

(1991) 10 AP CK 0008

In the Andhra Pradesh High Court

Case No : Election Petition No. 20 of 1990

Majji Narayana Rao

APPELLANT

Vs

Sri Gowth Shymasunder Shivaji and Others

RESPONDENT

Date of Decision : 09-10-1991

Acts Referred:

Constitution of India, 1950 — Article 226

Representation of the People Act, 1951 — Section 123, 123(2), 123(7), 123(8)

Citation : (1992) 1 ALT 5

Hon'ble Judges : Neeladri Rao, J

Bench : Single Bench

Advocate : E. Ella Reddy, for the Appellant; A. Pandu Ranga Rao, for Respondent No. 1, M.S.K. Sastry, for the Respondent No. 2 and Government Pleader for G.A.D., for the Respondent

Judgement

Neeladri Rao, J.—This election petition was filed by one of the candidates who contested from No. 2 Sompeta Assembly constituency in the elections held in November, 1989. Besides the petitioner, R.1 and R.2 herein contested from the said constituency and R.1 was declared elected. The election of R.1 was challenged inter alia on the grounds that the elections were not free and fair and the electorate could not exercise their electoral right and the right to vote was totally throttled, and booth No. 99 Pidi Mandasa, booth No. 89 Ambugam, booth Nos. 91 and 92, Tallabhadra, booth No. 90 Ambugam Bodduluru, booth No. 109 Kantragada, booth Nos. 63, 64, 65 and 66 Mandasa, booth No. 88 Lohari Banda, booth No. 87 Dunnuru and booth No. 153 Sariapalli were captured and the votes were rigged and polled by impersonation. It was also alleged that the S.I. of Police Mandasa abused his power and committed various irregularities which materially affected the election and the election is vitiated. It was further pleaded that R.1 obtained and procured the assistance of the said S.I. for the furtherance of the prospects of his election.

2. The allegations in regard to booth capturing, rigging of votes, and polling by impersonation in regard to booth No. 87 in Dunnuru, booth No. 88 in Lohari

Banda and in booth Nos. 63 to 66 in Mandasa are referred to in paras 7(f) to (h), and the allegations as against the S.I. of Police Mandasa and the procurement of his assistance by R.1 are referred to in para 8 of the election petition.

3. R.1 herein the elected candidate filed application No. 485/90 for striking off paras 7 and 8 of this election petition. By my order dt.31-8-90 the paras 7(f) to (h) and the allegations as against the S.I. of Mandasa and about R.1 procuring his assistance in para 8 were struck off. Hence there is no need to further advert to the same in this election petition.

4. The petitioner as P.W.1 deposed about the capture of booths, rigging of votes and polling by impersonation in regard to-polling booth No. 99 in Pidi Mandasa, booth No. 89 Ambugam, booth Nos. 91 and 92 Tallabhadra. He had not even deposed in regard to booths in Ambugam Bodduluru, Kantraguda and Sariapalli. Even in regard to booths in Ambugam and Tallabhadra, he deposed that he had no personal knowledge about the same and no one is examined for the petitioner in regard to the allegations of capturing booths etc in Ambugam and Tallabadhra. Hence the case of petitioner even in regard to booths in Ambugam and Tallabadra does not merit consideration.

5. Hence for the consideration of this election petition the case of the election petitioner in regard to booth capturing etc.,of booth No. 99 in Pidi Mandasa alone has to be adverted.

6. It was pleaded by the election petitioner that P.W.2 is his polling agent at booth No. 99 Pidi Mandasa and at about 7-45 A.M. R.W.2 the election agent of R.1 along with Shri Aggunna Jayaraju and others had come to Pidi Mandasa and threatened the voters and they were scared due to the violence resorted to by R.W.2 and his followers and then P.W.2 had given copy of Ex.A.1 to the Presiding Officer of booth No. 99 and requested him to stop the polling. It was further pleaded that then R.W.2 grew wild and instigated his men to drag the polling agents of the petitioner from out of the polling booth, and the polling agent (P.W.2) of the petitioner was thrown out of the booth and he went to Mandasa and reported the matter orally to Shri Ramesh (election agent of the petitioner) and then the petitioner sent telegrams as per Exs.A-2 to A-4 to the District Collector, Superintendent of Police, Election Commissioner of Andhra Pradesh and Election Commissioner of India and requested them for stopping the poll and to order repoll later. The petitioner also reported the same to Assistant Returning Officer at Sompeta as per Ex.A-5. It was further pleaded for the petitioner that at about 10-30 A.M. even P.W.3 and Shri Agguna Duryodhana, the polling agents of R.2 were also thrown out and then the voters got scared and dispersed and R.W.2 along with his men, at the instance of R.1, rigged the votes in favour of R.1 and the counter-foils of the votes would disclose that either the thumb marks or signatures of one or two persons of R.1 were put, and it was also pleaded for the petitioner that the polling in booth No. 99 was more than 96 per cent and it prima-facie establishes booth capturing.

