
(1984) 12 KL CK 0013
In the High Court Of Kerala
Case No : E.P. No. 2 of 1984

Sivan Pillai

APPELLANT

Vs

B.C. Jose

RESPONDENT

Date of Decision : 17-12-1984

Acts Referred:

Conduct of Elections Rules, 1960 — Rule 28, 30(2)
Registration of Electors Rules, 1960 — Rule 22(2)
Representation of the People Act, 1950 — Section 23(3)
Representation of the People Act, 1951 — Section 100(1), 101, 123, 123(1), 15

Citation : AIR 1986 Ker 153

Hon'ble Judges : Varghese Kalliath, J

Bench : Single Bench

Advocate : T.P. Kelu Nambiar, for the Appellant; S. Narayanan Potti, for the Respondent

Final Decision : Dismissed

Judgement

Varghese Kalliath, J.—In this petition, the petitioner calls in question the election of the first respondent to the Kerala Legislative Assembly from No. 70 Parur Constituency. He has filed this petition under Sections 80, 80A, 81, 82, 83, 84 and 100 of the Representation of the People Act, 1951, for brevity, "the Act".

2. The petition reveals the following facts. The petitioner, the respondent and four others were contesting candidates in the election of the No. 70 Parur Constituency. The notification under Sub-section. (2) of Section 15 of the Act was published in the Official Gazette of the State of Kerala on 17th Apr. 1982, calling upon all the assembly constituencies in the State of Kerala to elect members for the purpose of constituting a new Legislative Assembly for the State. The poll took place on 19-5-1982 in all the constituencies including No, 70 Parur Constituency.

3. The petitioner contested the election as a candidate of the Communist Party of India, a constituent party of the Left Democratic Front (Hereinafter referred to as

LDF). The other constituent parties of the L D F are : Communist Party of India (Marxist), All India Muslim League, Congress (S), Revolutionary Socialist Party, the Janatha (S) and the Democratic Socialist Party. The respondent was a candidate of the Congress (A) party, a constituent of the United Democratic Front (hereinafter referred to as U D F). The other constituent parties of U D F are : Congress (I), Indian Union Muslim League and few other local parties.

4. There were 84 polling stations in No. 70 Parur Assembly Constituency. As per the notification No. 3/5/82 (KL) dated 11-5-1982, the election commission introduced Electronic Voting Machines for conducting poll in 50 specified polling stations.

5. The petitioner's chief election agent challenged the procedure of the introduction of the use of electronic voting machines in an Original Petition No. 3356 of 1982 before this Court. This court dismissed the O. P. on 17-5-1982.

6. The polling was held, as scheduled using electronic voting machines in 50 specified polling stations and ballot boxes in the remaining 34 polling stations. The polling, as stated earlier, was on 19-5-1982. After the counting of votes, the Returning Officer declared the result on 20-5-1982. The petitioner secured 30,450 votes. The respondent secured 30,327 votes. The petitioner obtained 11,204 votes out of the votes polled in ballot boxes, 64 postal votes and 19,182 votes recorded by the electronic voting machines. The respondent obtained 13,409 votes from ballot boxes, 37 postal votes and 16,881 votes recorded by the electronic voting machines. The petitioner was declared elected.

7. The respondent filed Election Petition No. 1 of 1982 before this court. He prayed in his petition for a declaration that the election of the petitioner is void and for a further declaration that he has been duly elected.

8. This court dismissed the Election Petition (E. P. No. 1 of 1982) on 12-10-1982. The said decision is reported in 1982 Ker LT 876. (A.C. Jose v. Sivan Pillai). By the decision this court held that the system of voting by electronic machines in the 50 specified polling stations is not vitiated by reason of any improper reception, refusal or rejection of votes or the reception of void votes or by reasons of non-compliance with the constitutional or statutory provisions within the meaning of Section 100(1)(d)(iii) and (iv). It was also found that the votes cast by the machines are valid votes and they have been rightly counted by the Returning Officer.

9. The respondent filed an appeal before the Supreme Court as Civil Appeal No. 3839 (NCE) of 1982 : A.C. Jose Vs. Sivan Pillai and Others,). The Supreme Court held that it was not open to the election commission to override the Representation of the People Act and the Rules made thereunder and pass orders directing casting of ballot by machines in some of the polling stations. The Supreme Court allowed the appeal, set aside the election with respect to the 50 polling stations where the voting machines were used and directed a re-poll to be held in those 50 polling stations. The court observed : --

"We however do not touch or disturb the results of the votes secured in the other 34 polling stations which was done in accordance with law, namely, the use of ballot papers"".

10. The Election Commission of India issued Notification No. 495/KT-LA/84 dt. 18-4-1984. By the notification, 21st May 1984 was fixed as the date for taking a fresh poll at the 50 polling stations where the voting machines were used for the election held on 19-5-1982. A re-poll was conducted on 21st May 1984. After the re-poll the votes were counted on 22nd May 1984. The petitioner secured 20,067 votes. The respondent secured 19,335 votes. The resultant position was that the petitioner secured a total of 31,335 votes and the respondent a total of 32,781. It could be seen that though the petitioner secured 732 votes more than the respondent, in the polling conducted on 21-5-1984, the respondent was declared elected on the basis of 2,178 votes which he had secured more than the petitioner in the election conducted in 1982.

11. One of the defeated candidates calls in question the election of the returned candidate -- the respondent in this petition. The petitioner submits that the respondent was not duly nominated for the election in so far as there was no deposit as per Section 34 of the Act. Further he submits that a valid electoral roll was not followed in the election held on 21-5-1984: He contends that the use of the electoral roll of 1980 as supplemented in 1982 was illegal and so the election held on the basis of the illegal and non-existent electoral roll is void and liable to be set aside. He says that postal ballot was denied in respect of the 50 polling stations. He submits that the election of the respondent is vitiated by corrupt practices committed by the respondent and his agent. He has elaborated the facts regarding the corrupt practices which vitiated the election in para 13(F) and (G) of the petition. He has also appended to the petition a schedule giving the details of the corrupt practices mentioned in para 13 (F) and (G) of the petition.

12. In answer to the summons of this court, the respondent appeared before this court on 25-9-1984 and filed his written objections on 16-10-1984.

13. I shall briefly set out his contentions. He admitted the facts stated in paras 1 to 12 of the petition in regard to the candidature of the petitioner and the respondent and others, the holding of the poll, the declaration of the results, the filing of the election petition, reference to the judgment of this court and of the Supreme Court. He also admitted the holding of the repoll for the 50 polling stations on 21-5-1984 and the declaration of the results on 22-5-1984. He submitted that the contentions raised in the petition are baseless and incorrect. He said in regard to the ground raised by the petitioner based on the invalidity of the nomination, that after the declaration of the result of the poll of 1982 all candidates including the petitioner who were entitled under law the return of the deposit as per the provisions of Section 158 of the Act read with Rule 97 of the Conduct of the Election Rules, 1961, got the deposit returned and that the return of deposit will not affect the nomination of the contesting candidates whose list has been published u/s 38 of the Act. In regard to the ground raised by the

petitioner on the question of the electoral roll, the respondent submitted that the repoll ordered by the Supreme Court is in completion of the election that was notified under Notification No. 3/5/82 (KL) dt. 11-5-1982. He submitted that the repoll held on 21-5-1984 is not a fresh election, nor a bye-election, but merely a repoll in respect of the limited number of polling stations as per the specific directions of the Supreme Court. He submitted that it was quite right and proper on the part of the Election Commission when it used the very same Electoral Roll that was in force when the poll was held on 19-5-1982. He submitted that the irregularities mentioned in para 13 (A), (B), (C) & (D) in the petition are baseless and that at any rate it has not been shown by the petitioner that the alleged irregularities have materially affected the election of the respondent.

