the election of the appellant void. Against the said decision of the High Court the matter came to the Supreme Court.

205. In the aforesaid context, the Supreme Court held "burden of proof has two distinct meanings viz. (i) the burden of proof as a matter of law and pleading, and (ii) the burden of proof as a matter of adducing evidence. Section 101 of the Evidence Act deals with the former and section 102 with the latter. The first

remains constant and the second shifts. In an election petition the burden of proving that certain statements alleged to have been published by the respondent were false and that the respondent believed them to be false or did not believe them to be true is in the first sense, on the petitioner, but if the petitioner examines himself and states that he has committed the alleged acts and proves circumstances indicating a motive on the part of the respondent to make false allegations against him, the Court is entitled to accept his evidence, and if it does so, the onus would shift to the respondent to prove the circumstances if any to dislodge the assertions made by the petitioner; and if the respondent has failed to put before the Court any facts to establish either that the petitioner did in fact commit the alleged acts of violence in the past or to give any other circumstances which made him bonafide believe that he was so guilty the Court is entitled to say that the burden of proving the necessary facts had been discharged by the petitioner."

206. On the basis of the proposition laid down by the Supreme Court in the aforesaid decision, it appears that in view of the pleadings and evidence on record the burden was on the respondent No. 1 to prove that the publications were made by the returned candidate or his agent believing the same to be true. In fact, there is no evidence to that effect nor any suggestion has been made to that effect in cross-examination. In that view of the matter, in my view, the said decision clearly supports the case of the petitioner.

207. It is quite true that success of a candidate who has won an election should not be lightly interfered with. However, one of the essentials of the law of the election is also to safeguard the purity of the election process and to see that the people do not get elected by corrupt practice. In this connection judgment of the Supreme Court in the case of Jagan Nath v. Jaswant Singh and Ors., reported in AIR 1954 SC 21 may be taken note of. In the aforesaid decision relating to election disputes the Supreme Court held at paragraph 1 at page 212 as follows :

"It is always to be borne in mind that though the election of a successful candidate is not to be lightly interfered with, one of the essentials of that law is also to safeguard the purity of the election process and also to see that people do not get elected by flagrant breaches of that law or by corrupt practices. In cases where the election law does not prescribe the consequence or does not lay down penalty for non-compliance with certain procedural requirements of that law, the jurisdiction of the Tribunal entrusted with the trial of the case is not affected."

208. While dealing with a case of corrupt practice the Division Bench of Madhya Pradesh High Court comprising of M. Hidayatullah, C.J. and G.P. Bhutt. J. in the case of Maganlal Bagdi v. Hari Vishnu Kamath reported in 15 ELR 205 pages 209, held and observed *intra alia* as follows :

"It is well settled that the success of a candidate who has won at an election should not be lightly interfered with. However, one of the essentials of the law is

also to safeguard the purity of the election process and to see that people do not get elected by corrupt practices: (Jagan Nath v. Jaswant Singh).

209. It is well settled that although the election petition is in the nature of quasi-criminal proceeding, while insisting on standard of strict proof the Court should not extend or stretch this doctrine to such an extent as to make it 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 purity of the electoral process. In this connection judgment and decision in the case of S. Harcharan Singh Vs. S. Sajjan Singh and Others, may be taken note of.

210. In the aforesaid decision of the Supreme Court it appears that the appellant and the respondent contested the election to Punjab Legislative Assembly held in May, 1980 from Muktsar Constituency. Polling was held on 31.5.1980 and the result was declared on 1.6.1980 in which the appellant secured 29,600 votes and the respondent No. 3 secured 30,003 votes. The other candidates got only nominal votes. There was thus a difference of 403 votes in favour of the respondent No. 3. Respondent No. 3 was declared elected. The election of respondent No. 3 was challenged by an election petition alleging that the respondent No. 3 had indulged in corrupt practice in the said election and as such his election was liable to be set aside and he was liable to be disqualified for corrupt practice.