7. R.1 denied the pleas of the election petitioner. He further pleaded that neither he nor R.W.2 went to Pidi Mandasa on 22-11-89, the date of polling and there was no incident in that village on that day and there was neither booth capturing nor rigging.

8. R.3 the Returning Officer filed the written statement. He pleaded that copy of Ex.A.1 was not given to the Presiding Officer in booth No. 99 and hence Ex.A.1 does not bear any acknowledgment. It was further pleaded that the polling officer in Pidi Mandasa had not reported any such incident in the diary maintained by him. The Additional Superintendent of Police was kept incharge of Mandasa Mandalam which includes Pidi Mandasa and if such an incident had taken place it would have come to the knowledge of Additional Superintendent of Police, and no such incident was brought to his knowledge Ex.A. 5 was referred to the concerned authorities.

9. The election petitioner as P.W.1, P.W.2, the polling agent of the petitioner in booth No. 99, and P.W.3 the polling agent of R.2 in the said booth were examined in support of the case of petitioner. R.1 as R.W.1 and his election agent as R.W.2 deposed that they had not gone to Pidi Mandasa on 22-11-89, the date of polling and they further deposed that there was neither booth capturing nor rigging in regard to booth No. 99. They also deposed that Shri Agguna Jayaraju was the polling agent of Congress-I M.P. candidate in booth No. 99. R.W.3 deposed that he gave slips to the voters near polling booth No. 99 on the date of election. R.W.4 deposed that he worked as polling agent for R.1 in polling booth No. 99 on 22-11-89. They also deposed that neither R.1 nor R.W.2 had come to the said booth on the polling day and there was neither capture of the booth nor rigging.

10. The following issues were framed on 2-7-90.

Issue No. 1:- In para (a) of the affidavit filed in support of the election petition it is stated that the statement made in paragraphs 7 and 8 of the election petition and in annexures 2 to 15 of the schedule annexed with regard to the corrupt practices of booth capturing, are true to the knowledge of the election petitioner. In paragraph (b) of the said affidavit it was stated that those statements are true to his information. Whether they are inconsistent if so, whether such election petition is not in accordance with Section 83 of the Representation of Peoples" Act, 1951.

Issue No. 2:- Whether the election petition was not presented in the High Court in person. If so, whether it is contrary to Section 81 of the Representation of Peoples" Act?

Issue No. 3:- Whether para 7-a to 7-h and para 8 are lacking in material particulars? If so, whether they are liable to be struck down u/s 83 of the Representation of Peoples" Act.

Issue No. 4:-Whether the Election Agent of R.1 Mr. Bandalem Ramamurthy Naidu, stayed away along with Agguna Jayaraju and others for threatening the

voters, and as a result the voters were scared away at Polling Booth No. 99 of Pidi Mandasa?

Issue No. 5:-Whether Mr. Bandalem Remamurthy Naidu, election agent of R.1 instigated his men to drag the Congress-I polling agents from out of the Polling Booth No. 99 of Pidi Mandasa.

Issue No. 6:- Whether R.1 and his men (specified in the election petition) captured the following booths, viz., 63, 64, 65, 66, 87, 88, 89, 90, 91, 92, 99, 109 and 153, rigged, and polled votes in favour of R.1?

Issue No. 7:- Whether Respondent No. 1 and his men indulged in threatening voters and further indulged in violence and thus created scare among the voters , and thereby the electorate could not exercise their Electoral right?

Issue No. 8:- Whether the first respondent has committed corrupt practices mentioned in Sections 123(2)(b), 7 and 8 of the R.P.Act?

Issue No. 9:- Whether the deposit of Rs. 2,000/- by the election petitioner is not in accordance with Section 117 of the R.P. Act and rules made thereunder?

Issue No. 10:- Whether the election of the 1st respondent to Andhra Pradesh Legislative Assembly from No. 2 of Sompeta Assembly Constituency is liable to be set-aside?

Issue No. 11:- To what relief?

Issues No. 1 and 2:- The learned counsel for R.1 had not addressed any arguments in regard to these two issues. The election petitioner submitted that he presented this election petition in person, hence the first limb of the issue No. 2 had to be held in favour of the election petitioner. In view of the same the later limb of issue No. 2 does not arise.