14. In answer to the allegations of corrupt practices, the respondent submitted that those allegations are neither true nor correct. He has elaborated his contentions on this aspect in paras 10 to 14 in his written objections. I am not elaborating the details of the corrupt practices and the answer thereto, since I have to discuss the contentions of the parties in detail when I deal with the question of corrupt practices.

15. On the pleadings of the parties, after discussing with the counsel on both sides, I framed the following issues :

"1. Whether the respondent could be considered as a candidate duly nominated for election from No. 7 Parur Constituency in view of the withdrawal of the amount deposited u/s 34 of the Representation of the People Act, 1951?

2. Whether the repoll held on 21-5-1984 to the Assembly seat from No. 70 Parur Constituency is illegal and void in view of the fact that the electoral roll of the Constituency prepared in the prescribed manner by reference to the qualifying date, namely, 1-1-1984 and finally published on 25-1-1984, was not followed in the conduct of the election on 21-5-1984?

3. Whether the repoll conducted on 21-5-1984 following the electoral roll of 1980 is void and liable to be set aside?

4. Whether the repoll held on 21-5-1984 following the electoral roll of 1980 materially affected the result of the election?

5. Whether the repoll held on 21-5-1984 was in conformity with the decision of and directions issued by the Hon"ble Supreme Court?

6. Whether the result of the election held on 21-5-1984, insofar as it concerns the returned candidate, has been materially affected by the improper refusal or rejection of votes?

7. Whether the entire votes polled in the election held on 19-5-1982 have lost their significance in the light of the provisions of Section 98 of the Representation of the People Act, 1951 and in view of the Judgment of the Supreme Court?

8. Whether the respondent committed corrupt practice u/s 123 of the

Representation of the People Act, 1951?

9. Whether the allegations in the election petition and the schedule amount to corrupt practice u/s 123 of the Representation of the People Act, 1951?

10. Is the petitioner entitled to a declaration that the election of the respondent is void?

11. What is the order as to costs"

ISSUE No. 1

16. This issue relates to the question whether the respondent could be considered as a candidate duly nominated. In para 13(A) of the petition, the petitioner has stated his case on this aspect in the following words :--

"13(A) The respondent was not duly nominated for election from the constituency, insofar as there was no deposit as per Section 34 of the Representation of the People Act 1951".

The respondent has stated in para 4 in answer to this point that after the declaration of the result of the first poll in 1982 all candidates including the petitioner who were entitled under law to the return of the deposit got the deposit returned, and that will not affect the nomination of the contesting candidates whose list has been published u/s 38 of the Representation of the People Act, 1951.

17. The learned counsel for the petitioner argues that the continuance of the deposit is necessary for valid candidature. Counsel for the respondent points out that at the time the Supreme Court directed the repoll, both the petitioner and the respondent have got the deposit returned under the provisions of the Act. In law, the petitioner and the respondent are entitled to the return of the deposit. They have no right in law to compel the authorities to keep the deposit with them. The authorities are bound to return the deposit as soon as practicable. Section 158 of the Act reads thus :--

"158. Return or forfeiture of candidate's deposit : --

(1) The deposit made u/s 34 or under that section read with Sub-section (2) of Section 39 shall either be returned to the person making it or his legal representative or be forfeited to the appropriate authority in accordance with the provisions of this section.

(2) Except in cases hereafter mentioned in this section, the deposit shall be returned as soon as practicable after the result of the election is declared.

(3) If the candidate is not shown in the list of contesting candidates, or if he dies before the commencement of the poll, the deposit shall be returned as soon as practicable after the publication of the list or after his death, as the case may be.

(4) Subject to the provisions of Sub-section (3), the deposit shall be forfeited if

at an election where a poll has been taken, the candidate is not elected and the number of valid votes polled by him does not exceed one-sixth of the total number of valid votes polled by all the candidates or in the case of election of more than one member at the election, one-sixth of the total number of valid votes so polled divided by the number of members to be elected :

Provided that where at an election held in accordance with the system of proportional representation by means of the single transferable vote, a candidate is not elected, the deposit made by him shall be forfeited if he does not get more than one-sixth of the number of votes prescribed in this behalf as sufficient to secure the return of a candidate.

(5) Notwithstanding any thing in Sub-sections (2), (3) and (4),--

(a) If at a general election, the candidate is a contesting candidate in more than one parliamentary constituency or in more than one assembly constituency, not more than one of the deposits shall be returned, and the others shall be forfeited;

(b) if the candidate is a contesting candidate at an election in more than one council constituency or at an election in a council constituency and at an election by the members of the State Legislative Assembly to fill seats in the Legislative Council, not more than one of the deposits shall be returned, and the others shall be forfeited".

What is stated in Clause (2) is that the deposit shall be returned as soon as practicable after the declaration of the result of the election. It is in evidence that the deposit was returned even before the disposal of the Election Petition filed by the respondent before this court in 1982. It is seen from Ext. P-5 that the deposit was returned on 7-7-1982. Ext P-5 is the deposit re-payment voucher. The petitioner has also admitted when he was examined as P. W. 1 that he also got back the deposit in 1982 itself. I cannot assume that the Supreme Court was not aware, when it ordered a repoll to be held in 50 polling stations, that no candidate had his deposit u/s 34 of the Act remaining with the authorities. The counsel submitted that, that fact was not brought to the notice of the Supreme Court by the respondent. It has to be remembered that the petitioner also could have brought to the notice of the Supreme Court the fact that the deposit was withdrawn by all the candidates, who were entitled to, if it was a relevant fact. As stated earlier, in law, the candidates who have secured a minimum number of votes are entitled to the return of the deposit as soon as practicable after the result of the election is declared. The law is definite. The deposit shall be returned as soon as practicable after the declaration of the result of the Election Petition. I cannot think for a moment that the Supreme Court was not aware of this prescription u/s 158 of the Act. So I have to deal with this question on that basis, that knowing the fact that there will not be any deposit u/s 34 would remain with the authorities, the Supreme Court directed a repoll. Further it has to be noted that if the continuance of the deposit with the authorities is a necessary requirement for a valid repoll, the Supreme Court should not have

given the direction for a repoll since there were no contesting candidates who have not got the deposit returned at the time when the repoll was ordered. It is not reasonable to think that the Supreme Court directed a repoll which could have been avoided on the simple ground that there was no candidate who had their deposits with the authorities to contest the election. If the deposit was necessary for a valid repoll, the petitioner could have asked for a clarification of the Supreme Court on this matter. When the Supreme Court said that there should be a repoll, even the election commission is bound by that decision. The commission was also a party. If the contention of the counsel for the petitioner is accepted on this point, it means that the direction given by the Supreme Court is a direction which could not have been implemented at all.

