

(2007) 06 BOM CK 0133

In the Bombay High Court

Case No : Election Petition No. 5 of 2005

Sharad Madhavrao Patil

APPELLANT

Vs

Rohidas Chudaman Patil

RESPONDENT

Date of Decision : 05-06-2007

Acts Referred:

Conduct of Elections Rules, 1961 — Rule 94A

Constitution of India, 1950 — Article 324

Representation of the People Act, 1951 — Section 100, 100(1), 101, 103, 117

Citation : (2008) 2 BomCR 883

Hon'ble Judges : Patil Naresh H., J

Bench : Single Bench

Advocate : A.M. Kanade and S.P. Brahme, for the Appellant; P.M. Shah, Sr. C. and P.D. Sangavikar, for the Respondent

Final Decision : Dismissed

Judgement

Patil Naresh H., J.—The petitioner in this election petition challenges the election of the respondent from 88-Kusumba Legislative Assembly Constituency in Dhule District on the ground of corrupt practices as enumerated under the provisions of Sections 123(1) and (8) and 100(1)(b) (iii) and (iv) of the Representation of the People Act, 1951 (for short, "the Act").

FACTUAL MATRIX

The petitioner pleads that he is a valid elector and competent to contest election to the Legislative Assembly of the State of Maharashtra. The petitioner is an active social worker and a member of "Shiv Sena" a registered political party. The petitioner filed nomination for the election in question as a candidate of Shiv Sena. Copies of Form "A" and Form "B" annexed to his nomination paper are placed on record as annexure "A" to this petition. The petitioner has produced identity card allotted by the Returning Officer, 88-Kusumba Legislative Assembly Constituency as Annexure "B".

2. It is contended that the respondent contested the election as a candidate of Congress I Party. Respondent was declared elected in the said election. The election in question was conducted to the State Legislative Assembly of Maharashtra in the month of September/October 2004. The election programme is annexed to the petition as Annexure "C". The petitioner filed his nomination paper along with other candidates for the seat from 88-Kusumba constituency. There were in all 7 candidates in the said election. The result was declared on 16-10-2004 by the Returning Officer. Copy of declaration of result is placed on record as Annexure "D". It is contended that the respondent secured 80,419 votes and the petitioner secured 41,122 votes. The petitioner claims that he secured highest votes in the 88-Kusumba constituency next to the respondent.

The petitioner submits that the respondent is a senior and seasoned politician. He was a member of the Maharashtra State Legislative Assembly for last four terms and was Minister for 22 years. It is alleged that respondent failed to perform his duties satisfactorily due to which he lost confidence of the people gradually. His popularity and influence over the electors was declining and the people wanted change and were in search of a new, young and promising candidate. The petitioner fulfilled this demand of the people. The petitioner earned reputation and name because of his hard work and sincerity as contended by the petitioner in this petition. It is further contended that the petitioner was working at the grass root level for the welfare of poor and needy people. In this manner the petitioner proved to be a tough competitor for the respondent.

3. It is alleged that the respondent indulged into commission of corrupt practices during the election. It is alleged that respondent spent huge amount and got himself elected.

The petitioner contends that there were 120 polling stations in the 88-Kusumba constituency and all these stations were located at villages comprising of poor and illiterate people/electors.

4. Respondent, it is alleged, and his supporters offered cash to the electors to induce them to vote in his favour. It is alleged that respondent bribed the electors by offering them cash amount of currency notes of high denomination at the time of "Ovalan" after "Aukshan". The petitioner further alleged that taking disadvantage of Hindu custom of "Aukshan" which fell in October 2004, lakhs of rupees were offered and distributed amongst the electors. The code of conduct was violated by the respondent by indulging into distribution of cash to the voters secretly till the voting was over.

5. The petitioner contends that a local T.V. channel called "Dhule T.V." did the videography of the incident of distribution of money which was shown on the local channel "Dhule T.V.". The citizens watched the same on the television. The petitioner converted the video graphic film into a compact disc which relates to the campaigning of the respondent of village Ajang, polling station Nos. 85 and 86. The script and the compact disk of the contemporaneous events were

produced and marked as Annexure "E" to the petition.

6. It is contended that the Doordarshan channel videographed incident of corrupt practices of the respondent which was telecast in their programme "Janadesh 2004" on 3-10-2004 at 6.00 p.m. from Mumbai Doordarshan-"Sahyadri" channel. This programme was watched by many people in the State of Maharashtra.

7. The petitioner states that an application was submitted on 26-10-2004 to the Returning Officer to confiscate the said video tape. The Returning Officer gave reply to the said application of the petitioner. As the petitioner apprehended that said video film was likely to be tampered with or destroyed, the petitioner made an application on 22-11-2004 to the Returning Officer and the Collector to preserve the said film. The petitioner has placed on record this correspondence. The petitioner filed an application for search of the record concerning the telecast of the programme "Janadesh 2004" on 25-11-2004.

8. The petitioner alleged that the respondent and his supporters tampered with the electronic voting machines and committed corrupt practice as described u/s 123(8) of the Act such as (1) due to tampering of the voting machines some votes cast in favour of the petitioner were recorded in favour of the respondent, (2) some votes cast to the other candidates were recorded in favour of the respondent and (3) maximum votes were recorded in the account of the respondent though not cast in his favour. It is alleged that the respondent and his supporters changed the integrated circuit of electronic voting machines.

9. There was booth capturing at the time of polling. Respondent and his supporters colluded with the polling officers while capturing booths. The petitioner made complaint on 26-11-2004 to the Returning Officer about the illegalities committed at the time of polling at the behest of the respondent. The petitioner also sought information from the police department. It is alleged that insufficient police force was deputed in Kusumba constituency and the respondent took disadvantage of this and captured booths. The petitioner has placed reliance on communication made in this regard.

10. The petitioner alleges that it is possible to tamper the voting machines and the petitioner is ready to demonstrate the same with the help of the technician from the said field. The voting machines were made defective and at some places button No. 1 was made operative and rest of the buttons were not functioning. The name of the respondent was at Sr. No. 1 in the ballot paper and the voting machines. At 11.30 hours the fault was detected and polling was required to be stopped. It is alleged that another machine was brought to replace the faulty one but the said second machine turned out to be defective and the third machine was requisitioned. Thus from 11.00 a.m. for 2 hours the polling was suspended. An application dated 13-11-2004 was submitted by the polling agent of the petitioner. According to the petitioner this amounts to corrupt practice as per Section 123(8) of the Act and the election of the respondent is liable to be set aside u/s 100(i)(d) of the Act.

11. The petitioner further alleged that the respondent and his supporters took disadvantage of the illiteracy of the people. The illiterate electors were told that if first button is pressed, then machine starts and thereafter a vote can be cast. This resulted in getting more votes in favour of the respondent illegally which amounts to corrupt practice u/s 123(2) of the Act.

It is contended that the respondent is an office bearer of many educational institutions run under his auspices or influence. The staff and the students of the institutions were illegally enrolled in the voters list. They were not valid electors. The petitioner had raised objections in this regard but the same were not considered. Correspondence in this regard was made by way of letters dated 12-10-2004, 4-11-2004 and 5-11-2004 copies of which are placed on record. In this fashion, it is alleged that the respondent committed corrupt practice and got elected. The election is liable to be quashed and set aside.

