

(1987) 08 GAU CK 0006
In the Gauhati High Court
Case No : Civil Rule No. 411 of 1984

Ijirangbe Jeme

APPELLANT

Vs

The State of Assam and Others

RESPONDENT

Date of Decision : 11-08-1987

Acts Referred:

Assam Autonomous Districts (Constitution of District Councils) Rules, 1951 — Rule 133(6), 161(1), 166, 167, 168

Citation : (1988) 1 GLR 405

Hon'ble Judges : K.N. Saikia, C.J.; T.C. Das, J

Bench : Division Bench

Advocate : N.M. Lahiri, B.M. Mahanta and A. Dutta, for the Appellant; S.N. Bhuyan and B.P. Bora, for the Respondent

Final Decision : Allowed

Judgement

K.N. Saikia, C.J.—The writ Petitioner impugns the order of the Governor of Assam, Hills Area Department, dated 4th May, 1984 which is to the effect that the election of the Petitioner Ijirangbe Jeme from the 22 Dihamlai constituency of the North Cachar Hills District Council is found and declared to be void within the meaning of Rule 190(1) of the Assam Autonomous District (Constitution of District Councils) Rules, 1951 and that Smti. Isamle has been duly elected from that constituency under Rule 191(1) of the said Rules; and that an amount of Rs. 1,000/- as cost be payable at the rate of Rs. 500/- each by the Petitioner and the Deputy Commissioner, N.C. Hills District as returning officer to the Respondent No. 4 on the basis of report submitted under Rule 191(1) of the Rules on Miscellaneous Election Case No. 4 of 1980 which has also been impugned in the petition.

2. The Governor of Assam issued Notification No. HAD/234/72/27 dated 7.2.80 calling upon the constituencies of North Cachar Hills District Council to elect members in accordance with the Assam Autonomous District (Constitution of District Councils) Rules, 1951, "the Rules" for short, fixing 22.2.80 as the last

date of withdrawal, and 10.3.80 as the date of poll. The Deputy Commissioner, North Cachar Hills-cum-Returning Officer accordingly fixed 22.2.80 as the date of filing nomination. For No. 22 Dihamlai constituency the Petitioner, the fourth Respondent and another filed their nominations as candidates. The Petitioner as a candidate of the Janata Party selected the symbol "Haldhar within wheel" and the fourth Respondent as an independent candidate selected the "Lantern". The nomination paper of the third candidate was rejected at scrutiny, thus leaving the Petitioner and Respondent No. 4 in the fray.

3. The poll was held on 10.3.80 and counting of votes on 12.3.80. Out of total 2013 votes on the roll only 1489 votes were polled whereout the Petitioner secured 815 while the fourth Respondent secured 620 only. The Petitioner was declared to have been duly elected; and the result was published in the Assam Gazette dated 18.3.80.

4. The fourth Respondent filed an election petition before the Governor calling in question the Petitioner's election on, inter alia, grounds of corrupt and illegal practices, namely, illegalities in distribution of symbol; illegalities in counting; illegal closure at polling booth before the prescribed time, etc. and claimed that the Petitioner's election be set aside and she be declared as duly elected. Shri B.C. Barua Assistant District Judge was appointed Commissioner for the Election Petitioners, North Cachar Hills District Counsel, Halflong for hearing and disposing of the fourth Respondent's election petition registered as Misc. (Election) Case No. 4/80. The Petitioner contested the election petition and prayed for striking out some allegations made therein and after such striking out only following paragraphs survived for trial:

(a) That on 4.3.80 just a week before the poll, the first Respondent (in instant petition) visited Buangkung village halt for the night. He purchased a pig belonging to Shri Sonderlal Rangkhohi and arranged a grand feast. During the feast he appealed to them to cast their votes in his favour.

(b) That the first Respondent in collusion with the Returning Officer had Shri R. Jeme who was the own brother of first Respondent appointed as a polling officer at Boro Chenam Polling Station with a motive to help him indirectly. That the ballot boxes at Boro Chenam village were closed at 3.30 p.m. and the election officials left Boro Chenam on the same evening and halted at Michidui Polling Station where the first Respondent was present.