18. Now I shall examine whether the contention is sustainable or not in the light of the relevant provisions of the Act. Section 34 of the Act provides thus : --

"34. Deposits :-- (1) A candidate shall not be deemed to be duly nominated for election from a constituency unless he deposits or causes to be deposited-

(a).....

(b) in the case of an election from an Assembly or council constituency, a sum of two hundred and fifty rupees or where the candidate is a member of a Scheduled Caste or Scheduled Tribe, a sum of one hundred and twenty-five rupees :

Provided that where a candidate has been nominated by more than one nomination paper for election in the same constituency, not more than one deposit shall be required of him under this Sub-section.

Section 58 of the Act provides for a fresh poll in certain cases. It is provided that the Election Commission in certain circumstances can declare the poll at certain polling stations or places to be void. If any ballot box used at a polling station or at a place is unlawfully taken out of the custody of the presiding officer or the returning officer, or is accidentally or intentionally destroyed or lost or damaged or tampered with, to such an extent, that the result of the poll at that polling station or place cannot be ascertained or any such error or irregularity in procedure as is likely to vitiate the poll, is committed at a polling station or at a place fixed for the poll, the returning officer shall forthwith report the matter to the Election Commissioner. Thereupon the commission has got the power after taking all the circumstances into account, to order a repoll and to appoint a day for taking a fresh poll at that polling station or place and notify the day so appointed. In Sub-section (3) of Section 58, it is clearly stated that the provisions of this Act and of any rules or orders made thereunder shall apply to every such fresh poll as they apply to the original poll. Section 57 provides for adjournment of poll in emergencies. Section 64-A deals with destruction, loss, etc., of ballot papers at the time of counting. If at any time, before the counting of votes is completed, any ballot papers used at a polling station or at a place fixed for the poll are unlawfully taken out of the custody of the returning officer or are accidentally or intentionally destroyed or lost or are damaged or tampered

with, to such an extent that the result of the poll at that polling station or place cannot be ascertained, the Election Commission shall order, after taking all material circumstances into account that the counting of votes shall be stopped and declare the poll at that polling station to be void. The Commission shall also fix a day for taking a fresh poll at that polling station and shall notify the date for the fresh polling. In such a case, in Section 64A(3), it is provided that the provisions of the Act and of any rules made thereunder shall apply to every such fresh poll as they apply to the original poll.

19. Now in contrast to these sections in the case of death of a candidate before poll Section 52 provides for the commencement of the election "a new in all respects as if for a new election". The contingency contemplated is the death of the candidate before the poll whose nomination has been found valid on scrutiny u/s 36 and who has not withdrawn his candidature u/s 37. In the case of death of the candidate before the poll, the election shall be a new in all respects as if for a new election.

Note : What is provided is not a fresh poll since it is an "election anew" the Act specifically provides for filing nomination unlike in the case of a fresh poll, of course even in such a case in regard to a contesting candidate an exemption is granted under the proviso. The proviso reads thus : --

"Provided that no further nomination shall be necessary in the case of a person who was a contesting candidate at the time of the countermanding of the poll".

The Act does not contemplate fresh nomination in the case of a fresh poll under Sections 57, 58 and 64A. Counsel for the petitioner also did not argue that a fresh nomination is necessary in this case.

20. It is clear if a fresh poll is required under Act, what is contemplated is the continuation of the election process as they apply to the original poll. Of course, this is in regard to a fresh poll to be held under the provisions of the Act. In this case, the fresh poll has been directed by the Supreme Court, not because of any contingencies contemplated under Sections 57, 58 and 64A.

21. The power to order repoll by a court has been considered in *Mohinder Singh Gill and Another Vs. The Chief Election Commissioner, New Delhi and Others*, .

"Having regard to statutory setting and comprehensive jurisdiction of the Election Court we are satisfied that it is within its powers to direct a re-poll of particular polling stations to be conducted by the specified agency under the Election Commission and report the results and ballots to the Court. Even a repoll of postal ballots, since those names are known can be ordered taking care to preserve the secrecy of the vote. The Court may, if necessary, after setting aside the election of Rule 3 (if there are good grounds therefor) keep the case pending, issue directions for getting available votes, order recount and/or partial re-poll, keep the election petition pending and pass final order holding the appellant elected if, only if, valid grounds are established. Such being the wide ranging

scope of implied powers we are in agreement with the learned Addl. Solicitor General that all the reliefs the appellant claims are within the Court's powers to grant and Sri Ram's alarm is unfounded".

22. Having regard to the provisions referred above I feel justified in concluding that a fresh poll/re-poll ordered by the court also has to be held following those provisions prescribed for a fresh poll in the Act, in regard to cases under Sections 58 and 64A of the Act. Counsel for the respondent submits that an examination of Sections 34, 35, 36, 37 and 38 of the Act would strengthen his argument that in the case of a re-poll, the return of the deposit u/s 34 is of no consequence and would not affect the validity of the re-poll.

23. Section 34 provides that a candidate shall not be deemed to be duly nominated for election from a constituency unless he deposits in the case of an election from an Assembly Constituency a sum of two hundred and fifty rupees. Section 35 provides for scrutiny of the nomination papers by the returning officer. Section 36 prescribes the procedure to be followed in the matter of scrutiny of nomination papers. u/s 36(8), it is provided that the returning officer, immediately after all the nomination papers have been scrutinized should prepare a list of validly nominated candidates, that is to say, candidates whose nominations have been found valid. Section 37 provides for withdrawal of candidature. u/s 38, it is provided that immediately after the expiry of the period within which candidatures may be withdrawn under Sub-section (1) of Section 37, the returning officer shall prepare and publish in such form and manner as may be prescribed a list of contesting candidates, that is to say, candidates who are included in the list of validly nominated candidates and who have not withdrawn there candidature within the said period. The list shall contain the names in alphabetical order, of all the contesting candidates.

24. Conduct of Election Rules, 1961, Rule 28(a) defines "candidate" to mean a contesting candidate. Rule 30(2) provides that the names of the candidates shall be arranged on the ballot paper in the same order in which they appear in the list of contesting candidates. When once a person becomes a contesting candidate, he gets the right to contest the election. The Act or the Rules do not provide for deleting the names of the contesting candidates in the list prepared u/s 38. Even if the deposit u/s 34 is returned, that will not be a ground for deleting the name of that candidate from the list of contesting candidates prepared u/s 38 of the Act. There is no such provision in the Act or Rules.

25. Section 158 is mandatory in nature in so far as it provides that as soon as practicable, after the declaration of the result of the election petition, the deposit u/s 34 shall be returned to the candidates who are entitled to it. There is no provision in the Act for a re-deposit or a fresh deposit u/s 34 when once the deposit is returned to the candidate.