12. The respondent filed his Written Statement which is at Exhibit 11 of the record of this petition. Thereafter, he filed a corrected copy of the Written Statement which is at Exhibit 49. The respondent denies the claim made by the petitioner in toto. The respondent contends that the corrupt practices as alleged against him by the petitioner could be categorised as under:

Bribery Section 123(1)(a) (vide para Nos. 5, 6(i), (ii), (iii);

Undue influence Section 123(2) (Vide para Nos. 9 and 10);

Booth capturing Section 123(8) (vide paras 7 and 8).

13. The respondent contends that the accusations of bribery made in paragraphs 5 and 6 (i), (ii), (iii) of the petition are extremely vague. The petition is replete with only bald accusations made in casual and general manner. The respondent denies all the accusations levelled against him relating to corrupt practice of bribery. It is contended that the petitioner made the propositions which are very broad and general that all the polling stations in Kusumba constituency are located at the villages comprise of poor and illiterate people/electors which is not so. The respondent states that it is incorrect to state that the respondent bribed the electors by offering cash amount at the time of "Ovalanf after "Aukshan". It is false to state that taking disadvantage of Hindu customs, "Aukshan" which fell in October 2004 lakhs of rupees were offered and distributed amongst the electors. The respondent disputes the correctness of the assertions as regards the custom of "Aukshan" which fell in October 2004. In the alternative the respondent states that it is not known as to how it would amount to committing any offending act, if the existing custom or tradition is followed and respected. The petitioner does not disclose the material facts about the alleged corrupt practice of bribery.

14. As regards para No. 6 of the petition the respondent states that no complaint has been lodged by the petitioner or his agents at any time about the offending incidents quoted in the petition. All the allegations in para 5 are not correct and

they are imaginary. Resultantly, all the consequential allegations flowing from it so canvassed in para 6(ii) are also artificial and false and are denied in toto. The respondent states that the material facts are not forthcoming about videography, the CD, telecast etc. The respondent denied that the local channel-"Dhule TV" did the videography of the practice and modus operandi of the respondent as alleged and that the same was telecast on the local channel of city of Dhule.

15. The respondent denied the allegations made in this regard in the petition specifically. The respondent stated that during the entire election campaign he did not personally visit village Ajang, polling Station Nos. 85 and 86 due to inadequacy of time.

16. As regards the CD. it is stated that it is figment of fiction. No such events as alleged have ever occurred. It is stated that the respondent did not campaign jointly with the NCP leader Shri Kadambande at any time in the entire legislative assembly constituency of Kusumba. Shri Kadambande was a candidate for this election from Dhule city constituency. The respondent states that the incidents stated in para 6(i) and 6 (ii) read with the script are not existent. The respondent denied regarding occurrence of any such incident and the allegations made by the petitioner in this regard.

As regards the CD, which was stated to be part of the election petition by the petitioner, it is contended that the petitioner has failed to furnish copy of the CD to the respondent. The bound copy of paper book served to the respondent did not contain copy of the said CD. Failure of the same resulted in causing serious prejudice to the respondent which amounts to non compliance of the statutory provisions of Section 81(3) of the Act entailing dismissal of the petition u/s 86 of the Act.

17. As regards paragraph 6(ii) of the petition the respondent states that the date of polling was 13-10-2004, on 16-10-2004 counting was done and results were declared. The first complaint was filed by the petitioner on 24-10-2004, as contended, which was an after thought.

18. As regards the telecast on Sahyadri channel under the programme titled as "Janadesh 2004" it is contended by the respondent that there is no pleading about the exact objectionable statement of the respondent. It is not made clear as to which particular few corrupt practices of the respondent came to be videographed or telecast in the programme "Janadesh 2004" as alleged in para 6 (ii). The respondent categorically denied the correctness of Exhibits F", "G" "H" and I.

The respondent denied that he indulged in corrupt practice and violated the code of conduct so as to invoke the provisions of Section 101(b) of the Act due to which the election is materially affected by the alleged corrupt practices.

19. As regards the contentions in para 7 of the petition relating to booth capturing the respondent states that the allegations are false and without any

corroboration.

As regards the allegations made relating to tampering with the integrated circuit of the voting machines, the respondent denied the said charge. It is contended that under Article 324 the superintendence, direction, control and conduct of the election vests in the Election Commission which is an independent constitutional functionary. The respondent denied that booth capturing was done by seizure of voting machines placed at the time of polling. The allegations regarding tampering with the voting machines are imaginary. In this connection it is contended that the petitioner polled 41,074 valid votes along with other candidates who also polled some votes. The respondent denied the charge levelled in connection with Annexures "K" and "M".

20. As regards the allegations in para 8 of the petition it is contended that these allegations are not supported by affidavit u/s 83. The affidavit is restricted to the allegation made in para 7. Para 8 relates to the alleged irregularities occurred at two polling stations i.e. at Achande and Ubhand. Considering the total voting polled at Achande and Ubhand it is contended that the voting at these two objected polling stations do not make any material alteration in the ultimate verdict as respondent polled 1579 votes from these two places.

As regards the paragraphs 9 and 10 of the petition which relate to allegations of exercise of undue influence (Section 123(2)) it is submitted that the accusations are vague and factually incorrect and they are categorically denied by the respondent.

21. Regarding the affidavit u/s 83 proviso the respondent stated that it is no affidavit in the eye of law. The affidavit is false to the knowledge of the petitioner. Lastly, the respondent prayed for dismissal of the election petition with costs.

Based on the pleadings of both the sides, issues were framed by me at Exh. 20. They are reproduced herein below with my findings thereon.

ISSUES FINDINGS 1) Whether the election petition is bad for non disclosure of cause of action?

-No-

2) Whether the petition raises any adjudicatory and triable issues?

-Yes-

3) Whether the petition is bad for non compliance of statutory provisions of Section 81(3) of the Representation of the People Act? If yes, what is the consequence?

-No-

4) Whether the affidavit filed by the petitioner in support of the contentions concerning corrupt practices is in consonance with the requirement of law?

-Yes-

5) Whether the petitioner proves that respondent committed corrupt practices as enumerated under the provisions of Section 123(1)(a) of the Representation of the People Act?

-No-

6) Whether the petitioner proves that respondent bribed the voters of village Ajang?

-No-

7) Whether the petitioner proves that respondent bribed the villagers by offering them cash in the form of "Ovalanf after doing "Aukshari?

-No-

8) Whether the petitioner proves that video graphic film was converted in Compact Disk (CD) relating to campaigning of respondent at village Ajang?

-No-

9) Whether the petitioner proves that the Doordarshan videographed the corrupt practice of respondent in its programme "Janadesh 2004" telecast on 3-10-2004 at 6.00 p.m., on "Sahyadri" Channel of the Doordarshan?

-No-

10) Whether the petitioner proves that respondent committed corrupt practices by misguiding the voters?

-No-

11) Whether the petitioner proves that the supporters of the respondent tampered with the voting machines of Kusumba constituency by introducing a special programme which was designed in favour of the respondent?

-No-

12) Whether the petitioner proves that integrated circuit of the voting machines was tampered by the respondent as a result of which the votes cast in favour of the petitioner and other candidates were recorded in favour of the respondent?