211. The allegations against respondent No. 3 in the aforesaid case were that he, his election agent and other person with his consent had appealed to the voters of the constituency in the name of religion, namely Sikh religion, for voting in his favour or to refrain from voting in favour of the appellant. In brief it is alleged that Hukamnamas, the nature, the content and the effect of which we will examine later, were issued urging the voters to vote for respondent No. 3 and not to vote for the appellant. It was further alleged that in the meetings, inter alia, at Muktsar, (2) Khokhar and (3) Harlia Kalan speeches were delivered by eminent public persons appealing to the voters that as respondent No. 3 was the candidate of the Akat Takht, the people should vote for him and not to vote for him would be against the tenets of the Sikh religion and would be a blasphemous act against the Sikh religion. In publications like Akali Times the same view was propounded and it was indicated that Indira Congress was always against Sikh people and Sikh religion and as such to vote for Congress(I) would be to vote against Sikh religion, were pointed out at the meetings. It was emphasised before us that a Hukamnama for a Sikh is of great consequence and disobedience to Hukamnama entails great misfortune. The evidence in details was taken. The learned Judge of the Punjab and Haryana High Court on an analysis of the nature of the Hukamna as well as examination of the evidence adduced before him came to the conclusion that neither was it established that respondent No. 3 had appealed in the name of religion in terms of section 123 of the Act nor was the learned Judge convinced about the veracity or the correctness of the evidence adduced on behalf of the appellant as to what

happened in the three meetings. The learned Judge accordingly came to the conclusion that the appellant had failed to prove the corrupt practice alleged against the respondent No. 3. The learned Judge emphasised that allegations of corrupt practices in an election are in the nature of quasi-criminal charges and must be proved beyond reasonable doubt as such. The learned Judge was of the opinion that the appellant had not succeeded in proving the said charges beyond reasonable doubt. He accordingly dismissed the said election petition.

212. Sabyasachi Mukherjee, J. as he then was, speaking for the Supreme Court held and observed in paragraphs 64 and 65 of the said judgment as follows :

"64. Taking into account the totality of the evidence in the background of the fact that some communications from Akali Takht, call it Hukamnama or any other name, were issued and the issues of editorials of Akali Takht, which were mentioned by Shri Parkash Singh Badal as stated by the witness on behalf of the appellant and which is not denied by Shri Prakash Singh Badal, we are of the opinion that in this case appeal in the name of religion was made on behalf of the respondent No. 3. Though some facts stated in the oral evidence about the meetings had not been stated in the petition, but when evidence was tendered and was not shaken in cross-examination and the versions have a ring of truth in the background of other facts, we are of the opinion that the case of appeal to religion by the respondent No. 3 has been proved in this case. This conclusion becomes irresistible in view of absence of any express denial by Sri Parkash Singh Badal and in the absence of any explanation for not calling him as a witness on this point. Several decisions of this Court have laid down various tests to determine the standard of proof required to establish corrupt practice. 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 purity of the electoral process."

" 65. In the premises the respondent No. 3 was guilty of corrupt practice as mentioned in sub-section (3) of section 123 of the Act. In the result his election is set aside and the seat is declared vacant. The findings of this Court about the corrupt practice of respondent No. 3 be forwarded to the President of India for appropriate action u/s 8A of the Act."

213. Judgment and decision in the case of *Ambika Sharan Singh v. Mahant Mahadev and Giri*, (1969) 3 SCC 492 may be taken note of. The aforesaid decision relates to an appeal against an order of the High Court of Patna declaring the appellant's election from Barhara Assembly Constituency, Bihar, void u/s 100(1) of the Representation of the People Act XLIII of 1951.