(c) That in counting of votes, the Returning Officer committed serious irregularities and that the result was decided without scrutiny in favour of the first Respondent. The following irregularities were noted:

Polling Stations Votes as per E/Rolls \\\Votes cast according to

Polling agent Result Sheet

1. Inodunglo 336 258 444

2. Boro Chepam 519 361 259

3. Michidui 620 (not recorded) 361

4. Inchaikang 523 425 425

According to result sheet out of 336 voters at Indunglo polling station, 444 voters cast their votes.

During the declaration of the result on the night of 12.3.80 the Petitioner was informed that she secured 630 votes and the first Respondent secured 805. But in the result sheet the election Petitioner's votes had been reduced by 10 and the first Respondent's votes added by 10.

(g). That the Returning officer allotted the Janata party official symbol, "Haladhar within wheel" to first Respondent is violation of rules inspite of strong objection in order to help the first Respondent secure more votes as a Janata Party. Under Sub-rule (6) of Rule 133 of the Constitution of District Councils Rules, 1951 as amended vide GAG/4/73/3 dated 29th September, 1973, any reserved symbol of the National political parties is to be allotted to party candidates under conditions specified in the Rules but the first Respondent did not fulfil the necessary conditions.

(1). That the following voters Were allowed to cast the votes by the Presiding Officers though their villages Were not included in the polling stations list.

1. Gampai Khuti -4 votes

2. Gobin khuti -13 votes

3. Hokai Khuti -3 votes.

5. The Petitioner as the first Respondent contested the election petition stating inter alia, that material facts in support of the allegations of corrupt or illegal practices were not stated; that the Petitioner failed to make out a case for declaration of the election to be void under Rule 190(1) of the Rules; that the result of the election was not materially affected by alleged irregularities; that the allegations of purchasing a pig on 4.3.80 and visiting Buanguang village on that day, halting for the night there and arranging a grand feast and therein appealing to the gathering to cast their votes in his favour were totally false, baseless and untrue; that the allegation of distribution of money was false; that the allegation of closing of the ballot box at 3.30 P.M. at Boro Chenam polling station was not correct; that the Returning Officer committed no irregularity or illegality in conducting the election or in counting the votes; and that for the above reasons the election petition was liable to be dismissed.

6. The Election Commissioner on the basis of pleadings framed as many as 9 issues of which the following would be material for deciding this writ petition:

(4) Whether the allegations made in the petition as to the corrupt and illegal practices are vague, indefinite and lacking in full particulars and are liable to be

struck off and the petition liable to be dismissed?

(5) Whether the result of the election is materially affected by alleged illegalities and corrupt practices?

(8) whether the illegalities of corrupt practices have been proved on the part of the elected candidate as stated in Annexure-"A" of the petition?

(6) Whether the Respondent No. 2 who conducted the District council election as Returning officer had intentionally committed series of irregularities and anomalies by misuse of his power and whether the irregularities and the anomalies had adversely affected the election of the Petitioner?

(9) On the basis of findings to what redress the election Petitioner was entitled to?

7. Issue No. 4 was decided in the negative, while Issue No. 6 in affirmative i.e. in favour of the election Petitioner (fourth Respondent). Issue No. 8 was decided in the affirmative i.e. in favour of the election Petitioner and against the writ Petitioner (first Respondent). Issue No. 9 was decided in favour of the fourth Respondent.

8. At the trial, the fourth Respondent as election Petitioner examined 5 witnesses including herself as P.W. 4 while the writ Petitioner as 1st Respondent examined himself and 2 (two) other witnesses. The learned Commissioner after hearing submitted his report to the Governor whereupon the aforesaid impugned order was passed. Hence this petition.

9. The Petitioner herein challenged the findings on (1) distribution of symbol, (2) corrupt practices, and (3) violation of Rules. The law relating to distribution of symbol having been settled in the meantime that ground does not survive and has not been urged at the hearing.

10. Mr. N.M. Lahiri, learned Counsel for the Petitioner submits, inter alia, that learned Commissioner's findings are perverse, illegal and without jurisdiction as he did not apply his mind to the evidence on record and to the Gazette Notification dated 5.4.73; that he committed manifest error apparent on the face of the record in setting aside the Petitioner's election on basis of misconceived, perverse and illegal findings is to corrupt practices; that he acted illegally and without authority of law in declaring the 4th Respondent to have been selected in place of the Petitioner; and that the report of the Governor's order thereon is not a decision in accordance with law. Counsel also submits that the entertainment which has been branded as corrupt practice was nothing but customary hospitality; and that even if four voters could not cast their votes because of allegedly early closure of polling booth, that did not materially affect the result of the election.