26. The right to elect or to be elected, paramount though it is to democracy, is not included as a fundamental right in the Constitution. It is not a common law

right also. It is only a statutory right The right to dispute an election is pure and simple, a statutory right Outside the statutes, there is no right to be elected and no right to question an election. All these rights are therefore statutory creations, always subject to statutory limitations, I need not say that an election petition is not an action at common law or in equity. Neither the common law principles, nor the principles of equity apply to the statutory proceedings contemplated for challenging an election. The challenge of an election has to be made only under the rules and provisions of the statute which allowed such a challenge. The Supreme Court has held repeatedly that "concepts familiar to Common Law and Equity must remain strangers to Election Law unless statutorily embodied". In the trial of election disputes, the court has no right to resort to the principles of common law or equity. The court is not ordinarily empowered to import considerations of policies based on principles of equity and common law rights. The only policy that should guide the court in the trial of election disputes is that, do, what the statute ordains. The entire election process beginning from the issuance of the notification calling upon the electors to elect a member or members right up to the final resolution of the disputes, if any concerning the election, at all stages, is controlled and regulated by the statutes, and the rules. It has been held in many cases by the Supreme Court that the Representation of the People Act to be a complete and self-contained Code, within which must be found any right claimed in relation to an election or election dispute.

27. For all the reasons I have already said and for the reason that the statute and the Rules did not insist that no fresh poll/re-poll could be held validly without the deposit u/s 34 remaining with the authorities. I will not be justified in accepting the contention of the petitioner on this aspect I reject the contention. Before leaving this question I add this. The mandate of Section 158 of the Act is to return the deposit u/s 34 "as soon as practicable after the result of the election is declared. Certainly the Commission has the power to determine when it is practicable to return the deposit. If the Commission determines that it is not practicable to return the amount before the expiry of the time fixed for calling in question an election, or in case an election is called in question by presenting a petition u/s 81 of the Act after the finale of the dispute, that determination, I have no doubt will be a prudent determination, valid in law.

28. I shall now examine another incidental and subsidiary question on this issue. Assuming that it would amount to an irregularity to have a repoll conducted when the deposit u/s 34 has been returned to the candidates, it will be only an irregularity u/s 100(1)(d)(iv). Section 100(i)(d)(iv) reads thus :-

"100. Grounds for declaring election to be void.-- (1) Subject to the provisions of Sub-section (2) if the High Court is of opinion.

(a) to (c)

(d) that the result of the election, in so far as it concerns a returned candidate, has been materially affected -

(i) to (iii)

(iv) by any non-compliance with the provisions of the Constitution or of this Act or of any rules or orders made under this Act, the High Court shall declare the election of the returned candidate to be void".

The petitioner to succeed on this issue has necessarily to establish that the non-compliance of the provisions complained of by him has materially affected the result of the election in so far as it concerns the returned candidate --the respondent. The petitioner has not stated that the result of the election has been materially affected on account of the return of the deposit u/s 34. The entire facts in regard to this, the petitioner has stated in para 13(A) of the petition, but he has not stated in para 13(A) that the result of the election has been materially affected. No attempt has been made to adduce any evidence to establish that on account of the return of the deposit, the result of the election has been materially affected, so far as it concerns the returned candidate -- the respondent I find issue No. 1 against the petitioner.

29. Now, I shall consider the issues touching upon the Electoral Roll The Issues are 2,3,4, 5 and 6. The petitioner submits that valid and legal electoral roll was not followed in the election held on 21-5-1984. He states with reference to the qualifying date, namely, 1-1-1984, an electoral roll of the constituency was prepared in the prescribed manner and has been finally published on 28-1-1984. According to him, the electoral roll published on 28-1-1984 should have been followed in regard to any election after 25-1-1984, including the re-poll ordered by the Supreme Court Admittedly in the re-poll held on 25-1-1984 the electoral roll of 1980 as supplemented in 1982 was the electoral roll that was followed The counsel submits that the 1980 Electoral Roll supplemented in 1982 had no existence in the eye of law after the publication of the electoral roll on 25-1-1984. The counsel argues that the re-poll was held on the basis of an illegal and non- existent electoral roll and so the election is void He submits that this is a valid ground for declaring the election to be void u/s 100(1)(d)(iv). In this context the counsel urges that there is no specific direction by the Supreme Court when it ordered a re-poll, as to which electoral roll to be followed for the re-poll. The counsel referred me to certain provisions regarding the preparation of the electoral roll He has invited my attention to Sections 14(b), 21 and 23(3) of the Representation of the People Act, 1950 and Section 62 of the Representation of the People Act, 1951. Section 14(b) gives the definition of "qualifying date" in relation to the preparation or revision of every electoral roll under this part, as the first day of Jan. of the year in which it is prepared or revised Section 21 deals with the preparation and revision of electoral rolls. The electoral roll for each constituency shall be prepared in the prescribed manner by reference to the qualifying date and shall come into force immediately upon its final publication in accordance with the rules made under the Act Much reliance has been placed by the counsel for the petitioner on Section 23(3). Section 23 deals with inclusion of names in electoral rolls. It is provided that any person whose name is not

included in the electoral roll of a constituency may apply to the electoral registration officer for the inclusion of his name in that roll But it is provided in Sub-section (3) of Section 23 that no amendment, transposition or deletion of any entry shall be made u/s 22 and no direction for the inclusion of a name in the electoral roll of a constituency shall be given under this section after the last date for making nominations for an election in that constituency or in the parliamentary constituency within which that constituency is comprised and before the completion of that election. It is clear that the dead line prescribed is "the last date for making nomination for an election in that constituency". The statute prescribes that no voter even if he is eligible can get his name included in the voters' list after the last date for making nominations for election in that constituency. The counsel for the petitioner submits that this prescription of the date is applicable only in regard to amendment, transposition or deletion of any entry in an electoral roll, and not in respect of a fresh and a new electoral roll. The counsel referred me to Rule 22 of the Registration of Electors Rules, 1960. Rule 22 deals with the final publication of roll by the registration officer. Sub-clause (2) of Rule 22 makes it clear that when once publication is effected, the roll together with the list of amendments shall be the electoral roll of the constituency.

30. Section 62 of the Act deals with the rights to vote. It is provided that no person who is not, and except as expressly provided by the Act, every person who is, for the time being entered in the electoral roll of any constituency shall be entitled to vote in that constituency. Relying on these provisions, the counsel for the petitioner submits that the electoral roll that should have been followed for the repoll held on 21-5-1984 is the electoral roll prepared and published on 28-1-1984.

31. Counsel for the respondent submitted that since it is only a repoll the contentions raised by the petitioner are unsustainable in law. The repoll was only a completion of the election notified in 1982. The notification which was given effect to in regard to the election was of the year 1982. Section 62 of the Representation of the People Act fixes the relevant date to be reckoned for the purpose of determining the electors who are entitled to vote for the notified election. The last date for qualifying oneself to be a voter is the last date of nomination. What is the last date of nomination in a case of repoll? No doubt it is the last date notified for filing nomination in the 1st notification u/s 15 of the Act. The counsel referred me to Section 58(3) of the Act which runs thus :--

"The provisions of this Act and of any rules or orders made thereunder shall apply to every such fresh poll as they apply to the original poll".

32. In *Baidyanath Panjiar Vs. Sitaram Mahto and Others*, the Supreme Court was considering the scope and content of Section 23(3) of the Act. The court held that the electoral roll referred to in Section 62(1) of the Act must be understood to be the electoral roll that was in force on the last day for making the nominations for the election. I have to determine on the basis of this observation of the Supreme

Court, what was the electoral roll that was in force on the last day for making the nominations for the election? There is only one answer that the electoral roll that was in force on the last day for making nominations for the election was the 1980 electoral roll.