-No-

13) Whether the petitioner proves that tampering of the voting machine is possible in the manner in which it was pleaded by the petitioner?

-No-

14) Whether the petitioner proves that at village Achande (Polling Station No. 120) the voting machine was defective and only the button No. 1 was operative and rest of the buttons were not functioning?

-No-

15) Whether the petitioner proves that at Ubhand there was failure of the voting machines due to tampering and booth capturing by the supporters of the respondent amounting to corrupt practice as per Section 123(8) of the Representation of the People Act?

-No-

16) Whether the election of the respondent is liable to be set aside as per Section 100(1)(b) and (d) of the Representation of the People Act?

-No-

17) Whether the petitioner proves that the respondent is guilty of committing corrupt practices?

-No-

18) Whether the petitioner proves that the respondent misled the voters to push the first button for starting the voting machine which resulted in more votes being cast in his favour amounting to corrupt practice u/s 123(2) of the Representation of the People Act?

-No-

19) Whether the petitioner proves that the respondent, who runs various educational institutions, derived benefits of the same and got enrolled many members of the educational society and the students of the institutions as voters, who were otherwise not the valid voters?

-No-

20) Whether the petitioner proves that the respondent is guilty of committing corrupt practice of undue influence within the meaning of Section 123(2) of the Representation of the People Act?

-No-

21) Whether the respondent proves that he was not served with a bound copy of the paper book of the Election Petition containing the Compact Disk (CD) therein?

-No-

22) What order?

-As per final order-

DISCUSSION OF ORAL EVIDENCE Issues Nos. 3 and 4:

22. As regards the provisions of Section 81(3) of the Act, the respondent averred in the Written Statement that the petitioner did not furnish the copy of compact disc along with the copy of paper book of the election petition. Failure to furnish

copy of said document i.e. compact disc resulted in causing serious prejudice to the respondent. The non-furnishing of the copy of the document i.e. compact disc amounts to non-compliance of statutory provisions of Section 81(3) of the Act. The petition should be dismissed u/s 86 of the Act, as per the contentions raised by the respondent.

Provisions of Section 81(3) reads thus:

Every election petition shall be accompanied by as many copies thereof as there are respondents mentioned in the petition and every such copy shall be attested by the petitioner under his own signature to be a true copy of the petition.

23. I have perused the paper book of election petition and the original record maintained by the Registry of this Court. The election petition was presented on 29th November, 2004. According to the endorsement made by the authorized officer, four copies of the memo i.e. election petition were filed to be served on the respondent. The endorsement further shows that the synopsis was also filed along with form No. 25, concise statement and memo of registered address. The summons were issued to the respondent returnable on 4-4-2005 by an order dated 7-3-2005. The Bailiff report, dated 22nd March, 2005, shows that the copy of election petition was received by the Personal Assistant of respondent Shri. Rohidas Chudaman Patil on 22nd March, 2005.

24. The respondent filed application Exh. 16 dated 15-7-2005 praying for leave to produce original copy of the election petition together with all documents annexed, served on the respondent and application Exh. 17 dated 15-7-2005 praying for keeping the copy of the election petition served on the respondent, in safe custody under the seal of the " Registrar. The respondent was granted leave to produce the original copy of the petition served on him and the same was directed to be sealed and kept in the custody of the Registrar (Judicial) of this Court by an order dated 18th July, 2005.

It would, therefore, be curious to note that though the copy of election petition was served on the respondent on 22-3-2005, the respondent chose to file applications Exhs. 16 and 17 to produce the original copy of the petition before the Court for keeping it in safe custody under the seal, on 15-7-2005. No satisfactory explanation is found as to why the respondent did not raise objection regarding non-supply of copy of compact disc with the copy of petition, within a reasonable time after the service of copy of election petition on him.

By an application dated 17-3-2006 the petitioner prayed for exhibiting the compact disc, which is Article "X", and for allowing the petitioner to display the said compact disc. The said application was objected to by the respondent. By an order dated 22-3-2006, the application filed by the petitioner for exhibiting the compact disc [Article "X"] came to be rejected. The compact disc was neither exhibited nor it was allowed to be used by the petitioner in evidence.

25. In the case of Murarka Radhey Shyam Ram Kumar Vs. Roop Singh Rathore

and Others, , the Apex Court observed:

We are of the view that the word "copy" in Sub-section (3) of Section 81 does not mean an absolutely exact copy, but means that the copy shall be so true that nobody can by any possibility misunderstand it.

The Supreme Court further observed in Murarka's case (supra):

We are of the view that the word "copy" does not mean an absolutely exact copy. It means a copy so true that nobody can by any possibility misunderstand it. The test whether the copy is a true one is whether any variation from the original is calculated to mislead an ordinary person.

In the case of T.M. Jacob Vs. C. Poulse and Others, , the Apex Court in paragraph 45 observed:

In our opinion, it is not every minor variation in form but only a vital defect in substance which can lead to a finding of non-compliance with the provisions of Section 81(3) of the Act with the consequences u/s 86(1) to follow. The weight of authority clearly indicates that a certain amount of flexibility is envisaged. While an impermissible deviation from the original may entail the dismissal of an election petition u/s 86(1) of the Act, an insignificant variation in the true copy cannot be construed as a fatal defect. It is, however, neither desirable nor possible to catalogue the defects which may be classified as of a vital nature or those which are not so. It would depend upon the facts and circumstances of each case and no hard and fast formula can be prescribed. The tests suggested in Murarka Radhey Shyam Ram Kumar Vs. Roop Singh Rathore and Others, are sound tests and are now well settled.

26. In re-examination of the petitioner, a question was put as to whether a copy of compact disc as annexure to the election petition was supplied in all the copies. An objection was raised to the said question in re-examination on behalf of the respondent stating that the said question put to the petitioner in re-examination by the Advocate for the petitioner would amount to a leading question. The said objection raised by the Advocate for the respondent was overruled. The petitioner answered that he had supplied copy of compact disc with all the copies of election petition.

From the facts and the evidence led by " the parties, it is evident that the respondent has failed to establish that the petitioner did not furnish copy of a document i.e. compact disc along with the copy of election petition which was served on the respondent. The petitioner has made a categorical statement" in the pleadings and in his oral evidence that he has served a copy of compact disc along with the petition to the respondent, which the respondent has denied. There is no clinching evidence to reach safe conclusion that the petitioner did not furnish a copy of compact disc along with the petition to the respondent. Therefore, there was no question of the respondent being prejudiced or misled in any manner.

For the reasons stated above, I arrive at a conclusion that the objection raised by the respondent that the petition requires to be dismissed for non-compliance of provisions of Section 81(3) of the Act is not sustainable and the same is answered in negative.

27. The another issue is regarding whether affidavit filed by the petitioner in support of the contentions concerning corrupt practices is in accordance with the provisions of Section 83(c) of the Act in Form No. 25 of Rule 94-A of Conduct of Election Rules, 1961.