11. Mr. S.N. Bhuyan, learned Counsel for the 4th Respondent demurring submits, inter alia, that in Rule 190 which defines corrupt practice, every Sub-clause is

independent of the other ; that the plea of the customary hospitality under Rule 192(B) was not taken by the Petitioner but simple plea of (sic)denial was taken; that Sub-clause 1(B) does not speak of the Selection being materially affected; that the irregularities were rightly held to have vitiated the election; and that the 4th Respondent was rightly declared to have been elected after setting aside the Petitioner's election.

12. The most important point to be decided is whether the commission of corrupt practices was proved according to law. We have referred to the surviving para (a). The Petitioner had submitted in para 21 of his written statement that the said allegation was totally false, baseless and untrue. The Commissioner on Issues No. 4 and 8 found from evidence of P.W. 1, Shri Lalsboangthang that on 4.3.80 the Petitioner visited Buangkong village and addressed an election meeting which started from 7. P.M. with a gathering of 40/50 persons and appealed to all to cast their votes in his favour and that a feast was served to the gathering with the pig purchased from one Sondarlal Kangkhol at Rs. 200/. by the Petitioner. In cross-examination the witness admitted that the feast was partaken only by the workers of the Petitioner and the members of the Gaonbura's family. The learned Commssioner observed that it was not suggested to the withness that none of the voters had partaken the feast. The learned Commissioner rejected the submission that the entertainment so made by the Petitioner did not amount to any corrupt practice as it was the custom to entertain the respectable persons holding that the entertainment was not by the persons of the village which the Petitioner visited but by the Petitioner himself to the persons attending the election meeting convened by the Petitioner wherein he delivered lecture and appealed to cast vote in his favour. He, however, did not observe as to who had contributed the rice and other articles and what could be the implication thereof. P.W. 2, Thanga Rangkhol corroborated P.W. 1 as to the holding of the election meeting at the house of the gaonbura wherein the Petitioner stated that he was defeated in the Assembly election and requested to cast votes in his favour in the District council election and also that the Petitioner paid Rs. 200/- for purchasing a pig and that the persons attending the meeting were entertained in the feast. Ha was the Headmaster of the local school. According to him there was no president in the meeting which the Petitioner attended and that almost all the male persons of Buangkong village attended including his father-in-law, the Gaonbura and that the village had about 138 persons. The pig weighed about 28 Kgs. The feast was served at about 12 mid-night while the meeting started from 7 P.M. and lasted for about an hour only. He did not show why the people were waiting for all these hours. He did not know who supplied rice and other articles, nor did he know how many persons from Buangkung village partook the feast. This witness also addressed the meeting and said that an Executive member of the District council visited their village and they were all happy for that and be appealed to all persons to support the Petitioner. He categorically stated that the Petitioner had not taken meal with the villagers as he went to bed earlier. He had not met the Petitioner after that

meeting.

13. From the above evidence could it be concluded that the Petitioner had committed corrupt practice by entertaining voters with the feast so as to vitiate his election?

14. Rule 2(5) of the Assam Autonomous Districts (Constitution of District Council) Rules, 1951, shortly "the Rules", defines, "corrupt practice" to mean any of the practices specified in Rule 193 or Rule 194 of the Rules. Rule 193 defines "major corrupt practices", while Rule 194 defines "minor corrupt practices". Rule 190 states the ground for declaring an election void. Under Sub-rule (1) of Rule 190, subject to the provisions of this Rule, if in the opinion of the Commissioner- (a) the election of a returned candidate has been procured or induced, or the result of the election has been materially affected, by any corrupt or illegal practice; (b) any corrupt or illegal practice has been committed in the interest of a returned candidate; or (c) the result of the election has been materially affected by the improper acceptance or rejection of any nomination or by reason of the fact that any person nominated was not qualified or was disqualified for election, or by the improper reception or refusal of a vote, or by the reception of any vote which is void, or by any non-compliance with the provisions of the rules relating to the election, or by any mistake in the use of any prescribed form; or (d) the election has not been a free election by reason of the large number of cases in which bribery or undue influence has been exercised or committed, the election of the returned candidate shall be void. Under Sub-rule (2) if the Commissioner reports that a returned candidate has been guilty by an agent, other than his election agent, of any corrupt or illegal practice but further reports that the candidate has satisfied him that (a) no corrupt or illegal practice was committed at the election by the candidate or his election agent, and the corrupt or illegal practices mentioned in the report were committed contrary to the orders, and without the sanction or connivance, of the candidate or his election agent; (b) the candidate and his election agent took all reasonable means for preventing the commission of corrupt or illegal practices at the election; (c) the corrupt or illegal practices mentioned in the report were of a trivial and limited character or took the form of customary hospitality which did not affect the result of the election; (d) in all other respects the election was free from any corrupt or illegal practice on the part of the candidate or any of his agents, then the Commissioner may find that the election of the candidate is not void.