33. In *Ramji Prasad Singh Vs. Ram Bilas Jha and Others*, the Supreme Court considered the scope and content of Section 62(1) of the Act. The Court observed that Section 62(1) may be split up into two parts so as to make its meaning and intent clear. It provides in the first place that a person who is not entered in an electoral roll of a constituency shall not be entitled to vote in that constituency. Secondly it provides that, except as expressly provided by the Act, every person who is for the time being entered in the electoral roll of any constituency shall be entitled to vote in that constituency. The Court observed that Section 23(3) of the Representation of the People Act, 1950 provides that no amendment, transposition, or deletion of any entry shall be made and no direction for the inclusion of a name in the electoral roll of a constituency shall be given after the last date for making nominations for an election in that constituency and before the completion of the election. If the name of a person is entered in the electoral roll in violation of the mandate contained in the section, he can have no right to vote by reason merely of the entitlement conferred by Section 62(1) of the Act of 1951. The Supreme Court has made it clear that no amendment, transposition or deletion of any entry shall be made in the electoral roll after the last date for making the nominations for an election in a constituency and before the completion of the election. I give emphasis to the words "before the completion of the election". I have to decide when the election in the constituency, namely No. 70 Parur Constituency has been completed. I think certainly there is only one answer to this query that it has been completed only after the repoll in 1984. The last date for making the nomination was in 1982. I have no hesitation to hold that the valid electoral roll for the repoll is the electoral roll of 1980 supplemented in 1982.

34. There is another aspect of the matter to be considered, assuming that in following the electoral roll of 1980, for the repoll, the Commission has committed an irregularity, whether that irregularity has affected materially the result of the election in so far as it concerns the returned candidate -- the respondent. The petitioner has not established by legal evidence that the result of the election has been materially affected on account of following the 1982 electoral roll. I find that there is no substance in the complaint that there is irregularity in following the 1980 electoral roll. I hold the issues 2, 3, 4, 5 and 6 against the petitioner.

35. The counsel for the respondent submitted that non-compliance or the violation of the provisions of the Representation of the People Act 1950 is not within the purview of Section 100(1)(d)(iv) of the Act, since Section 100(1)(d)(iv) states specifically only, any non-compliance with the provisions of the Constitution or of this Act or any rules or orders made under this Act. The counsel submits that I should note the words "this Act". The argument of the

counsel is that the preparation of Electoral Roll is in accordance with the provisions contained in the Representation of the People Act, 1950. The violations complained of in regard to electoral roll are violations of or non-compliance of certain provisions of the Representation of the People Act, 1950 and as such Section 100(1)(d)(iv) of the 1951 Act has no application. The counsel also cited a decision reported In Bharat Bhushan Vs. Ved Prakash, . The question raised is not free from doubt I think it is not necessary for me to decide this point I have already held that there is no violation of any of the provisions of the Act in following the electoral roll of 1980 as supplemented by 1982.

Issue No. 7

36. Since the counsel for the petitioner wanted this issue also to be raised by submitting this issue in the draft issues submitted by him, I framed this issue also for consideration. This issue is raised on what has been pleaded in para. 13(E) of the petition. The petitioner says : --

"When the Supreme Court allowed the appeal, the Supreme Court did not declare the respondent herein to have been duly elected by declaring the election of the petitioner herein to be void. Therefore the Supreme Court should only be deemed to have declared the election of the petitioner herein to be void. There is no other mode of decision either by the trial court or by the appellate court Therefore the effect of the judgment allowing the appeal and the Election Petition cannot take shape other than in any of the three manners provided in Section 98 of the Representation of the People Act, 1951. Therefore again, the entire votes polled in the election held on 19-5-1982 lose their significance and value and they cannot be validated by any judicial process".

The Supreme Court has, in its decision made it clear in unmistakable terms that "after the repoll the result of the election would be announced afresh after taking into account the votes already secured by the candidates including the respondent". I find no substance in this contention of the petitioner and I reject the same.

Issues 8 & 9 :

37. The petitioner calls in question the election of the respondent on the ground that the respondent and his agent indulged in corrupt practices. The material facts of the corrupt practices alleged to have been committed by the respondent and his agent have been stated in para. 13(F) of the petition and the full particulars in the schedule to the petition. The petitioner says that P. W. 5, one T.N. Krishnan Nair popularly and endearingly known as Appu Chettan, circulated at the instance of the respondent printed notices (one such notice marked in this case is Ext. P.1), announcing and promising the payment of Rs. 1,001/- as gratification to any person whomsoever, who procures the maximum number of votes for the respondent in a particular booth. P.W. 5 had also announced a prize of Rs. 5/- each to that person who detects the voting by impersonation as also a special prize of Rs. 251/- to that person who detects the maximum number of

voting by impersonation. The case of the petitioner is that Ext P-I notice was issued and circulated by P.W. 5 in his capacity as the agent of the respondent and with the consent and knowledge of the respondent. Petitioner submits that this conduct of P.W. 5, the agent of, the respondent, is a corrupt practice u/s 123 of the Act.

38. The petitioner has stated some more particulars in the schedule with reference to this corrupt practice. He says that after the declaration of the result of the election the prizes promised under Ext. P-I were awarded at a meeting held at the Municipal Town Hall, North Parur, and that P.W. 5, the respondent and the recipients of prizes and a large gathering of persons were present at that meeting. The prize of Rs. 1,001/- the petitioner alleges, was awarded to one Shri T.J. Joseph, Municipal Councillor and that P.W. 5 and Others spoke on that occasion. The petitioner reiterates that P.W. 5 was an active worker for the respondent in the election and an agent of the respondent as would be evident from the newspaper reports which appeared immediately after the declaration of the result of the election. He has produced those newspapers as exhibits in the case.

39. The other corrupt practice alleged in the petition and in the schedule, relates to certain official acts of Shri. P.K. Velayudhan, Minister for Community Development. The petitioner says that at the instance of the respondent and on his behalf Shri P.K. Velayudhan, Minister for Community Development issued a "note" D/-3-5-1984, sanctioning the extension of a Water Supply Pipe Line under N R E P Scheme as a special case under the head Water & Soil Conservation from the existing line from Kavilnada to Perakkapuzha Kadavu in Ward No. 2 of Kottuvally Panchayat and that the Minister also addressed the District Collector, Ernakulam to accord sanction for the same immediately. The Minister acted in this manner as required by the respondent and the local Congress man "to win over, the electors of that locality". The petitioner submits that the action of the Minister is clearly designed to help the respondent and to induce the electorate to cast their votes in favour of the respondent. This conduct of the respondent in inducing the Minister, the petitioner submits would amount to a corrupt practice u/s 123 of the Act.