12. Section 83 of Representation of Peoples" Act (R.P. Act) lays down that the election petition shall contain a concise statement of material facts on which the petitioner relies and shall putforth particulars of any corrupt practice that the petitioner alleges including as full the statement as possible of the names of the parties, alleged to have committed such practice and the date and place of the commission of each such practice and shall be signed by the petitioner and verified in the manner laid down by the CPC for verification of the pleadings. Rule 94-A of the Conduct of Election Rules (for short rules) states that the affidavit referred to in the proviso of Section 83 shall be sworn before a Magistrate of the First Class or a Notary or a Commissioner on oath and it shall be in Form No. 25. Such affidavit was filed under Rule 94-A of the Rules. Paras (a) and (b) of the said affidavit are as under:-

"(a) That the statements made in paragraphs 7 and 8 of the accompanying election petition about the commission of the corrupt practices of booth capturing, indirect interference with free exercise of electoral rights of voters and procuring the assistance of police officer (Sections 123(2), (b), (7) and (8))

and the particulars of such corrupt practice mentioned in paragraphs 7 and 8 of the same election petition and in annexures 2 to 15 of the schedule annexed thereto are true to my knowledge.

(b) That the statements made in paragraphs 7 and 8 of the said petition about the commission of corrupt practices of booth capturing, indirect interference with the free exercise of electoral right of voters and procuring the assistance of police officer (Sections 123(2)(b) (7) and (8) and the particulars of such corrupt practice given in paragraphs 7 and 8 of the said petition and in annexures 2 to 15 of the Schedule annexed thereto are true to my information".

13. A reading of paras 7 and 8 suggests that the statements referred to in para (b) of the affidavit are true to the information of the election petitioner while the rest of the statement in paras 7 and 8 are true to the knowledge of the election petitioner. Thus there is no inconsistency between paras (a) and (b) of the affidavit filed under Rule 94-A. Even if there is such inconsistency it cannot be held that it is not in accordance with Section 83 of R.P. Act. Hence issue No. 1 is held against R.1.

14. Issue No. 3:- R.1 filed application No. 485/90 on 7-8-90 praying for striking off paras 7 and 8 of the election petition. By order dt.31-8-90 paras 7(f) to (h) and the portion in para 8 in regard to the allegations of procuring the service of S.I. of Mandasa for the furtherance of the prospects of R.1 were struck off. The order in the said application is the finding in regard to this issue.

15. Issue Nos. 4 to 8:- Booth No. 99 was in Pidi Mandasa during 1989 Assembly and Parliament elections. P.W.2 was the polling agent of the petitioner in the said booth. He deposed in chief examination that between 7-30 A.M. and 8-00 A.M. on the polling date i.e., 22-11-89, R.W.2 the election agent of R.1 had come to Pidi Mandasa along with 15 to 20 people and they included Shri Agguna Jayaraju. They threatened the voters and asked them not to vote and they themselves cast the votes. Then they were armed with knives and other weapons. Because of that, the voters were afraid and they had not come to the polling booth. Then he had gone to the Presiding Officer and gave report as per Ex.A.1 requesting for arrangement of police protection or postponement of the election by two hours. The Presiding Officer refused to take acknowledgment on the copy of that report. Then R.W.2, Shri Agguna Jayaraju and others had come into the polling booth and slapped him and necked him out of the polling booth. Then he went to the house of Shri Majji Tulasi Das, the brother of the election petitioner, at Mandasa. But Sri Tulasi Das was not there at his house then. Then he reported the matter to the election agent of election petitioner. The later asked him to go to the polling booth by informing him that he would report the incident to the police. By about 10-30 A.M. he (P.W.2) had comeback to the polling booth. By then R.1, i.e., the elected candidate had come with some of his followers to this polling booth. Then P.W.3 and Shri Agguna Duryodhana the polling agents of R.2 were also sent away from this polling booth and then some of the followers of R.1 went into the polling booth.

16. In cross-examination P.W.2 deposed that after he went into the polling booth he handed over the form authorising him to act as polling agent of election petitioner and he cast his vote and then he had given a complaint as per Ex.A.1. He further deposed that he had written the said report in the original and duplicate at door way of polling booth. He also deposed that there were no police at this polling booth on the date of polling.