The petitioner has filed an affidavit in support of his contentions of allegations of corrupt practices. The said affidavit is at page No. 20 of the election petition. Perusal of the said affidavit shows that the statements made in paragraphs No. 5 and 6(i) to (iii) of the election petition and the particulars of corrupt practices mentioned in paragraphs 5 and 6 of the same petition and in paragraphs 1 to 3 of Annexure "E" of the schedule annexed thereto were said to be true to the knowledge of the petitioner.

The statements made in paragraph 7 of the petition about the commission of corrupt practices and the particulars of such corrupt practices mentioned in paragraph 7 of the petition and in paragraphs 1 to 8 of Annexure "K" and "M" of the schedule annexed thereto were said to be true to the information of petitioner.

The statements made in paragraph 9 of the petition about the commission of corrupt practices and the particulars mentioned in paragraph 9 of the petition were said to be true to the knowledge of the petitioner.

The objection of the respondent is to "the effect that there is complete non-compliance with the requirements of Section 83(1)(a) and (b) of the Act and the allegations in paragraph 8 of the petition were not supported by an affidavit u/s 83 of the Act.

Under the provisions of Section 86 of the Act, an election petition is required to be dismissed which does not comply with the provisions of Section 81 or Section 82 or Section 117 of the Act. The non-compliance of the provisions of Section 83 shall not entail dismissal as pre the provisions of Section 86 of the Act.

28. In the case of Murarka (supra), the Supreme Court in paragraph 8 observed:

It seems clear to us that reading the relevant sections in Part VI of the Act, it is impossible to accept the contention that a defect in verification which is to be made in the manner laid down in the Code of Civil Procedure, 1908 for the verification of pleadings as required by Clause (c) of Sub-section (1) of Section 83 is fatal to the maintainability of the petition.

29. The defects, if any, due to non-compliance of Section 83 of the Act can be dealt with under the doctrine of curability and in view of Section 86(1) read with 86(5), such non-compliance would not entail dismissal of the election petition at

the threshold.

30. The learned Senior Counsel appearing for the respondent submitted that in the affidavit submitted in support of the contentions of corrupt practices there is no mention of averments in para 8 of the petition. In para 8 of the petition the petitioner refers to tampering of the voting machines. The allegations were made by the petitioner to the effect that the voting machines were made defective and at some places they broke down. It is further alleged that due to defects in the voting machines the voting had to be stopped at village Achande (polling station No. 120). At village Ubhand there was failure of voting machines. The failure of machines was due to tampering and booth capturing by the supporters of the respondent which amounts to corrupt practice as per Section 123(8) of the Act. It is further alleged that at village Achande voting machine was defective and only button No. 1 was operative and rest of the buttons were not functioning.

31. In substance, the allegations made in " para 8 concerning tampering of the voting machines relate to the supporters of the respondent, who are neither specifically named in the petition nor any evidence is led to mention the names of such supporters and the exact role played by them in tampering of the voting machines and booth capturing. Allegations in para 7 of the petition are made against respondent and his supporters who allegedly committed corrupt practice as described in Section 123(8) of the Act. It was alleged that the supporters of the respondent tampered with the voting machines in 88-Kusumba Constituency in such a fashion that a programme was introduced in those machines which was designed to favour the respondent. It was further alleged that by changing integrated circuit or tampering with the machines the defects and faults were created in the voting machines.

32. Perusal of the affidavit shows that in para (b) the petitioner had stated that the statements made in para 7 of the petition and paragraphs 1 to 8 of Annexures "K" and "M" were true to his information.

33. The contentions of booth capturing and tampering of the voting machines are raised in para 7 also and, therefore, absence of statement in the affidavit concerning the contentions raised in para 8 would not be fatal to the petition. I, therefore, find that the affidavit filed by the petitioner u/s 83 of the Act and Rule 94-A (in Form 25) of the of the Conduct of Elections Rules, 1961 substantially comply with the require merits of law.

The respondent filed Written Statement to the petition and chose to proceed with the trial of the election petition. It would be necessary to note that the respondent chose not to press for preliminary objection regarding maintainability of the petition before the trial could start.

Considering the nature of allegations made in the petition and the particulars provided thereof, the objection raised by the respondent does not deserve consideration, at this stage. The said objection is not sustainable. Issue No. 3 is answered in negative. The answer to issue No. 4 is in affirmative.

Issues Nos. 5, 6 and 7:

34. On the substantial allegations made by the petitioner in the election petition, it was deposed by the petitioner that the respondent was aware of the petitioner's popularity and concerned about decline in his percentage of votes therefore the respondent decided to resort to unfair means in the election by utilizing his money power. It was deposed that the people residing in the constituency are poor, backward and illiterate. There were 120 polling booths in the said constituency.

35. In the examination-in-chief the petitioner deposed that the respondent bribed the voters by offering cash amount of currency notes of high denomination including Rs. 500/- in the form of "Ovalanf after " ". The respondent was engaged in offering currency notes to large number of voters in return of "Aukshan" or in the form of "Ovalanf. It was deposed that this was going on between 22-9-2004 and 9-10-2004. These incidents were videographed by a local channel called "Dhule TV". The petitioner deposed that at village Ajang the respondent was offering currency notes to the voters and while doing so the activities of the respondent were videographed by Dhule T.V. wherein it could be seen that the respondent was offering currency notes to the voters. It is deposed that a compact disk was converted from the video tape which was in possession of Dhule T.V. The petitioner further deposed that Doordarshan channel "Sahyadri" telecast a programme "Janadesh 2004". It also showed/respondent offering cash notes to the voters.

36. The petitioner claims that he made correspondence in this regard with the authorities. During the cross examination of the petitioner he deposed that he had not filed written complaint to the Returning Officer of Kusumba Constituency that the respondent was offering currency notes of high denomination in return of "Aukshan or "Ovalanf. But he made an oral complaint to the Returning Officer. The witness volunteered that he did not address any press conference about the illegalities of the respondent but stated that his election office had issued press notes to various media establishments/persons but a complaint was made to the police on 29-10-2004 after the elections were held.

37. The petitioner did not make any complaint to the Observers deputed by the Election Commission to supervise the election process. Neither complaint was made to Shri Balasaheb Thakare, who, according to the witness, is party supremo of Shiv Sena political party regarding the alleged mal practices.

38. The witness stated that there was no embargo on him to file complaint regarding mal practices alleged against the respondent with the Returning Officer, the Election Commission, the police authorities or the party chief. The witness further deposed that he did not think to contact the observers deputed by the Election Commission during the election campaigning for putting up his grievances before them.

39. The petitioner further deposed that he came to know of the mal practices

adopted by the respondent in distributing currency notes through Doordarshan news and from telephone calls received by him from various persons. The petitioner admits that he had not seen the programme "Janadesh 2004" telecast on the Doordarshan nor he gave interview to the media persons from "Sahyadri" channel. He further deposed that he was not personally aware as to who took interview of the respondent on behalf of the Doordarshan. The petitioner deposed that it is true to say that the correspondence regarding programme "Janadesh 2004" telecast by the Doordarshan was made after declaration of result of the said election. The petitioner further deposed that he never made any grievance in his correspondence concerning telecast of the programme "Janadesh 2004" regarding distribution of currency notes during the election process by the respondent or his workers in return of "Aukshan" or "Ovalanf. As regards the videography made by Dhule TV the petitioner deposed that he was not aware as to when the same was done and the petitioner came to know about the same-from others.