15. Under Rule 193 bribery includes any gratification to any person whomsoever with the object of inducing an elector to vote or refrain from voting at an election which will amount to corrupt practice. Gratification is not restricted to pecuniary gratification but includes all forms of employment for reward. Any act specified in Rule 193 when done by a person who is not a candidate or his agent or acting with the connivance of a candidate or his agent will be a minor corrupt practice. In the instant case there is no evidence to show that the Petitioner paid for

everything in the feast. The only evidence is that he paid Rs. 200/- for the pig, but himself did not partake the feast. In his evidence the Petitioner as Witness No. 3 admitted that on 4.3.80 the Petitioner visited Buangkong village and halted there and that he purchased a pig to feed the workers and that he did not take his meal with them. According to him those who partook were his workers, and he denied that he appealed to them to cast their votes in his favour. He stayed and slept in the house of the village Gaonbura, Kalalseike. He named some of his workers. P.W. 1, we have seen, also admitted in cross-examination that the feast was partaken only by the workers of the Petitioner and the member of the Gaonbura's family. However, it was not put to this witness that none of the voters had taken the feast. It was submitted before the Commissioner, as it is being submitted before us, that the entertainment made by the Petitioner did not amount to any corrupt practice as there was a custom to entertain a respectable person. But the submission was rejected. There is nothing to show that it was far in excess of customary entertainment in that village. There is evidence to show that the Petitioner was not present and awake at the time of entertainment. Nor is there anything to show that appeal to vote for him was made at the time of taking the feast. It is also not shown that the result of the election was materially affected thereby. How many partakers were voters was not alleged and proved.

16. The Commissioner did not specifically say under which provision, namely, what was the specific category of corrupt practice. Rules 193 and 194 do not mention any form of entertainment. However, Rule 190(2)(C), excepts the form of customary hospitality which did not affect the result of the election as an exception to corrupt or illegal practice. It can therefore, be deduced that any form of hospitality, in excess of or other than customary hospitality, will amount to corrupt practice.

17. In *T.N. Angami v. Smti. Ravoluen* ALR 1971 SC 22 it was alleged that about 200 people mostly women formed a procession, shouted slogans to vote for the Appellant and the Appellant asked them to vote for him and after the meeting a feast was held at the Appellant's house at which drinks were served to the people. This High Court held that there was no evidence to indicate that the Respondent or any person induced the persons present to vote or offered them food and fruit. On the contrary it was found that evidences of both sides indicated that it was customary practice in Nagaland to offer hospitality to the people who visit their house. Supreme Court held that it would not be correct to equate ordinary hospitality or courtesy with corrupt practice.

18. Mr. Bhuyan submits that the plea of customary hospitality was not taken in the written statement. That was because the Respondents' plea in the election petition was that only the workers were given meals and no voter was entertained. Only if that plea is rejected, the corrupt practice of entertainment will be relevant and once it is held to be of the nature of entertainment, the exception of customary hospitality will be relevant in deciding whether it amounted to bribery by gratification.

19. The expression "bribery" is to be given wide meaning in order to ensure that elections are held in an atmosphere of absolute purity, *Rajendra Prasad Jain v. Silbhadra Yajee* AIR 1967 SC 1455. Bribery in the context of election means the offence committed by one who gives or promises or offers money or any valuable inducement to an elector, in order to corruptly induce the latter to vote in a particular way or to abstain from voting or as a reward to the voter for having voted in a particular way or abstained from voting. An entertainment or gratification may be included, unless excepted, but it must be proved beyond reasonable doubt.