17. P.W.3 deposed that from the age of discretion he used to work as polling agent of the petitioner, and during 1989 elections only he worked as polling agent of R.2 who contested as T.D.P. candidate and R.2 is his relation. He also deposed that P.W.2 had come into the polling booth at 7.45 A.M. and gave report to the polling officer and requested him to postpone the polling or to provide police protection by stating that R.W.2 along with his followers were threatening the voters and then the Presiding Officer replied that he could not do anything. Five or ten minutes after the polling was commenced, R.W.2 along with Shri Agguna Jayaraju, R.W.4 the polling agent of R.1 and others came into the polling booth and beat P.W.2 and necked him out of the polling booth. After P.W. 2 was thrown out of the polling booth, there was polling till 10.30 A.M. and by then 200 to 250 votes were polled. R.W.2 and Shri Agguna Jayaraju had come into polling booth again at 10.30 A.M. and sent him (P.W.3) and other polling agent of R.2 away from the polling booth by stating that the polling was in favour of T.D.P. By the time they were sent out of the polling booth they had seen 15 to 20 rowdies and R.1 there. As he could not stay in that atmosphere he had gone to G.R. Puram and he telephoned for R.2 and when no one lifted, he telephoned to the petitioner and informed him about the incident and then he returned to Pidi Mandasa by 12.30 or 1.00 P.M. There were no queues of voters by then, and the voters who were coming went away on seeing the rowdies with weapons and while 4 or 5 were there in the polling booth, the rowdies were guarding the the polling booth. As the polling booth was closed he could not state as to what the persons in the polling booth were doing.

18. The election petitioner as P.W.1 deposed that when he was informed about this incident in Pidi Mandasa on the forenoon of 22-11-89 by his election agent Shri S. Ramesh, he instructed him to send telegrams to the Collector and others concerned requesting them to take necessary action and to stop the poll, and to order re-poll. Accordingly he sent the telegrams as per Ex.A.2 to A.4. He reported the matter in regard to this booth to the Returning Officer who was then at Sompeta as per Ex.A.5. The Returning Officer had not taken any action in pursuance of his complaint. He further deposed that the Returning Officer had not taken any action in the matter as he had soft corner for R.1 and for the same reason no action was taken by him when his polling agent Shri C. Babji was injured due to the act of violence by the people of R.1 and that injured was not even taken to the hospital, even though he sustained injuries as per Ex.A.7 wound certificate.

19. R.1 as R.W.1 and his election agent as R.W.2 and his polling agent at this

booth as R.W.4, and R.W.3 deposed that R.1 and R.W.2 had not come to this polling booth on the date of election and no incident had taken place in this booth on the date of election. R.W.3 deposed that he was near the polling booth and he was issuing the slips to the voters noting the serial number and he worked for R.1 in the elections.

20. The election petitioner filed application No. 438./90 praying for a direction to the District Collector, Srikakulam to produce the counterfoils of ballot papers in the polling booths referred to in the election petition and other documents. He also filed application No. 199/91 praying for sending the counter-foils of the ballots referred to finger print expert. It was contended for the election petitioner that the inspection of the finger prints on the counter-foils of the ballot papers used in polling booth No. 99 will disclose that they were of only few persons and it would support the contention of the election petitioner that the people of R.1 resorted to rigging.

21. Before considering the evidence on record it may be convenient to refer to the decisions of the Supreme Court wherein the standard of proof required for proving the allegations of corrupt practice u/s 123 of R.P. Act, was stated. In Lakshmi Raman Acharya Vs. Chandan Singh and Others, it was held that proceedings arising out of election petitions are quasi-criminal in character and the allegations made in the petition must be proved beyond reasonable doubt and it is unsafe to accept the oral evidence at its face value without looking for assurance from some surer circumstances or unimpeachable documents. In A. Younus Kunju Vs. R.S. Unni and Others, it was held that a charge of corrupt practice under R.P. Act had to be proved beyond reasonable doubt and the standard of proof is the same as in a criminal case. Keeping in view the principles laid down therein about the standard of proof, the material on record has to be considered in regard to the corrupt practices alleged u/s 123(2) and 123(8) of R.P. Act.

22. Ex.A.1 the report said to have been given by P.W.2, the polling agent of petitioner to the Presiding Officer does not bear the acknowledgment of the Presiding Officer. Nothing is alleged as against that Presiding Officer to indicate that he openly supported R.1 or that he had reason to support R.1 or that he is hostile to the election petitioner. Even in Ex.A.1 the name of R.W.2 was not referred to. Though P.Ws.2 and 3 deposed that P.W.2 requested for police protection or for stopping poll, no such recitals were made in Ex.A.1. When P.W.3 was supporter of the election petitioner it is not explained as to why he kept quiet if infact P.W.2 was slapped and necked out of the polling booth. Though P.W. 3 had gone as the polling agent of R.2, his evidence discloses that earlier for number of elections he worked as the polling agent of the election petitioner. In such a case P.W.3 also would have protested if any such incident had taken place in polling booth No. 99. Mandasa is only 5 K.Ms. from Pidi Mandasa. P.W.2 deposed that after he was expelled from this polling booth he went to Mandasa and reported to the election agent of the election petitioner. If the election agent