214. In the aforesaid decision it was the fact that at the time of the general election in February 1967 the appellant was the Minister of State in the Finance Department of the State of Bihar. There were in all 8 candidates contesting from

Barbara constituency. The poll day was February 15, 1967. Having obtained 21,791 votes against 20,243 votes obtained by respondent No. 1 (the petitioner) the appellant was declared elected. In the election petition filed by respondent No. 1, thereafter, he made a number of allegations of diverse corrupt practices giving particulars thereof in more than 10 schedules. In his written statement, the appellant denied all these allegations and also filed a recriminatory petition u/s 97 of the Act.

215. In the elaborate judgment, the High Court after examining the voluminous evidences led by the parties held the appellant guilty of 3 corrupt practices, namely of distributing money to Harijan voters in various villages as bribery, of having canvassed on the basis of his caste, namely Rajput, and of having obtained or procured the assistance of 4 Gazetted Officers namely, R.W. Sheo Bachan Singh, Muni Lal, R.S. Prasad and Bhupender Narain Singh, all of whom except Muni Lal, being in the Department of Commercial Taxes which was under the charge of the appellant.

216. In the appeal to the Supreme Court, the question for determination was therefore whether the High Court was correct in holding the appellant guilty of the said three corrupt practices.

217. The court after going through the voluminous evidence of 292 witnesses and eschewing all interested and contradicting testimony found :

(i) that there was sufficient evidence to show that the campaign on the basis of caste was carried on at numerous places, at some places by appellant himself and at some places by others in his presence and at others by several workers of the appellant including his election agent. The conclusion, therefore, is inevitable that it was done with his consent direct or implicit. The High Court consequently was right in its conclusion that the appellant was proved to have committed the corrupt practice falling u/s 123(3);

(ii) the finding by the High Court that besides appealing to the voters on the basis of caste the appellant also committed another corrupt practice, that of obtaining and procuring the assistance of four Gazetted Officers to further his electoral prospects rested on ocular testimony as well as documentary and circumstantial evidence. The Supreme Court was of the opinion that there was sufficient evidence on which the learned Trial Judge could legitimately base his finding against at least 3 officers, namely, Bhupendar Narain Singh, Sheo Bachan Singh and R.S. Prasad.

(iii) in the view taken as to the finding on the aforesaid two corrupt practices, the Supreme Court did not feel it necessary to go into the question of the third corrupt practice namely of bribery to the Harijan voters. The Trial Judge's finding that the election of the appellant was void is upheld.

218. It may be noted in the aforesaid decision that the finding by the High Court that besides appealing to the voters on the basis of caste the appellant also

committed another corrupt practice, that of obtaining and procuring the assistance of four gazetted officers to further his electoral prospects, rested on ocular testimony as well as documentary and circumstantial evidence. The allegation was that these four officers not only canvassed for but by threats and intimidation also collected election fund for the appellant from shop-keepers of several villages. There were 8 witnesses from Gundi, Suratya, Keshopur, Udaipur, Babura, Jopahri, Dhanwaha Bazar, Lachmipur and Chatter who deposed to the said Bhupender Narain Singh, R.W. 49, having canvassed for and collected election fund for the appellant. In respect of the said Sheo Bachan Singh, R.W. 51, there were as many as 21 witnesses from Chatter, Chiran Keshopur, Meerganj. Lauchar. Babhangwan, Funhan, Babura, Rampur Mohanpur and Bhekura deposing to his having canvassed for the appellant on the basis of caste. Against Ram Sunder Prasad, R.W. 58, there were two witnesses. P.W. 61 from Dularpur and P.W. 65 from Ratanpur and against Muni Lal, R.W. 66, there were 12 witnesses from Gyanpur, Bhagalpur, Piparpanti, Ekawna, Gundi. Babura, Pakeri and Jagatpur All these witnesses testified to their having seen these four officials canvassing and Bhupender Singh collecting funds from shopkeepers in their respective villages. These four officers denied having either done the canvassing or collecting funds as alleged by these witnesses. Sheo Bachan Singh and Muni Lal claimed that they were at their respective offices at Chaibassa and Bhagalpur and therefore the allegations against them were untrue. The Trial Judge, however, felt that it was highly improbable that so many witnesses from so many villages should give false evidence against such highly placed officers without any reason and accepted their evidence discarding the denials of those officers especially as that evidence was supported by documentary as also circumstantial evidence.