40. P.W. No. 2 Dilip Chavan deposed that he had visited village Ajang on 26th or 27th September 2004. At that time he saw that respondent Rohidas Patil, Rajwardhan Kadambande, Gulab Patil were engaged in election campaign. He witnessed a lady from Bhil community performing "Aukshan" of the respondent and in return he saw that the respondent was having bundle of currency notes of Rs. 500/- denomination and was offering one currency note out of the same to the said lady. The witness informed the petitioner on telephone that the respondent is distributing money in village Ajang and he should do something in this regard. The witness claimed to have seen a person doing videography of the procession wherein the respondent was distributing currency notes. In the cross examination the witness deposed that for the first time he informed the petitioner about distribution of money by the respondent in the meeting at Central Office of Shiv Sena party. The witness admitted that he did not inform the petitioner regarding videography on the day when he visited the village. The witness did not make any complaint to any of the authorities regarding the incident neither he thought to gather the workers of the Shiv Sena party and to lodge a protest.

In the evidence of the petitioner and his witnesses P.W. 2 Dilip and P.W. 4 Manish Joshi allegations were made against the respondent regarding distribution of currency notes to the womenfolk in the Kusumba constituency while "Aukshan" was performed. P.W. 3 Manish Joshi claimed to have watched Sahyadri channel and noticed objectionable features in the same. In the said programme he claimed to have seen that the respondent was offering money while Aukshan was performed. The witness was shocked to see the programme and thereafter he contacted the petitioner on telephone and informed about the said programme. This witness was cross-examined during which he stated that he is Taluka Deputy Chief of Shiv Sena party. The witness stated that he did not file complaint before any authority regarding the incident of offering of currency notes while Aukshan was performed. He only informed the petitioner of the incident but he did not

think it appropriate to file complaint with the concerned authorities. Except informing the petitioner the witness did not take any other steps.

41. The evidence led by the petitioner in this regard is that the respondent was seen offering currency notes while the custom of "Aukshan" and "Ovalani" was performed according to the Hindu custom. The substance of the allegations is that in return of "Aukshan", respondent was offering currency notes in order to secure votes of the women voters who were illiterate and poor.

42. From the pleadings and the evidence led by the petitioner it can be safely, concluded that the petitioner has failed to establish the charge and allegations against respondent that he was indulged in distributing money by taking disadvantage of Hindu custom of "Aukshan" and "Ovalani". The petitioner could not establish that currency notes of Rs. 500/- denomination were distributed by the respondent and his supporters at village Ajang. The petitioner failed to establish that respondent was in fact present in the said village during the crucial time. The petitioner's knowledge of distribution of money is based on hearsay and on information received by him and his party supporters on telephone and during personal interaction at the party meeting. Complaints in this regard are stated to be lodged at a much later point of time. There is no justifiable and convincing explanation given by the petitioner and his witnesses as to why after noticing such acts on the part of the respondent they did not feel it necessary to lodge immediate protest with the appropriate authorities. The evidence of P.W. 2 Dilip to the effect that he had visited village Ajang and had witnessed the procession wherein the respondent was seen offering currency notes to women folk seems to be imaginary and is not supported with any cogent material on record. These allegations and charges made against the respondent, therefore, are not proved. Hence, issues Nos. 5, 6 and 7 are answered in negative.

Issues Nos. 8 and 9:

43. The petitioner deposed that at Dhule a TV channel known as "Dhule TV" videographed the election campaign of 88 Kusumba constituency. The Dhule TV videographed incidents where respondent was seen offering currency notes to the voters by way of "Ovalani" in return of "Aukshan". The petitioner got prepared a compact disk of the videotape, which was in possession of Dhule TV and the CD is annexed to the election petition along with transcript at Exhibit "E". The petitioner did not examine any person from Dhule TV channel in support of his claim. In the cross examination the petitioner stated that he was not aware as to when videography of election campaign was done by the persons from Dhule TV. Many people told the petitioner that persons from Dhule TV videographed the election campaign therefore the petitioner came to know of it. In the written statement the respondent had raised an issue that along with the copy of election petition copy of the CD was not furnished which amounts to non compliance with the statutory provisions of Section 81(3) of the Act entailing dismissal of the petition u/s 86. It would be appropriate to mention here itself that during the cross-examination by respondent the petitioner had filed an

application on 17-3-2005 praying for exhibiting the CD, "X". By an order dated 27-3-2006 the application Exh. 56 filed by the petitioner to the said effect came to be rejected. Reliance was placed by learned Senior Counsel for the respondent on the following reported judgments.

(1) L.R. Shivaramagowda, Etc. Vs. T.M. Chandrashekar Etc., .

(2) Ravinder Singh Vs. Janmeja Singh and Others, .

(3) Mahant Ram Prakash Dass Vs. Ramesh Chandra and Others, ; and

(4) Quamarul Islam Vs. S.K. Kanta and others, .

44. The petitioner has failed in establishing the authenticity of the CD for using the same in the evidence. The CD would lose its evidentiary value in view of the rejection of application Exh. 56 filed by the petitioner.

45. As regards Issue No. 9 "whether the petitioner proves that the Doordarshan videographed the corrupt practice of the respondent in its programme "Janadesh 2004" telecast on 3-10-2004 at 6.00 p.m. on Sahyadri channel of the Doordarshan", the petitioner deposed that his interview was recorded by Sahyadri channel along with the interview of the respondent. Clippings of his election campaigning were shown in the said programme "Janadesh 2004". The petitioner further deposed that the respondent was shown in the said programme offering currency notes to the voters. The programme "Janadesh 2004" was telecast on Doordarshan on 3rd October 2004 at 6.00 p.m., according to the petitioner. The petitioner further deposed that on 26-10-2004 he filed an application with the Returning Officer inviting his attention that such programme was telecast on Doordarshan. Request was made to the Returning Officer to take search of the video cassette for the purpose of Court proceedings. The Annexure "F" to the petition was objected to be exhibited and read in evidence by the respondent based on the contention that the said copy is not the original one or a certified copy of the original. It was submitted on behalf of respondent that unless the evidence is led to establish that such a communication was made to the Returning Officer the contents of the said letter cannot be read in evidence. At the time of recording of evidence by consent of the parties the said document was exhibited by me subject to the decision which would be taken later on regarding its admissibility in evidence. Therefore, the said objection is being decided now. It is true that the petitioner has produced a simple typed copy on record as Annexure "F" to the petition. The copy is signed as true copy by the petitioner and also the Advocate for the petitioner. The petitioner has not led any evidence to bring on record the original copy received by the Returning Officer or any other evidence establishing that such a communication was in fact made by the petitioner to the respondent, except the evidence of the petitioner. Considering the provisions contained in Chapter V of the Indian Evidence Act 1872 I am of the view that the said document Annexure "F" cannot be read in evidence. The document is relevant to the extent that in accordance with the oral evidence of the petitioner the application was made to the Returning Officer.