20. It is well settled that a charge of corrupt practice is of a quasi-criminal nature and has to be proved beyond reasonable doubt. See *Mahani Shreo Nath v. Choudhry Ranbir Singh*, (1970) 3 SCC 647; *Harish Chandra Bajpai Vs. Triloki Singh*, : *Sri Baru Ram Vs. Prasanni and Others*, : *Ramanbhai Nagjibhai Patel Vs. Jashvant Singh Udesingh and Others*, : *N.C. Zeliang Vs. Aju Newmai and Others*, *Vir Chandra Barman v. Anil Sarkar* AIR 1976 SC 602 . The allegations of corrupt practice made in an election petition should be sufficiently clear and precise to bring home the charges to the candidate and the statutory requirements of the law must be strictly observed. See *M. Narayana Rao Vs. G. Venkata Reddy and Others*, : *Narendra Madivalapa Kheni Vs. Manikrao Patil and Others*, ; *D. Venkata Reddy Vs. R. Sultan and Others*, ; *Kona Prabhakara Rao Vs. M. Seshagiri Rao and Another*, ; *Mithilesh Kumar Pandey Vs. Baidyanath Yadav and Others*, and *Daulat Ram Chauhan Vs. Anand Sharma*, Allegations regarding corrupt practices must be "very strongly and narrowly construed to the very spirit and letter of the law". The acts constituting corrupt practice must be proved and established by direct evidence. The evidence must be positive and definite. It cannot be proved by mere pre-ponderance of probability. The allegation of corrupt practice must be clear and specific and should not be left for Court to infer by process of involved reasoning. The necessary particulars, statement of facts and essential ingredients must contain (i) direct and detailed nature of corrupt practice as defined in law; (ii) details of every important particular must be stated giving the time, place, names of persons, use of words and expressions; (iii) it must clearly appear from the allegations that the corrupt practices alleged were indulged in by (a) the candidate himself (b) his authorised election agent or any other person with his express or implied consent. The proof of corrupt practice must be beyond reasonable doubt as in a criminal case and mere preponderance of probability will not be sufficient as the allegation is quasi criminal nature and the proof that will be required in support of such allegations would be as in criminal charges. See *Zafar Khan and Others Vs. Board of Revenue, U.P. and Others*, It was held in *Ram Singh and Others Vs. Ram Singh*, that in case of allegations of fraud or corrupt practice if two views are reasonably possible one in favour of elected candidate and the other against him, the election should not be declared void. The standard of proof of allegations of corrupt practice is that they have to be proved beyond reasonable doubt almost as in a criminal case. In the instant case the view that there was no feast to the voters but only to the workers

and the members of the Gaonbura's family would also be reasonable and this being in favour of the Petitioner, his election ought not to be set aside.

21. The next question is whether the Returning Officer had intentionally committed irregularities in the preparation and announcement of result and if so whether that had adversely affected the result of the election. The allegation regarding regularities in counting the votes in paragraph (3) has already been stated in paragraph 4. The allegations were that the turning officer committed serious irregularities in counting votes and declaring the result in favour of the Petitioner; that in the result sheet at Indunglo polling station it was shown that voters cast their votes while in that polling station there were only 336 voters as shown in the electoral roll; and that during the declaration of the result on the night of 12.3.80 the election Petitioner was informed that she secured 630 votes and the instant Petitioner secured 805 votes but in the result sheet the Petitioner's votes had been reduced by 10 and Respondent's votes had been added by 10. The election Petitioner as P.W. 4 deposed that she was informed that she got 1630 votes and the instant Petitioner got 800 or so and that in the result sheet given to her on 9.5.80 (Ext. 1) Indunglo polling station showed 444 votes while in the Electoral Roll (Ext. 2) only 336 votes were shown. She applied for a result sheet which was given to her on 24.5.83 (Ext. 3) wherein the figures 444 were changed to 259 without initial and figures 361 were written. It was also alleged that the original result sheet (Ext. 12) submitted by Shri Jadav Chandra Goswami, an office Assistant did not tally with Exts. 1 and 3 in respect of some of the particulars furnished. However, Shri Jadav Chandra Goswami admitted in his evidence that the incorrectness in the result sheet as stated in Annexure- "A" of the election petition had not materially affected the result of the election and that he had made some corrections after clarifying the figures in the ballot paper accounts. From this the Commissioner concluded that on consideration of Exts. 1, 3 and 12 and the evidence of P.W. 5 it appeared that P.W. 5 had no authority or competency to correct the result sheet with his initials and the result sheet clearly showed that the Returning Officer had not performed his duties in the preparation of the result sheet with req(sic) care and diligence and that Ext. 12 on the basis of which the result of the election was declared, was not genuine and the correctness thereof was doubtful and that the provisions of Rule 168 were not complied with. The Returning Officer had not submitted to Court the return in original inspite of notice. The Commissioner accordingly found that the Returning Officer had contravened the relevant Rules in the preparation of the return and the result sheet. The Election Petitioner also deposed as P.W. 4 that she was not given any notice informing the date and the time of counting of votes and that she heard about the counting of votes at the bazar and came to the place of counting when counting was done. The question whether Rule 161(1) was complied with or not could not be verified as the record had not been submitted before him. P.W. 5 deposed that the documents concerning the election of 22 Dihamlai Constituency were eaten up by a cow. However, the Commissioner observed that in the written statement by the Respondents