40. The respondent has answered the allegations of corrupt practices in para 10 of his written statement. He states that the notice Ext P-1 referred to in para. 13(F) of the petition was neither printed nor circulated with his consent or knowledge. He admits that P.W. 5 was the Chairman of his Election Committee. He submits that the issue and circulation of the aforesaid notice or contents thereof was not known to him till late in the evening of 19th May, 1984 when the news about this fact published in the Malayala Manorama Daily DA 19-5-1984 was brought to his notice casually by Advocate K.R. Vijayan and some others. His further case is that on verification after the election, he came to know that P.W. 5 "as his own personal promise" did circulate some of the notices mentioned in para. 13(F). The respondent reiterates that it is wholly untrue to say that the

notices were got printed, issued and circulated by P.W. 5 at his instance or with his consent. He contends that the contents of the notice would not constitute a corrupt practice u/s 123 of the Act, since it contained no promise of any gratification to any voter for voting for the respondent. In regard to the distribution of the prize, the respondent only admitted that few days after the declaration of results of the election there was an informal meeting in the Municipal Town Hall, North Parur as mentioned in para. 13(F) of the petition. He denied to have any knowledge of awarding prize by P.W. 5 to Shri Joseph or any other person pursuant to the promise made by P.W. 5. The respondent also denied to have had any knowledge of the manner of the distribution of the notices as stated in para. 13(F) of the petition. He also contends that the printing or the circulation of the notices or the awarding of any prizes by P.W. 5 "as his own personal affair" does not constitute a corrupt practice as defined in Section 123 of the Act.

41. In regard to the allegation of corrupt practice detailed in para. 13-G of the petition based on certain alleged acts of the Minister, Sri P.K. Velayudhan, the respondent submits that he had absolutely no knowledge of those alleged acts of the Minister. He also submitted that the Minister for Community Development has not done any act official or otherwise with the intention to help him in the election or on his behalf with his consent or knowledge. He also says that the alleged acts of the Minister would never constitute a basis for charging the respondent guilty of corrupt practice.

42. Section 81 of the Act enables a candidate or an elector to call in question any election on one or more of the grounds specified in Sub-section (1) of Sections 100 & 101 by an election petition presented to the High Court. The petition should be presented within 45 days from, but not earlier than, the date of election of the returned candidate. Sections 100 and 101 of the Act catalogue the different grounds which if established would empower the court to make a declaration that the election of a returned candidate is void.

43. Sub-section (1) of Section 100 lays down the various grounds for declaring an election to be void. These grounds include corrupt practices committed by the candidate, his election agent and any person with the consent of the returned candidate or his election agent. Section 100(1)(d) adds an additional condition which must be satisfied before the election can be declared to be void even though the corrupt practice is committed by an agent other than the election agent.

44. Sections 100 and 101 of the Act are really concerned with the substantive law on the subject of election disputes. Together they prescribe and delineate the grounds which must be established before an election can be declared void.

45. Section 100(1) is in two separate parts : the first part deals with situations in which the election must be declared to be void on proof of certain facts and the 2nd part deals with situations in which the election can be declared to be void

only when the result of the election in so far as it concerns the returned candidate can be held to have been materially affected on proof of some additional facts. I may now straightway examine what the grounds are. In the first part the grounds are that the candidate lacked the necessary qualification or had acquired disqualification, that a corrupt practice was committed by the returned candidate, his election agent or any other person with the consent of the returned candidate or his election agent or that any nomination paper was improperly rejected. These I would say are unqualified and absolute grounds on convincing proof of which the election can be set aside without establishing any further requirement.

46. Grounds listed in the second part of Section 100(1) are conditioned by Section 100(1)(d) that the result of the election in so far as it concerns a returned candidate was materially affected, by the improper acceptance of a nomination or by a corrupt practice committed in his interest by an agent other than an election agent or by the improper reception, refusal or rejection of any vote or the reception of any vote which is void, or by any non-compliance with the provisions of the Constitution or of the Representation of the People Act, 1951, or any rules or orders made under the Act. It is therefore clear that as far as the grounds enumerated in the second part of Section 100(1), they are indexed with the additional condition that the result of the election in so far as it concerns a returned candidate is materially affected by those acts enumerated in the second part of Section 100(1).

47. Now I shall examine more closely the provisions bearing upon corrupt practices in Section 100. There are different kinds of corrupt practices. The corrupt practices are defined in Section 123 of the Act. A broad dichotomy of these corrupt practices is necessary in view of the controversy in this case, on the basis of as to who commits them. The first group deals with corrupt practices committed by the candidate or his election agent or any other person with the consent of the candidate or his election agent. If any corrupt practice under this group- is established it will automatically void the election without waiting for any further condition required to be fulfilled.

48. Then there is the corrupt practice committed by an agent other than an election agent. In this case to void the election an additional condition has necessarily to be established u/s 100(1)(d) of the Act, viz., that the result of the election was materially affected, I shall give words to my above thoughts in a slightly different way with the hope that it will make the idea more explicit. The elector or the candidate who calls in question any election may establish by evidence a corrupt practice by the candidate himself or his election agent or some other person with the consent of the candidate or his election agent in which case the court is not called upon to investigate, what the result of the election would have been without the corrupt practice. No doubt, the expression "any other person" in this section, will certainly include also an agent other than an election agent, I am fortified in this conclusion from the special provision later

seen in the same section about "an agent other than an election agent". (See Section 100(1)(d)(ii).)

49. To sum up the law is this: if the petitioner fails to prove a corrupt practice by the returned candidate or his election agent or any other person with the consent of the returned candidate or his election agent, but relies on a corrupt practice committed by an agent other than an election agent he is bound, if he wants to succeed, to prove additionally that, that corrupt practice has materially affected the result of the poll. This additional burden he has to discharge convincingly, unless he establishes by acceptable evidence the consent of the returned candidate or his election agent to the Commission of the Corrupt Practices.

50. Now who is an agent? The learned counsel for the petitioner, Shri T.P, Kelu Nambiar, referred me to several dictionaries -- Black's Law Dictionary, Stroud's Judicial Dictionary and World Book Dictionary -- for a definition of "an agent". I have no doubt that the definition of agent for the purpose of Section 100(1)(d)(ii) of the Act has to be taken from Expl. to Section 123 of the Act. The explanation tells that an agent includes an election agent, a polling agent and any person who is held to have acted as an agent in connection with the election with the consent of the candidate. The Supreme Court has said that the inclusion in this explanation of an "election agent" is unnecessary because an election agent is the "alter ego" of the candidate in the scheme of the Act and his acts are the acts of the candidate, consent or no consent on the part of the candidate.

51. Having delineated what according to me the substantive right for the presentation of a petition calling in question an election of a returned candidate, I may now proceed to examine the content and contours of the corrupt practices defined in Section 123 of the Act. For the purpose of this case, I need not examine all the corrupt practices enumerated in Section 123 of the Act. I think it is sufficient if I refer to the first Sub-section of Section 123.

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

(1) "Bribery", that is to say-

(A) any gift, offer or promise by a candidate or his agent or by any other person with the consent of a candidate or his election agent of any gratification, to any person whomsoever, with the object, directly or indirectly of inducing-

(a) a person to stand or not to stand as, or (to withdraw or not to withdraw) from being a candidate at an election, or

(b) an elector to vote or refrain from voting at an election, or as a reward to-

(i) a person for having so stood or not stood, or for (having withdrawn) or not (having withdrawn) his candidature; or

(ii) an elector for having voted or refrained from voting."