219. Counsel for the appellant challenged the veracity of these witnesses on the following grounds :

- i) that there was no evidence of the appellant having obtained or procured the assistance of these officers,
- ii) that the evidence was vague as none of the witnesses gave the names of the shop-keepers whom these officers approached for canvassing and for funds nor had they given the amounts collected from them.
- (iii) that the evidence showed that Sheo Bachan Singh and Muni Lal were at Chaibassa and Bhagalpur and that therefore the evidence against them were false, and
- (iv) that the evidence of several of these witnesses could not be acted upon for the two reasons given by him.

220. The Supreme Court, however, dealing with the said submission of the Counsel for the appellant wherein the veracity of the witnesses were challenged, held in paragraph 21 of the said judgment as follows :

"As regards the first contention, it is true that there is no direct evidence of the appellant having requisitioned the services of these officers. Such direct evidence, however, can hardly be expected on a charge such as getting the officers to work for him. The fact, however, is that three out of them belonged to the Department of Commercial Taxes which was directly in charge of the appellant. If the evidence of these witnesses were to be accepted there would be no difficulty in coming to the conclusion that it was highly improbable that without the assent of the appellant these officers would move about in so many villages on their own for canvassing and collecting funds on behalf of the appellant. It is true that the witnesses did not give the names of those who were approached nor the amounts collected from them. But such particulars could hardly be expected for such canvassing and collection could not have been done in the presence of others and the shopkeepers were hardly likely to disclose the amounts they paid for fear that they would be victimised by the officers. The failure of these witnesses to give particulars cannot therefore be over emphasised and on that ground alone their evidence discarded. However, it is not as if the charge was solely founded on oral testimony."

221. In paragraph 27 the Supreme Court further observed as follows :

"It is true that some of the witnesses who gave evidence against these officers had acted as polling agents of respondent No. 1, the evidence of some of them was not accepted by the Trial Judge under the charge of distribution of hand-pumps and some of them had during their evidence admitted liking for respondent and a correspondent dislike for the appellant. Even if we were to eliminate the evidence of these witnesses from consideration on the ground that they were interested witnesses there would still remain against each of these officers witnesses against whose evidence no blemish could be pointed out by Mr. Verma. Their evidence together with the documentary and circumstantial evidence would go to corroborate the evidence of the witness Whom Mr. Verma called interested witnesses. There was sufficient evidence on which the learned Trial Judge could legitimately base his finding against at least 3 officers, namely, Bhupinder Singh, Sheo Bachan Singh, and R.S. Prasad. Since there is no documentary or circumstantial evidence against Muni Lal and he was not under the direct control of the appellant, we do not propose to hold, as a matter of abundant caution, that his services were obtained or procured by the appellant. In our view, Mr. Verma has failed to establish any substantial reason for disagreeing with the aforesaid conclusion arrived at by the Trial Judge."

222. Judgment and decision in the case of Ram Sharan Yadav Vs. Thakur Muneshwar Nath Singh and Others, may also be taken note of. The aforesaid decision relates to an appeal directed against a judgment dated April, 10, 1980 of the Patna High Court setting aside the election of the appellant mainly on the ground that he had been found guilty of indulging in corrupt practice in the election held on 10.6.77 to the Bihar Legislative Assembly from Goh Assembly Constituency. The result was announced on 16.6.1977 in which Ram Sharan

Yadav (appellant), a candidate sponsored by the Communist Party of India, was declared elected after polling 28,783 votes as against 16,458 votes polled by Thakur Muneshwar Nath Singh (the first respondent). An election petition was filed by the respondent in the High Court for setting aside the election of the appellant on the ground that he had indulged in corrupt practices as envisaged in section 123(2) of the Act, 1951. The plea of the respondent found favour with the High Court which set aside the election of the appellant. Hence the appeal was preferred to the Supreme Court.