thereof this plea was not taken and hence the story of the documents being eaten up by cow was not accepted by the Commissioner who accordingly held that the provisions of Sub-rule (1) of Rule 161 had not been complied with and that the Returning Officer had committed irregularities and anomalies by misusing his power and his acts or omissions had adversely affected the election of the Petitioner.

22. Mr. Lahiri submits that the Commissioner acted perversely, illegally and without jurisdiction in setting aside the Petitioner's election on vague allegations made by the election Petitioner that she was informed to have received 10 votes more and the Petitioner 10 votes less than what was shown in the result sheet without considering whether this would materially affect the result of the election. Counsel submits that the mere fact that in the certified copy of the result sheet (Ext. 1) against Indunglo Polling Station 444 votes were shown to have been polled by mistake although there were 336 voters listed for that polling station and the figure of votes polled was later changed to 259, and similarly for Michidui the figure of votes polled was corrected from 361 to 444, did not in any manner materially affect the result of the election to justify the conclusion that declaration of the result of the election was not genuine and its correctness was doubtful. We also find that apart from the alleged mistakes referred to in recording the figures of votes polled, it was not the case of the election Petitioner that the total of her votes had been illegally reduced to the extent of materially affecting the result of the election. There was also no allegation of any mistake or alteration in the actual number of votes received by each of the candidates in those stations. The evidence of P.W. 5 clearly showed that some election papers relating to the constituency are eaten up by a cow after the election and declaration of suit for which those could not be produced before the Commissioner. However, no recounting was prayed for or allowed and yet those were bold to have materially affected the suit of the election.

23. Rule 168 of the Rules which deals with return by the turning Officer provides:

168. The Returning Officer shall then prepare and certify return setting forth-

- (1) the result of the verification referred to in Rule 167;
- (2) the name of the candidates for whom valid votes have been given;
- (3) the number of valid votes given for each candidate;
- (4) the names of the candidates declared elected;
- (5) the number of votes declared invalid; and,
- (6) the number of tendered votes given:

and shall permit any candidate or his election agent or his authorised representative to take a copy of, or an extract from, such return.

Under Rule 169 the Returning Officer shall, after reporting the result of the

election under Rule 166 forward the return mentioned in the preceding rule to the Secretary to the Government of Assam, Tribal Areas Department. Amongst the grounds for declaring the election void under Rule 190, one of the grounds is that the result of the election has been materially effected by any non-compliance with the provisions of the rules (sic)ating to the election, or by any mistake in the use of any prescribed form. In the instant case no non compliance with the provisions of any Rule has been alleged and proved nor there any allegation of any mistake in the use of any prescribed form. What has been alleged is discrepancy in the figures the votes polled and the total number of votes in respective stations. It was not alleged that the return was not prepared and certified by the Returning Officer as required under Rule 168 nor was it alleged that the Return so prepared and tilled was not sent to the Government. Rule 161 deals with place, time and notice of counting only.