Even if the existence of the document is held to be established by the petitioner, for want of sufficient evidence the contents of the said document cannot be read. During the course of recording of evidence the document was exhibited subject to the decision on the objection raised by the respondent. Mere marking of a document as an exhibit does not dispense with the proof of the document Sait Tarajee Khimchand and Others Vs. Yelamarti Satyam alias Satteyya and Others, & Sanjay Cotton Co. Vs. Omprakash Shiopprakash and Another, . Therefore, I find substance in the objection raised by the respondent. The objection is sustainable and accordingly I hold that the document, Annexure "F" could not be read in evidence.

46. The petitioner deposed that the Returning Officer by a letter dated 29-10-2004 communicated to him that the petitioner should intimate him the date and time of the programme "Janadesh 2004" which was telecast on "Sahyadri" channel. A typed copy of the communication signed as true copy by the petitioner and his Counsel purportedly made by the Returning Officer to the petitioner dated 29-10-2004 is placed on record as Annexure "G" to the petition.

47. The learned Counsel for the respondent has raised objection as regards admissibility of the said document in evidence on the ground that the petitioner has failed to prove the communication and the contents thereof. The respondent raised objection to the admissibility of Annexure "G". The petitioner has not examined any responsible officer from the office of the Returning Officer to establish that such a communication was made by the Returning Officer to the petitioner dated 29-10-2004. Except evidence of the petitioner there is nothing on record to prove the contents of the said letter. The document, Annexure "G" to the petition, therefore, cannot be read in evidence.

From the evidence I find that except the word of the petitioner and his pleadings no evidence is led by the petitioner to establish that such a communication was received by the petitioner which was forwarded by the Returning Officer. Therefore, the said document, though exhibited, cannot be read in evidence.

48. The other witness examined on behalf of the petitioner is P.W. 4 Manish Joshi who claims to have watched the programme "Janadesh 2004" on "Sahyadri" channel. He deposed that he had seen respondent offering currency notes while women performed "Aukshan". The witness stated that he contacted later on the petitioner on phone and informed him of the said programme. The witness admitted in the cross-examination that he did not file any complaint before any authority concerning the incident which was, according to him, objectionable on the part of the respondent. Except informing the petitioner he did not take any steps. The witness stated that he is working for the Shiv Sena party since last 10 to 12 years. The witness admitted that except informing the petitioner on telephone he has not done anything in the matter. The evidence of this witness does not inspire confidence. From the material produced on record it is seen that the petitioner has failed to establish that in the programme "Janadesh 2004" on the "Sahyadri" channel the respondent was shown distributing currency notes to

women voters. The objections raised by the respondent as regards the pleadings made in this connection and the oral evidence led by the petitioner are sustainable. Accordingly, I record my negative findings on these issues.

Issues Nos. 10, 11, 12, 13, 14, 15, 16, 17 & 18:

49. The petitioner in para 7 of the petition pleaded that the election of the respondent suffers from commission of corrupt practices as described u/s 123(8) of the Act. It is alleged that the supporters of the respondent tampered with the voting machines of 88-Kusumba Constituency in such a fashion that a special programme was introduced in those machines which was specifically designed to favour the respondent. It is alleged that the integrated circuit of the electronic voting machine was tampered. Booths were captured and seized at the time of polling. Respondent, it is alleged, and his supporters colluded with the polling officers for committing booth capturing. A complaint was filed by the petitioner to the Returning Officer on 26-10-2004 about the illegalities. At village Ajang Polling Station No. 120 voting machine was made defective and at some places they broke down at the crucial time. The polling had to be stopped from 11 a.m. to 2 p.m. The election of the respondent, according to the petitioner, was liable to be set aside u/s 100(i)(d). Allegations of tampering with voting machine, booth capturing are made in para 7, 8 and 9 of the petition. The petitioner alleged that the respondent spread a wrong message to the voters that the voters were to push the first button which would facilitate the machine to operate.

50. The petitioner deposed before the Court as regards corrupt practice pleaded in paragraphs 7,8 and 9 of the petition. In the deposition the petitioner deposed that the voters of Kusumba constituency are poor and illiterate due to which the respondent spread a wrong message to the voters that for putting the machines into operation voters will have to press button No. 1. Name of the respondent was at Sr. No. 1 in the Electronic Voting Machine along with his symbol. The learned Senior Counsel Shri Shah raised an objection as regards the contentions in para 8 of the election petition that the affidavit is not filed by the petitioner to support the allegation of corrupt practice committed by the respondent. The petitioner further deposed that due to defects in the electronic voting machine voting at village Ubhand could not take place for some time and the polling agents had to file complaints in writing to the polling officer. The petitioner had filed an application to the Superintendent of Police Dhule bringing to his notice that there was shortage of police force. Copy of complaint addressed by Polling Agent Pravin Shivaji More and Ramlal Santosh More to the polling officer on 13-10-2004 was annexed to the petition.

51. In the cross examination the petitioner deposed that at every polling booth electronic voting machine was installed and before the polling started the staff of the Election Commission put up demonstration of the voting machine in presence of the Polling Agents of the respective candidates. The petitioner admitted that in case the polling agents were present their signatures were obtained by the presiding officer on the seal which was put after demonstration and the

functioning of the voting machine. He further admitted that before polling started the demonstration of the voting machines and other necessary formalities were completed. The petitioner further deposed that it is true that none of his polling agents filed complaint; or any grievance to the concerned authority regarding finding of fault with the integrated circuit of the electronic voting machine. Except objection regarding polling station situated at village Achande and village Ubhand neither the petitioner nor his polling agents filed any complaint to the concerned authorities regarding faulty electronic voting machines or regarding its tampering.

52. The petitioner further deposed that neither the petitioner nor his polling agent made any request to the concerned authorities for extension of time for facilitating the voters to cast their votes at village Achande. The Returning Officer had in writing communicated to the petitioner that polling time at polling station located in village Achande was extended by two hours. There were two polling stations in village Achande out of which on one polling station the electronic voting machine did not work for some time, according to the petitioner. The petitioner further deposed that the polling agents orally made complaints to the concerned authorities regarding defective voting machines. The petitioner deposed that the total votes polled at polling stations located at village Ubhand were 803. Respondent polled 420 votes and 90 votes were polled by the petitioner, 283 votes were polled by Vinayak Shinde while other contesting candidates polled 3, 7, 1 and 9 votes respectively.

53. P.W. 3 Bhagwan Patil deposed in examination-in-chief that he had gone to village Henkalwadi which is one and half kilometres away from his village Sadgaon for purchasing some birds. The witness saw some persons belonging to the party of the respondent present there who were having voting machines with them and were describing some women members of the village as to how to operate the said machine. The witness deposed that one of the persons from the said group was heard saying that the machine will work if button at Sr. No. 1 was pressed and if button at Sr. No. 2 was pressed then one may receive shock. The witness returned to his village after witnessing the incident. When the witness met some workers of the petitioner's party he informed them that he had seen some persons belonging to the party of the respondent at village Henkalwadi along with voting machine. From the evidence it appears that the presence of this witness at the crucial time and place was highly doubtful. The evidence of the petitioner's witness demonstrates that he is a chance witness. No reliance could be placed on the evidence of this witness for establishing the charge of corrupt practice levelled against the respondent.

54. The learned Senior Counsel appearing for the respondent submitted that no evidence is led by the petitioner to substantiate his allegations that the voting machines were tampered to suit the purpose of the respondent. The allegations that illiterate voters were lured to press button No. 1 is also imaginary and is deliberately made against respondent No. 1 to level false charges.