was informed about it, he would have certainly gone to Pidi Mandasa alongwith his people to counter-act the moves of R.1's followers, if such an incident had taken place. That election agent of the petitioner is not examined. He is said to be an advocate. No explanation is given for non-examination of that election agent. If the incident as alleged by P.Ws.2 and 3 had taken place and when it is stated that the election agent was informed about it, he is a material witness. The evidence of P.Ws.2 and 3 is to the effect that after 10-30 A.M. only the rigging was resorted. Hence if in fact that incident had taken place, and if that election agent was informed and when he was at a distance of 5 K.Ms. from this polling booth, and when that place i.e., Mandasa is the native place of the brother of election petitioner he would have number of supporters there, and the normal human conduct would have been to take the supporters of the election petitioner by the election agent of the petitioner to Pidi Mandasa to prevent the followers of R.1 from resorting to threats etc., if, in fact they so indulged. But one would not keep quiet even without reporting to Additional Superintendent of Police who was put in-charge of Sompeta and Mandasa Mandalams, and when Sompeta is only at a distance of 20 to 25 K.Ms. from Pidi Mandasa, Though P.W.3 stated the distance between Sompeta and Pidi Mandasa as 15 K.Ms., only, at the time of arguments it was stated that the said distance was about 20 to 25 K.Ms. But there is no evidence to show as to why the election petitioner who is also resident of Sompeta had not chosen to complain at the camp office of Additional Superintendent of Police at Sompeta, if in fact this incident had taken place, when he stated that he was informed about it on phone itself. It is not the case of the election petitioner that the Additional Superintendent of Police openly supported R.1 or that he is hostile to the election petitioner. It is in evidence that R.1's father, and later R.1 contested as against Shri Tulasi Das, the brother of the election petitioner and later the election petitioner from this Sompeta Assembly Constituency and thus they are in politics since long. One time Shri Majji Tulasi Das, the brother of the election petitioner won the election from this constituency and he was also Minister in Andhra Pradesh State. The election petitioner also succeeded in this Assembly elections from this constituency once. Thus it is not a case where the family of the election petitioner is not having political roots in this Assembly Constituency. In such a case it is difficult to believe that any official and much less an officer of the cadre of Additional Superintendent of Police would have taken partisan attitude during the elections in this Sompeta Constituency. In fact when R.3 alleged in the counter that Additional Superintendent of Police was in-charge of Sompeta and Mandasa Mandalams, the petitioner deposed that the Additional Superintendent of Police who was supposed to be at Sompeta was not there but he had not stated as to the place where the Additional Superintendent of Police had gone. The Additional Superintendent of Police was not summoned as a court witness for being corss-examined to show that he was not at Sompeta on the date of polling. When he was in-charge of Sompeta and Mandasa Mandalams, his camp office would have given the information to the contesting candidate about the movement of the Additional Superintendent of Police, as he was kept in-charge to maintain law

and order and his movements should be made known to the contesting candidates or their agents if they want to seek information about the same. It is not stated for the election petitioner that no one was available in the camp office of Additional Superintendent of Police at Sompeta to receive the complaints and to convey the message to him. If it is a case of polling agent being removed from the polling booth even at the commencement of the polling, one will naturally apprehend that the opposite party will resort to rigging, and then it would have been naturally complained to the police. As Pidi Mandasa is only at a distance of 20 to 25 K.Ms. from Sompeta, the police could have reached within an hour and they could have ensured peaceful polling.

23. In Ex.A.5, that was given by the election petitioner, it was recited that R.1 and his followers Shri Agguna Jayaraju and others have used violence and captured the Pidi Mandasa booth No. 99, beat the Congress agents and totally prevented them from entering the booth and there was no action on the part of the Presiding Officer in spite of reports. The time was noted as 11.00 A.M. in Ex.A.5. But it is not clear as to who had noted that time. But while the election petitioner pleaded and P.Ws.2 and 3 deposed that it is R.W.2, the election agent of R.1 was with Shri Agguna Jayaraju alongwith others when they resorted to violence, the name of R.W.2 is not referred to in Ex.A.5 and on the other hand it is R.1 who was referred to as one of the persons who resorted to violence at this booth. Thus the recitals in Ex.A.5 are inconsistent to the pleading in regard to the material fact as to whether R.1 or R.W.2 who is said to have resorted to violence at this booth. Of course P.Ws.2 and 3 deposed that R.1 also had come to this booth at about 10.30 A.M. on the polling day. But it was not even suggested to R.1 that he had come to this polling booth on that day. As already observed it was not even pleaded that R.1 had come to this polling booth on the date of polling. It was merely averred in the election petition that at the instigation of R.1, R.W.2 and others resorted to the violence and rigging in this booth. But it was not specifically averred that R.1 was also present at this polling booth on the date of polling.