24. It is an accepted principle that no election is to be declared void by reason of any act or omission by the Returning Officer or any other person in breach of his official duty in connection with the election or election rules if it appears to the Tribunal having cognisance of the question that the election was so conducted as to be substantially in accordance with the law as to elections, and that the act or omission did not affect its result. The result in this context means the success of one candidate over another and not merely an alteration to the number of votes given to each candidate. Whether counting has to be doubted and the recounting has to be ordered will depend on the facts and circumstances of the case, see. *S. Iqbal Singh Vs. S. Gurdas Singh and Others*, The discrepancies by themselves do not make out a case for directing a recount of votes. Proper foundation is required to be laid by the election Petitioner, indicating the precise material on the basis of which it could be urged by him with substance that there were irregularities necessitating discarding of the results. Application for recounting is better made before the signing of final result sheet by the Returning Officer. See *S. Baldev Singh Vs. Teja Singh Swatantar (Dead) and Others*, where the application was submitted about half an hour after the Returning Officer had completed and signed the result sheet, and it was rejected. Vide *Beliram Bhalaik Vs. Jai Beharilal Khachi and Another*, Even when no such application was made the Tribunal could also grant recount if specific illegality substantially affecting the result of the election was made out, as was held in *Chanda Singh Vs. Choudhary Shiv Ram Verma and Others*, In *R. Narayanan Vs. S. Semmalai and Others*, it was ruled that the Court would be justified in ordering a recount of the ballot papers only where :

(i) the election petition contains an adequate statement of all the material facts on which the allegations of irregularity or illegality in counting are founded.

(ii) On the basis of evidence adduced such allegations are prima facie established, affording a good ground for believing that there has been a mistake in counting; and,

(iii) The Court trying the petition is prima facie satisfied that the making of such

an order is comparatively necessary to decide the dispute and to do complete and effectual justice between the parties.

The decisions in Janardhan v. Govind Prasad AIR 1979 Beliram Bhalaik Vs. Jai Beharilal Khachi and Another, and Chhedi Ram Vs. Jhilmit Ram and Others, are applicable.

25. Where there is no sufficient ground for recounting, decision to reject the election result for irregularities in preparing the election result sheet will not generally arise and it did not arise in this case. The finding that the result sheet was not genuine has, therefore, to be rejected.

26. The next question is how far the result of the election was (sic)rially affected by alleged closing down of Boro Chenam polling station at 3.30 p.m. instead of 4 p.m. thereby depriving 4/5 persons their right to vote which evidence according to the Commissioner was not challenged by cross-examination. Even accepting this fact 4/5 voters being deprived of their right to vote by early (sic)losure of the booth, the election Petitioner could not show that the result of the election was materially affected, the difference being much more than that. It was not the case of the election Petitioner that large number of voters were excluded. It also not proved that all these 4/5 voters would have cast their votes in favour of the election Petitioner. This by itself could not, therefore, justify discarding of the election result.

27. It is well settled that in a democracy such as ours, the (sic)urity and sanctity of elections, the sacrosanct and sacred nature (sic) the electoral process must be preserved and maintained. The valuable verdict of the people at the polls must be given due (sic)pect and candour and should not be disregarded or set at thought on vague, indefinite, frivolous and (sic)nciful allegations (sic) on evidence which is of a shaky or prevaricating character. It is also well settled that the onus lies heavily on the election Petitioner to make out a strong case for setting aside an election. D. Venkata Reddy Vs. R. Sultan and Others, It (sic) of course to be borne in mind that though the election of successful candidate is not to be lightly interfered with, one of the essentials of law is also to safeguard the purity of the selection process and also to see that people do not get elected flagrant breaches of the law or by corrupt practices. In cases where the election law does not prescribe the consequence or does not lay down the penalty for non-compliance with certain procedural requirements of the law, the Tribunal should be circumspect in setting aside the election and more so in declaring a defeated candidate elected.

23. Applying the above principles we do not find any material to uphold the impugned report of the learned Commissioner. We accordingly set it aside and consequently we also set aside the impugned order of the Governor No. HAD. 71/80/pt/225 dated the 4th May, 1984 which declared the election of the Petitioner to be void and the instant Respondent No. 4 to have been duly elected instead. The petition is accordingly allowed and the rule made absolute. All the

interim orders stand vacated. The Respondent No. 4 shall pay the cost of this petition which we assess at Rs. 500/- (Rupees five hundred) only.

Petition allowed.