55. From the pleadings and the oral evidence led in this behalf by the petitioner it is found that though there is some evidence to say that polling at one or two places had to be stopped due to defects in the voting machines but then extra time of two hours was given by the polling officers to the voters. The petitioner failed to establish as to whether the integrated circuit of the voting machines could be tampered and, if so, in this case the same was done. There is absolutely no evidence to demonstrate as to who was instrumental in the alleged tampering of the voting machines. As regards the allegations of booth capturing the same is a serious charge. There is absolutely no evidence to support the case of the petitioner on this charge that respondent and his supporters had captured booths. The complaints made by the petitioner on this charge of tampering with voting machines and booth capturing seem to be afterthought.

56. The petitioner, therefore, has failed to establish his charge of corrupt practice of misleading the voters, tampering with voting machines and booth capturing. The charges levelled, therefore, failed and the findings on these issues are answered in negative.

Issues Nos. 19 and 20:

57. On these issues the petitioner pleaded in para 10 that the respondent is the office bearer of many educational institutions and he has control over many members of the staff and the students who were enrolled as voters in the voters list though they were not valid voters. The petitioner had filed complaints in this regard on 12-10-2004, 4-11-2004 and 5-11-2004. The petitioner in his evidence deposed to support the charge that the respondent runs various educational institutions in which the students from other States seek education. The petitioner deposed that at village Morane a large number of students, who are native of different States, were enrolled as voters. This was intimated by the petitioner to the Vice Chancellor of North Maharashtra University, Jalgaon. The learned Senior Counsel for respondent raised objections to the admissibility of these documents.

The documents at Exhibits 37 to 45 were objected by the respondent for want of evidence and authenticity as regards the documents at exhibits 37 to 45 except the pleadings and the petitioner's statement in examination in-chief no evidence is led to establish the communication and the contents of those documents.

Exhibit 37 is said to be a communication addressed to the Returning Officer. Likewise, Exhibit 38 is addressed to the District Collector. Exhibits 39 and 40 are addressed to the Returning Officer. As regards these communications the petitioner's oral evidence would indicate that the petitioner had forwarded such communications to the respective officers or persons named therein.

But the petitioner has failed to establish and prove the contents of the said communications. Therefore, though the documents are exhibited they cannot be read in evidence. As regards Exhibit 41 this is a communication received by the petitioner from the Returning Officer. I am of the opinion that except the

pleadings and oral evidence of the petitioner there is nothing on record to prove the contents of the said letter so that it can be read in evidence. Exhibit 42 is a communication made by the petitioner to the District Superintendent of Police.

Exhibit 43 is a communication dated 13-10-2004 made to the Polling Station Officer by Pravin Shivaji More and Ramlal Santosh More who were stated to be working as Polling Agents for the petitioner. Exhibit 44 is again a communication dated 12-10-2004 made to the Returning Officer by one Komalsing Rajesing Girase and Jaising Chatursing Girase. These persons who have made the correspondence (Exhs. 43 and 44) to the concerned authorities are not examined before the Court by the petitioner. Hence the objection to the admissibility of these documents in evidence raised by the respondent is sustainable. These documents cannot be even exhibited. The contents of these documents are not proved, therefore, I decide to de-exhibit these documents at Exhibits 43 and 44.

Exhibit 45 is a communication dated 5-11-2004 made by the petitioner to the Vice Chancellor, North Maharashtra University, Jalgaon. Though the petitioner's pleadings refer to these communications and the oral evidence of the petitioner does support his pleadings but for reading the contents of these communications the petitioner has not led any clinching and reliable evidence. Therefore, though the documents at Exhibits 37, 38, 39, 40, 41, 42 and 45 are exhibited their contents cannot be read in evidence.

58. The petitioner has failed to establish that large number of students studying in the institutions run by the respondent were enrolled as voters illegally. The communications allegedly made to the Vice Chancellor of the North Maharashtra University were also not proved by the petitioner for reading their contents except bare allegations made by the petitioner in the pleadings and in the oral evidence. The petitioner in para 10 of the petition has pleaded that the respondent is office bearer of many educational institutions or many institutions are run under his auspices or influence. The members of the staff and the students were illegally enrolled as voters. The petitioner had raised objection in this regard. The petitioner in his examination-in-chief stated before Court that at village Morane large number of students studying in the institutions run by the respondent were enrolled as voters. The petitioner had given intimation to the Vice Chancellor of North Maharashtra University and brought to his notice misuse of the staff and number of students in the election process by a communication dated 5-11-2004. None was examined on behalf of the University to establish that the petitioner had made such a communication which was received by the Vice Chancellor of the University. The petitioner did not lead any other evidence to prove that names of such students and staff members who were enrolled in the voters' list illegally and voted in the election.

59. The respondent deposed before the Court that he might have established some educational institutions but he did not run the same himself. The witness further stated that it was not possible for him to say as to whether he was member of governing body of any such institution. He further denied the

suggestion that he had enrolled students of his institutions as bogus voters who actually belonged to other States. The witness further denied to have visited village Ajang during his election campaign.

60. The petitioner's pleadings and the oral evidence are lacking to substantiate his allegations that the respondent was instrumental in getting enrolled the staff members and students of the institutions run by him illegally and by adopting such methods the respondent committed corrupt practices. The evidence on this count is lacking to support the case of the petitioner, for want of cogent and reliable evidence on issue No. 19 the same is answered in negative.

61. As regards the issue as to whether the respondent was guilty of corrupt practice within the meaning of Section 123(3) of the Act I find that the petitioner has failed to establish the said charge against the respondent. For the reasons stated above, issue No. 20 is also answered in negative.

Issue Nos. 1 and 2:

62. In this case the respondent did not press for trial of any issue as preliminary issue seeking dismissal of the petition at the threshold. The respondent chose to proceed with the trial of the election petition on merits. In view of the evidence led and the issues discussed I find that the petition raised adjudicatory and triable issues. For the reasons given while considering the issues, as aforesaid, no further discussion is required on Issue Nos. 1 and 2. Issue No. 1 is answered in negative while issue No. 2 is answered in affirmative accordingly.

Issue No. 21:

63. The answer to this issue is covered while discussing the evidence concerning issue No. 3. The respondent in his evidence stated that he received two copies of the petition and in both the sets, copy of the CD was not supplied by the petitioner. But while discussing issue No. 3 I have given reasons on the objection raised by the respondent and the contentions that the petitioner has not supplied copy of the CD. The respondent has failed to substantiate his objections. Whereas the petitioner has deposed that complete set of the election petition along with CD was served on the respondent. In view of my finding on Issue No. 3, the answer to issue No. 21 is certain. I hold that the respondent failed to establish that copy of the CD was not served by the petitioner along with the paper book of the election petition on him. I answer this issue in negative.

64. The learned Counsel Shri. A.M. Kanade, appearing for the petitioner submitted that the petitioner has led cogent and reliable evidence to support his allegations of corrupt practices against the respondent, returned candidate. The allegations of corrupt practices were of serious nature due to which the election result was materially affected. The petitioner has pleaded material facts and particulars in the petition regarding alleged corrupt practices practised by the respondent during the election. According to the learned Counsel the charges are proved in the evidence based on which the petition deserves to be allowed by

setting aside the election of the respondent.