24. In telegrams as per Exs.A.2 to A.4 given at 2.05 P.M. on polling day at Mandasa it is stated that R.1 and R.2 and their workers captured and rigged the polling booths at 1) Pidi Mandasa, 2) Mandasa 3) Talla Bhadra, 4) Ambugam, 5) Makannapalli, 6) Boddapadu and 7) Sariapalli, by not allowing the Congress-I polling agents inside the booths. (Petitioner contested as Congress-I candidate). But in the election petition it was not even whispered that there was booth capturing and rigging in Makannapalli and Boddapadu. Though in the election petition it was stated that there was booth capturing and rigging in Ambugam Bodduluru, Katragada, Lohari Banda and Dunnavuru also, they were not referred to in Exs.A.2 to A.4 in para 3 of the written statement of R.3 discloses that the votes polled in favour of the petitioner and R.1 in polling booths in Kantragada, Lohari Banda and Dunnavuru do not indicate that there was rigging. Thus according to the learned counsel for R.1 the allegation of rigging in Pidi Mandasa in Ex.A.2 to A.4 cannot be held as true and the petitioner with an oblique motive

got those telegrams issued.

25. In para 24 of the written statement of R.1 it was stated that the petitioner got only 19 votes in 1985 Assembly elections and 13 votes in 1989 Assembly elections in Ambugam, while R.1 got 578 votes and 823 votes respectively. The particulars given therein are not contradicted. They are relied upon to contend that the petitioner had chosen to refer to some of the polling booths in Exs.A.2 to A.4 telegrams, where he is not having good support and where he could get only negligible number of votes. Similarly the particulars in regard to polling booths in Tallabhadra for 1985 and 1989 Assembly elections were given in para 29 of the written statement of R. 1. They are also not contradicted. They disclose that the petitioner got only 16 and 29 votes in polling booths 1 and 2 in Thallabadra in 1985 elections and 33 and 44 votes in polling booths 1 and 2 in 1989 elections while R.1 got 513, 423, 575 and 580 votes respectively. They are also relied upon to support the above contention, i.e., to make it appear that there was booth capturing and rigging in the polling booths where R.1 had got strong support and where the petitioner is having negligible support, and that polling booths were also referred to in Ex.A.2 to A.4 telegrams.

26. The election petitioner deposed that his election agent had given the telegrams as per Exs.A.2 to A.4. But the said election agent was not examined to show as to who informed him about the alleged booth capturing and rigging in various polling booths referred to in Exs.A.2 to A.4.

27. R.1 won with a majority of 18,580 votes. It was suggested to the petitioner that on 22-11-89 i.e., on the polling day he (the election petitioner), his election agent and his polling agents were very busy preparing reports and submitting them to the Presiding Officer, Assistant Returning Officer and the Returning Officers and it seems to be their main activity on that day. The said question was denied and the election petitioner deposed that whenever there was violence, unlawful activity and booth capturing, they were informing the concerned officers, and as Additional Superintendent of Police and R.6R who were supposed to stay at Sompeta were not available for receiving the complaints in person they were sending the reports.

28. Anyhow that question was put to indicate that as the election petitioner was sure that he would be defeated, he and his election agents were giving reports with false allegations so as to have evidence to support the plea of corrupt practice which can be alleged in the election petition.

29. In Ex. A.5 the very complaint that was given by the election petitioner on 22-11-89 the petitioner alleged that it was R.1 who had gone with his followers including Shri Agguna Arjuna to Pidi Mandasa and they resorted to violence. But in the election petition it is stated that it is R.W.2 who had gone with his followers to Pidi Mandasa. Thus there is material discrepancy in regard to the person who is said to have gone. If such discrepancy is there only in regard to some of the followers, then one may explain it on the ground that as it is difficult