223. The Supreme Court in this connection considered several decisions which are as follows :

- 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,

224. The Supreme Court also observed another well settled principle is that before the allegation of "undue influence" can be proved, it must be shown that "undue influence" proceeds either from the candidate himself or through his agent or by any other person either with his consent or with the consent of his election agent so as to prevent or cloud the very exercise of any electoral right.

225. The Supreme Court, however, in this judgment considered the main allegation against the appellant which is to the effect in paragraphs 7,8 and 9 following :-

"7. The main allegation against the Appellant is that he had through his agents, supporters and other people duly instructed by him, made an attempt to set at naught the electoral process by putting the voters in serious fear as they were threatened, assaulted and even firing was resorted to. On the finding of the High Court, it was further proved that the acts mentioned above, which undoubtedly amount to "undue influence", had been committed not only at the instance but in the presence of the appellant. There is no ritualistic formula nor a cut-and-dried test to lay down as to how a charge of undue influence can be proved, but if all the circumstances taken together lead to the irresistible inference that the voters were pressurised, threatened or assaulted at the instance of either the candidate or his supporters or agents with his consent or with his agents' consent, that should be sufficient to vitiate the election of the returned candidate."

"8. We would, however, like to add a word of caution regarding the nature of approach to be made in cases where allegations of fraud or undue influence are made. 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 purity of the electoral process "

9. By and large, the court in such cases while appreciating or analysing the evidence must be guided by the following considerations :

- 1) the nature, character, respectability and credibility of the evidence,
- 2) the surrounding circumstances and the improbabilities appearing in the case.
- 3) the slowness of the appellate court to disturb a finding of fact arrived at by the trial court who had the initial advantage of observing the behaviour, character and demeanour of the witnesses appearing before it, and
- 4) the totality of the effect of the entire evidence which leaves a lasting impression regarding the corrupt practices alleged."

Issues settled are answered in the manner following :

Issue No. 1 - The Election petition is maintainable.

Issue No. 2 - The respondent No. 1, election agent and agents are guilty of corrupt practices.

Issue No. 3 - The respondent No. 1, the Returning Officer, the Assistant Returning Officer, the Counting Supervisor, Counting Assistant acting as agent of the respondent No. 1 and resorted to corrupt practices.

I am not, however, inclined to declare the petitioner as elected or secured majority of votes. There is no question of recounting in the instant case inasmuch as the election is vitiated by corrupt practices since the election is declared void.

So far issue Nos. 2 and 3 are concerned, they are decided in the affirmative. I am of the view that the petitioner cannot be declared as elected.

For all the aforesaid reasons, in my view, it is proved that corrupt practices had been committed under sections 123(2), 123(4) and 123(7) of the Representation of the People Act, 1951 by the returned candidate and/or his agents and the election of 216 Sabang Legislative Assembly constituency declaring the respondent no. 1 should be declared void.

Considering all aspects of the matter I am of the view that corrupt practice under sections 123(2), 123(4) and 123(7) of the Representation of the People Act. 1951 by the respondent No. 1 and/or his agents has been proved in this case. Accordingly it is declared that the election of the respondent No. 1 being the returned candidate from 216 Sabang Legislative Assembly Constituency is void.

The learned Advocate for the respondent No. 1 has prayed for stay of operation of my judgment and order for a limited period. However, in view of my specific

finding on the charge of corrupt practice it would not be proper to grant stay, in my view.

Since the petitioner succeeds to the extent indicated above, he will be entitled to costs.

All parties are to act on xerox signed copy of the operative portion of this judgment on the usual undertakings.

226. Election declared void