65. The learned Senior Counsel Shri. P.M. Shah, appearing for the respondent submitted that the petitioner has failed to establish any of the grounds raised in the petition and the charges of corrupt practices levelled against the respondent. Filing of the petition is an afterthought. According to the Counsel the allegations were made in a casual manner which could not be substantiated in the pleadings or in the oral evidence of the petitioner.

66. Considering the pleadings and the evidence led by the petitioner I find that the petitioner has failed to establish any of the charges of corrupt practices or the allegations made by the petitioner against the respondent. The documents, which were relied upon by the petitioner to be crucial, were not proved to be admitted in evidence. The oral evidence of the petitioner and his witnesses was lacking to prove the allegations of corrupt practices beyond reasonable doubt. Based on such evidence, which has come in this petition, the petitioner's prayers could not be granted. Therefore, the arguments advanced on behalf of the petitioner stand rejected.

CASELAW:

67. The learned Counsel appearing for the petitioner places reliance on the reported judgment in the case of Chandrakant Uttam Chodankar Vs. Shri Dayanand Rayu Mandrakar and Others, to support his contention that presence of endorsement of Registrar of High Court that true copies were filed at the time of presentation of election petition raises presumption that true copies were served on respondent. The onus, therefore, is on the respondent to establish that a true copy of the election petition was not furnished.

On behalf of the respondent reliance was placed on following reported judgments:

1. Ananga Uday Singh Deo Vs. Ranga Nath Mishra and Others, .

In this case there was no pleading at all except some vague assertions with regard to the allegation of corrupt practice relating to the bribery indulged by the elected candidate. The petition lacked material facts and particulars.

2. Ravinder Singh Vs. Janmeja Singh and Others, .

The Supreme Court observed in paragraph 11 of the judgment thus:

Section 83 of the Act is mandatory in character and requires not only a concise statement of material facts and full particulars of the alleged corrupt practice, so as to present a full and complete picture of the action to be detailed in the election petition but under the proviso to Section 83(1) of the Act, the election petition levelling a charge of corrupt practice is required, by law, to be supported by an affidavit in which the election petitioner is obliged to disclose his source of information in respect of the commission of that corrupt practice. The reason for this insistence is obvious. It is necessary for an election petitioner to make such a charge with full responsibility and to prevent any fishing and roving inquiry and

save the returned candidate from being taken by surprise. In the absence of proper affidavit, in the prescribed form, filed in support of the corrupt practice of bribery, the allegation pertaining thereto, could not be put to trial the defect being of a fatal nature.

3. Borgaram Deuri Vs. Premodhar Bora and Another, .

The Apex Court observed in para No. 10 thus:

The allegations of corrupt practices are viewed seriously. They are considered to be quasi-criminal in nature. The standard of proof required for proving corrupt practice for all intent and purport is equated with the standard expected in a criminal trial. However, the difference between an election petition and a criminal trial is, whereas an accused has the 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. The burden of the election petitioner, however, can be said to have been discharged only if and when he leads cogent and reliable evidence to prove the charges levelled against the returned candidate. For the said purpose, the charges must be proved beyond reasonable doubt and not merely by preponderance of probabilities as in a civil action.

The Supreme Court further observed in paragraph No. 21 thus:

It is beyond any cavil that the allegations of corrupt, practice must be pleaded strictly in terms of Section 83 of the Representation of the People Act and proved beyond all reasonable doubt.

4. L.R. Shivaramagowda, Etc. Vs. T.M. Chandrashekar Etc., .

In this case the Apex Court observed that the affidavit accompanying the election petition alleging corrupt practice must disclose source of information and clearly state which allegations based on personal knowledge and which on information received. In absence thereof, the affidavit would not be in conformity with Form 25 prescribed under Rule 94-A.

5. Hari Shankar Jain Vs. Sonia Gandhi, .

The Apex Court observed that Section 83(1)(a) of the Act of 1951 mandates that an election petition shall contain a concise statement of material facts which can be considered as material supporting the allegations made. They must be such facts as would afford a basis for the allegations made in the petition and would constitute the cause of action as understood in Civil Procedure Code, 1908.

6. Mr. V. Narayanaswamy Vs. Mr. C.P. Thirunavukkarasu, .

The Apex Court in this case was of the opinion that the affidavit filed in support of the allegations of corrupt practices must conform not only to the form prescribed in substance but also contain particulars as prescribed by the Rules. The petitioner shall disclose his source of information in respect of the

commission of corrupt practice. He must state which of the allegations are true to his knowledge and which to his belief on information received and believed by him to be true. The effect of non-compliance of Sections 81 and 83 of the Act was discussed in this case in relation to the provisions of Section 86 of the Act.

68. To support the contentions of the petitioner on identical lines, reliance is placed on:

Kamalnath Vs. Sudesh Verma, and Suganthi Suresh Kumar Vs. Jagdeeshan, .

As regards allegation of petitioner that the voting machines were tampered by the respondent, reliance is placed on the reported judgment in the case of (Michael B. Fernandes v. C.K. Jaffer Sharief and Ors.) AIR 2004 Kar 289, to support the contentions of the respondent that the machines are tamper proof and there is no possibility of manipulation or mischief.

CONCLUSIONS:

69. From the pleadings and the oral evidence led by the contesting parties I am of the view that the petitioner has failed to substantiate any of the allegation of corrupt practices levelled against the respondent. The allegations of corrupt practice are to be viewed seriously. Such allegations are required to be considered to be quasi-criminal in nature. The standard of proof required for proving corrupt practices is equated with the standard expected in a criminal trial. The burden of election petitioner is discharged only if and when he leads cogent and reliable evidence to prove the charges. Therefore, the charges must be proved beyond reasonable doubt and not merely by preponderances of probabilities as required in civil action.

70. Considering the evidence and the material brought on record I am of the considered opinion that the petitioner has failed to establish the charge for the reasons stated on the substantial issues concerning corrupt practices. I hold that the petition fails and is required to be dismissed with costs.

71. As regards awarding of costs I am of the view that apart from bill of costs which would be drawn the petitioner shall pay special costs of Rs. 10,000/- to the respondent as I find that the petitioner though made serious allegations of corrupt practices against the respondent in his pleadings and the oral evidence the petitioner failed to establish the same by leading cogent and reliable evidence. The allegations of corrupt practices are not to be made in a casual manner as such allegations are considered to be of quasi criminal in nature. The documents which the petitioner has placed on record to substantiate the charge of corrupt practices even could not be proved or admitted in evidence for reading the contents thereof.

72. For the reasons stated above, I pass the following Order:

ORDER:

(i) The Election Petition is dismissed with costs.

(ii) The petitioner shall pay the costs to the respondent, returned candidate.

(iii) The petitioner shall also pay special costs of Rs. 10,000/- (Rs. ten thousand) to the respondent, returned candidate.

(iv) The Registry of this Court to comply with the requirements of Section 103 of the Representation of the People Act 1951 by intimating the substance of the decision arrived at in the election petition to the Election Commission and the Chairman of the State Legislature at the earliest.