to recollect the names of all the followers, such a discrepancy had arisen. But when it is a case of corrupt practice that is alleged and if such corrupt practice was resorted to by the contesting candidate or his election agent it is very material. But now the discrepancy is as to whether it is R.1 the contesting candidate or R.W.2 his election agent who had gone to Pidi Mandasa. Even Ex.A.1 does not bear any endorsement. The election petitioner had not taken steps to examine the said Presiding Officer as a court witness so as to enable him to cross-examine him. Further nothing is alleged as against that Presiding Officer. No voter is examined to prove that he was threatened and hence he had gone away, or that he had gone to the polling booth and he was informed that somebody had already exercised his vote. The election agent of the petitioner was not examined and no explanation is given for his non-examination. It is not explained as to why that election agent had not gone to Pidi Mandasa immediately after he was informed when it was only at a distance of 5 K.Ms. from Mandasa where he was then. Even though there was no rigging in Mandasa, it was falsely alleged in Exs.A.2 to A.4 that there was rigging in those booths also. Even the votes secured by R.1 as against the petitioner herein in 1985 elections, disclose that in Ambugam and Tallabhadra R.1 has strong support and the election petitioner is having negligible support. In such a case there was no need for R.1 or his followers to resort to rigging in Ambugam and Tallabhadra. But it was also alleged in Exs.A.2 to A.4 that there was rigging in polling booths in those villages also. The election petitioner had not even pleaded that there was rigging in Makannapalli and Boddapadu though it was alleged to that effect in Exs.A.2 to A.4. So it can be presumed that there was no rigging in Makannapalli and Boddapadu and a false allegation was made in regard to those villages in Exs.A.2 to A.4. Thus when it is demonstrated that the allegation of rigging in some of the polling booths referred to in Ex.A.2 to A.4 is not true, and when the author of the said statements i.e., the election agent of the petitioner is not examined, it is difficult to believe that in regard to Pidi Mandasa it was alleged on the basis of the information furnished to him. Further it is not explained as to why there was delay of about four hours for giving such a telegram, if the intention is to have the police protection to have peaceful polling in Pidi Mandasa.

30. But it was strongly urged for the election petitioner as under:-

The voting in Pidi Mandasa was to an extent of 96 per cent and the petitioner had got only 18 votes while R.1 got 800 and odd votes. R.1 has neither relations nor he has his caste people in Matsya, Sabara Matsya and Karepalli villages which were tagged on to this polling booth. There are 300 voters, 70 voters, and 60 to 70 voters respectively in the above three villages. Villages Matsya and Sabara Matsya are mainly inhabited by Harijans and Girijans and they are supporters of Congress party to which the petitioner belongs. In the earlier elections the election petitioner had not got so few votes from this polling booth. Hence these facts supported the version of the election petitioner that there was rigging in this polling booth.

31. In 1985 also the election petitioner herein and R.1 herein contested from Sompeta constituency and R.1 won in the said elections. No evidence is adduced in regard to the number of votes polled in favour of each of the candidates from this polling booth in 1985 Assembly elections. The written statement of R.3 discloses that the candidates other than R.1 got 174 votes in Pidi Mandasa. As petitioner got 18 votes, it has to be held that Telugu Desam Party candidate i.e., R.2 got 156 votes from this polling booth. P.W.3 deposed that till 10.3d A.M. there was peaceful polling. It is not stated for the election petitioner that he got support only from the three villages referred to and he had no other support from Pidi Mandasa. In the absence of the particulars of the votes polled to each of the candidates in 1985 Assembly elections it may not be stated to what extent the election petitioner is having support in Pidi Mandasa.

32. Any how the various material particulars on record which were discussed earlier do not support the case of the petitioner that there was booth capturing or rigging in Pidi Mandasa. In *Ram Surat v. Harish Chandra* it was observed as under:-

"Inspection of counter-foils of the ballots could not be allowed to establish the plea for which there was no adequate foundation either in the pleading or in the evidence of the petitioner. Such an inspection will not yield evidence of any specific fact in issue, excepting perhaps that of discarding the testimony of these eight witnesses examined by the opposite party. Manifestly the petitioner under the cover of the court's order was to fish out evidence - a course which is not permissible".

33. In that case eight of the witnesses examined for the elected candidate stated that on the polling day they were absent from the village and it was asserted for the election petitioner that the counter-foils would show that the votes would have been polled in their names. In that context the above observations were made.

In *Bhabhi v. Sheo Govind* it was held that before the court can order inspection of ballot papers, in an election petition, the following condition's are imperative.

- 1) That it is important to maintain the secrecy of the ballot which is sacrosanct and should not be allowed to be violated on frivolous, vague and indefinite allegations.
- 2) That before inspection is allowed, the allegations made against the elected candidate must be clear and specific and must be supported by adequate statements of material facts:
- 3) The Court must be *prima facie* satisfied on the material produced before the Court regarding the truth of the allegations made for a recount;
- 4) That the Court must come to the conclusion that in order to grant prayer for inspection it is necessary and imperative to do full justice between the parties;

5) That the discretion conferred on the Court should not be exercised in such a way so as to enable the applicant to indulge in a roving inquiry with a view to fish materials for declaring the election to Be void and

6) That on the special facts of a given case sample inspection may be ordered to lend further assurance to the prima facie satisfaction of the Court regarding the truth of the allegations made for a recount, and not for the purpose of fishing out materials.