The corrupt practice listed in Section 123(1)(A) may be indulged in by

a) the candidate

b) his agent -- that is to say (i) an election agent (ii) a polling agent

(iii) any person who is held to have acted as an agent in connection with the election with the consent of the candidate

(c) by any other person with the consent of the candidate or his election agent

52. I am concerned with the corrupt practice committed by P.W. 5 who was the Chairman of the respondent's election committee. I have no doubt to hold that he is an agent within the extended meaning of that term as given in the Expl to Section 123. The counsel for the respondent very fairly submitted that P.W. 5 can be considered as an agent. The definition of bribery in Section 123 of the Act, leaving unnecessary parts in the context of this case reads thus : --

"Bribery that is to say any gift, offer or promise by a candidate or his agent or by any other person with the consent of a candidate or his election agent of any gratification, to any person whomsoever with the object directly or indirectly inducing-

(a).....

(b) an elector to vote or refrain from voting at an election, or as a reward to-

(i).....

(ii) an elector for having voted or refrained from voting."

To attract this section, the inducement should have a direct nexus with the action of the elector either by casting his votes to the returned candidate or by refraining from voting. Any gift, offer or promise by the alleged corrupter if aimed at inducing a person in order to encourage him to use his efforts to induce a third person to vote for the returned candidate is not bribery, by the person who has given or offered the gift, offer or promise. Proof of mere payment or offer of payment to a third person for securing a number of votes in favour of a particular candidate without the further proof of a direct nexus between the payment and the inducement to the voter to cast his. votes to the returned candidate will not be sufficient to prove that the voter is indirectly induced on account of the payment or offer of payment. The gratification should have some link or privity direct or indirect in persuading the voter to cast his vote to a particular candidate or refrain from casting "his vote at an election. In other words, if the payment or offer of payment or prize is to induce an elector to vote -- be direct or vicarious -- no doubt it is a corrupt practice. If it is with any other oblique objective, perhaps the objective may be bad in morality it may be evil but may not be necessarily corrupt in the eye of law.

53. I shall now examine the contents of Ext. P1 to see whether the offer made in Ext. PI would amount to bribery within the meaning of Section 123 of the Act. By

Ext. P-I, P.W. 5 held out a promise in his individual capacity a prize of Rs. 1,001/- to those workers in the polling booth who cause the casting of the maximum number of votes to the "TWO LEAVES" Symbol in the Parur Constituency, in the election that is taking place on the 21st. Further he said in the notice that he is promising a prize at the rate of Rs. 5A for every false vote which the LDF is intended to cast to him who detects the same. He also held out a promise to give a special prize of Rs. 250/- to that agent of the UDF who would detect the maximum number of such false votes. The offer made in Ext. P1 by P.W. 5 is a sporting offer to all those who are interested in winning a prize by complying with the terms set out in Ext. P1. There is no element of bargain in Ext. P1. The offer of prize in Ext. P1 is not to the voters directly or indirectly but the offer is to those workers in the polling booth. The purpose of the offer in Ext. P1 can easily be discerned as an encouragement to the workers at the booth. In Abdul Hussain Mir Vs. Shamsul Huda and Another, the Supreme Court has observed : --

"A narrow construction is conceivable where only payments to the voters is hit by the legal stick. A pragmatic construction, inhibiting corruption but permitting electioneering expenses is the right one, although many tricky projects may get through the legal meshes which law cannot help and only public vigilance can arrest." -

Again the Supreme Court has said :--

"Reading Section 77, dealing with the ceiling on election expenses and Section 123(1) which strikes at bribery harmoniously and realistically, we reach a few well-defined semantic conclusions. To widen is to be idealistic and ineffectual. To shrink is to fail in the goal of the law. Mr. Garg rightly emphasised that in the light of the precedents of this court what the law aims at is blow on the purchase of the franchise by direct or indirect methods. You may buy influence of important persons which is bad in morality but not yet in law. You may overspend to create enthusiasm in the workers which produces professional electioneers waiting for the season to fleece candidates and parties. This vitiates the smooth wheels of the democratic process but cannot be stanchd by the tourniquet of the law. The rulings in Ghasi Ram Vs. Dal Singh and Others, at p. 1196 : (1968) 3 SCR 102, 110 and the one at Om Prabha Jain Vs. Abnash Chand and Another, at p. 1086 : (1968) 3 SCR 111, 116 have been cited at the bar and they make out that the vice is the bargain for the ballot and what is obnoxious is the quid pro quo for the vote, however accomplished."

54. Ensuring purity of election process is to be considered as a sacred duty, no one will doubt that it is essential in a democratic system of government that elections should be free from any corrupt practice. Every vote cast in an election should be voluntary and honest expression of the choice of the voter uninfluenced by any alien considerations. No consideration other than the sublime and pragmatic purpose for which the right is intended. Every election should ensure honest competitions for vote. The object and purpose of Section 123 no doubt, is to ensure that election process should remain pure and

unsullied. Any construction of Section 123 of the Act should aim at the suppression of mischief of corruption. In *Shri Umed Vs. Raj Singh and Others*, Bhagwati, J, said :-

"The political ideal of democracy is government by the consent of the governed and government by consent postulates, amongst various other requirements, free elections where there is honest competition for votes. The election process must, therefore, remain pure and unsullied and it has been the endeavour of our law makers to secure this by making various provisions in the Representation of the People Act, 1951. Section 123, Sub-section (1)(A) is one such provision. It must, therefore, doubtless be construed so as to suppress the mischief and advance the remedy. But that does not mean that a construction should be adopted which ignores the plain natural meaning of the words or disregards the context and collocation in which they occur.

I am bound by the precedents of the Supreme Court and this Court on the subject. I should not speculate upon improvements in those precedents. Lord Eldon has said : --

"It is better that the law should be certain than that every judge should speculate upon improvements in it."

I remember the dictum that "genera! propositions do not decide concrete cases" and the "life of the law has not been logic : it has been experience." (See *Lochner v. New York* (1905) 198 US 45, Holmes J. dissenting). I should also remember that great adage that in the decision process courts are dominantly coerced, not by the essays of their predecessors -- but by a surer thing -- by an intuition of fitness of solution to problem. (Vide -- *Oliphant* -- A return to stare decisis. Page 159.) A just solution for the particular case is the crucial factor in the decision process.

55. I now come to the decision on this point. My decision is that the contents of Ext. P1 notice would not amount to an offer of bribery to a voter within the meaning of Section 123(1HA) of the Act.

56. The learned counsel for the respondent wanted me to record a finding whether P.W. 5 has printed and circulated Ext. P1 notice with the consent of the respondent or his agent. The petitioner has of course stated in his petition that P.W. 5 has printed and circulated notices similar to Ext. P1 with the consent and knowledge of the respondent. Consent is an essential requirement to attract Section 100(1)(b). It has to be established by convincing evidence. I have gone through the evidence of P.W. 5. It is not even suggested to P.W. 5 when he was examined that he had printed and circulated the notice with the consent of the respondent. The suggestion made at the time of examination of P.W. 5 is that the notices were printed for the UDF Election Committee. The question put to P.W. 5 is : --

Another question that was asked when P.W. 5 was examined as a witness is : --

(Matter in vernacular omitted -- Ed.)