35. P.W.2 deposed that he was the polling agent of the election petitioner in this polling booth, so naturally if any incident had taken place in this booth, he could have known about it. Then there could not be any discrepancy as to whether it is R.1 the elected candidate, or R.W.2 his election agent who had come with his followers. As already observed, while it is stated in Ex. A.5 report that was given on the date of polling, R.1's name was referred to in this context, while in the election petition the name of R.W.2 was referred to. Further P.W.2 deposed that the election agent of R.1 whom he had seen on the date of polling had bald head and he was short, but R.W.2, is not short and he is not having bald head. Ofcourse there was only sparse hair on his head. As Ex.A.1 does not bear the acknowledgment of the Presiding Officer and as nothing is alleged against that Presiding Officer, a doubt arises as to whether any report as per Ex.A.1 was given, especially when it was not so referred to in the diary of the Presiding Officer. It is also demonstrated that the allegations of rigging in regard to some of the polling booths referred to in Ex.A.2 to A.4 are false. Even the election agent who had given Exs. A.2 to A.4 is not examined. Hence a doubt arises as to whether those telegrams are issued with a motive or whether there is any genuine basis in regard to the allegations of booth capturing in regard to Pidi Mandasa referred to in Exs. A.2 to A.4. When it is stated for R.1 that Shri Agguna Jayaraju was polling agent of M.P. candidate for Congress-I, for polling booth in Pidi Mandasa, polling agents forms were not summoned to disprove the same. Hence a doubt arises as to whether he joined hands with others in attacking his own people. P.W.3 would not have been a silent spectator, if P.W.2 was slapped, when he himself is Congress-I supporter. As already observed the standard of proof that is required in regard to corrupt practices is same thing as in criminal proceedings and it should be beyond reasonable doubt. As there is no such evidence to establish that there was booth capturing and rigging in regard to booth No. 99, or that the voters were scared away and they were not allowed to exercise their right of voting, it is not a case for ordering inspection of the counter-foils of the ballot papers with reference to booth No. 99, and it has also to be held that it is not established that R.1 is guilty of corrupt practices alleged u/s 123(2) and 123(8) of R.P. Act.

36. As the allegations in para 8 of the election petition about R.1 procuring the assistance of services of S.I. of Mandasa for furtherance of the prospects of his election were struck off, even the corrupt practice alleged u/s 123(7) of R.P. Act has to be held as not proved.

37. Issue No. 9:- It is not shown for R.1 as to how the deposit of Rs.2,000/- made by the election petitioner is not in accordance with Section 117 of R.P. Act, and hence this issue is held against R.1.

Issue No. 10:- In view of the findings on Issues Nos. 3 to 8 the election of R.1 is not liable to be set-aside and I find accordingly.

38. After the election notification is issued and before the date of polling the Law and order situation in each constituency is reviewed. Then concerned authorities identify the villages or polling booths where there is likelihood of violence which may lead to booth capturing or rigging. It is for the Central Government to consider the desirability of arranging video recording at such places, if such a necessity arises, so as to dissuade the candidates and their followers from resorting to booth capturing rigging. The very fact of making arrangements for video recording will avoid the tendency to resort to booth capturing/mass scale rigging for it will be exposed. As a consequence of it, there will be less number of; election petitions with allegations of booth capturing/mass scale rigging.

39. Issue No. 11:- In the result election application No. 199/91 and the election petition are dismissed. No costs.

40. This election petition having been set down for being mentioned on this the 11/10/91 pursuant to the Order of this Court dated 9-10-91 and passed herein, upon perusing the said Order dated 9-10-91 in the E.P.No. 20/90 and upon hearing the arguments of the counsels appearing on behalf of the respective parties herein the Court made the following Order:-

Df.11-10-1991.

(On being mentioned)

41. This is being called today at the instance of the learned Government Pleader appearing for R-3 herein. Rule 41 of the Advocates Fee Rules is relied on for R-3 to contend that the fee of the advocate has to be fixed. Rule 41 reads as under: -

" 41. In all Election Petitions filed in the High Court fee shall be fixed at not less than Rs. 2,500/- for each contesting respondent".

42. It is manifest from the above that the fee referred to have to be fixed is for each contesting respondent. R-3 herein is not a contesting respondent. Hence that rule is not applicable. But, any how as the written statement was filed for R-3, it is reasonable to fix some fee, and in the circumstances it is just to fix the fee at Rs. 1,000-00. Hence the advocate's fee is fixed at Rs. 1,000/-.