In Ext. P1, P.W. 5 has stated very clearly that the notices are being issued in his individual capacity. P.W. 1 is the petitioner. He had no case when he was examined that the notices were issued with the consent of the respondent. The counsel for the petitioner submits that I should disbelieve the respondent when he has disclaimed the knowledge of printing and circulation of the notices and after disbelieving the respondent, I should presume that the respondent has given his consent for printing and distributing the notices. I do not see any definite circumstance established in the case to compel me to disbelieve the respondent when he disclaims knowledge of printing and distribution of notices by P.W. 5. Circumstances are insufficient to disbelieve the respondent when he positively denied his consent for the printing and circulation of the notices. There is no positive proof before me to hold that the notices were printed and distributed by P.W. 5 with the consent of the respondent or his election agent.

57. In *Shri Harasingh Charan Mohanty Vs. Sh. Surendra Mohanty*, the Supreme Court observed : --

"If the corrupt practice is committed by the returned candidate or his election agent, u/s 100(1)(b) the election is void without any further condition being fulfilled. But if the petitioner relies on a corrupt practice committed by any agent other than an election agent, he must prove that it was committed by him with his consent or with the consent of his election agent. Consent, however, cannot be inferred from mere close friendship or other relationship or political affiliation."

I hold that there is no proof in this case that P.W. 5 printed and distributed the offending notices with the consent of the respondent or his election agent.

58. I have to dispose of one other contention also in regard to the corrupt practice alleged to have been committed by P.W. 5 in printing and distributing the notices. Now I have found that the notices were printed and distributed by P.W. 5 not with the consent of the respondent or his election agent. Even then a further question remains for my consideration of course on the assumption that the notice issued by P.W. 5 would amount to a corrupt practice (I have already found that the notices would not amount to a corrupt practice) namely, whether the printing and distribution of the notices had materially affected the result of the election. In *Vashit Narain Sharma Vs. Dev Chandra and Others*, and *Samant N. Balkrishna and Another Vs. V. George Fernandez and Others*, , the Supreme Court has said in unmistakable terms that in the matter of whether an election has been materially affected or not, there is no room for any reasonable judicial guess. The law requires proof. Hidayatullah C.J. said in *Paokai Haokip Vs. Rishang and Others*, at p. 665 :-

"Further it is pointed out that the burden of proof in England was the exact reverse of that laid down by the Indian Statutes. There, the returned candidate has to prove that the non-compliance or mistake did not affect the result of the election. In our country, the burden is upon the election petitioner to show

affirmatively that the result of the election has been materially affected."

59. I have to examine whether the petitioner has successfully discharged his burden by demonstrating to the court either positively or even reasonably that on account of the distribution of notices, the result of the election has been materially affected. No convincing evidence is seen adduced in the case to establish that the result of the election is materially affected, excepting the vague assertion of the petitioner that the distribution of notices has affected him adversely. I find that the petitioner has failed to prove that the election of the returned candidate has been materially affected on account of the printing and distribution of notices by P.W. 5.

60. The second corrupt practice alleged in the petition is in respect of certain acts of Minister for Community Development -- Shri P.K. Velayudhan. It is stated in paragraph 13(g) of the petition that Shri P.K. Velayudhan was camping at North Parur since when the date of polling was fixed, and he issued a notice D/-3-5-1984 sanctioning the extension of a water supply pipe line under NREP Scheme as- a special case under the head "Water and Soil Conservation". The allegation against the Minister was sought to be proved by examining P.W. 14, an Assistant Engineer, Public Health Sub Division, Parur. Through this witness, a File No, A2-958/84 NREP relating to Kottuvally Panchayat has been marked as Ext. P9. Through this witness a letter addressed to this witness by the Block Development Officer, North Parur and the remarks of the witness on that letter have been marked as Ext. P9(a) and Ext. P9(b). Ext. P9(c) is the reply to Ext. P9(a). The petitioner submits that from Ext. P9(a) it can be seen that the Minister has taken undue interest and showed undue haste in sanctioning a scheme for laying water pipe line under the project NREP. As stated earlier Ext. P9(a) is a letter from the Block Development Officer to the Assistant Executive Engineer. In this letter what is stated is : --

"The Hon"ble Minister for Community Development has issued orders to take up the above work under NREP immediately. Hence this letter."

The reference in Ext. P9(a) is taken as the stereobate by the petitioner for substantiating the allegation of corrupt practice. This letter is insufficient for establishing the allegation in para. 13(C) of the petition that the file regarding this order of the Hon"ble Minister moved in lightening speed and the estimate of work was submitted under the special component plan by the Assistant Engineer. Public Health Sub Division, Kerala Water and Waste Water Authority, North Parur. P.W. 14 has deposed that the estimate in regard to the work referred in Ext. P9(a) was submitted along with the estimate of other works to the Division Officer months before the receipt of Ext. P9(a). Ext. P9(a) is DA 7-5-1984. He has also deposed that no action was taken under the circumstances on Ext. P9(a). The witness also said that no administrative sanction was obtained for the work till the date of his examination before the court. There is no averment or proof that the scheme for laying a pipe line as alleged in para. 13(g) was known to voters. Only if the voters knew that the Minister has promised a particular

convenience to a section of voters then alone that promise could induce the voters to vote for a particular candidate. There is no averment in the petition that the voters were told or apprised of the scheme, mentioned in para. 13(G) of the petition. P.W. 1 himself has said that he got the information regarding the scheme from one Panchayat President and from the newspapers. No paper other than the file has been produced and marked in this case. The said Panchayat President has not been examined. The Minister also has not been examined as a witness in this case.

61. In *Harisingh Pratapsingh Chawda Vs. Popatlal Mulshanker Joshi and Others*, , Alagiriswami, J. said : --

"If the payment or promise was to induce the voters, it cannot induce the voters unless they come to know about the payment or the promise. There is no evidence here that the voters knew about the promise to build the hostel. The bargain in such cases as we have mentioned in the judgment delivered by us today in *Iqbal Singh v. Gurdas Singh*, C.A. No. 1172 of 1973 : Reported in *S. Iqbal Singh Vs. S. Gurdas Singh and Others*, is really an offer on the part of the bribe giver that he would do such and such a thing if the voters would vote for him. It is not necessary that the voters should have accepted it. But the voters should have a knowledge about the offer. Then only it would be a bargain."

Assuming that there was some offer by the Minister (no evidence at all in this case) if that offer was kept only in the mind of the offerer and not articulated and made known to the offeree (voters) it will not amount to a bargain. In *S. Iqbal Singh Vs. S. Gurdas Singh and Others*, Alagiriswami, J. quoted the observations in *Ghasi Ram Vs. Dal Singh and Others*, : -

"The position of a Minister is difficult. It is obvious that he cannot cease to function when his election is due. He must of necessity attend to the grievances, otherwise he must fail. He must improve the image of his administration before the public. If everyone of his official acts done bona fide is to be construed against him and an ulterior motive is spelled out of them, the administration must necessarily come to a standstill. The State of Haryana came into existence on Nov. 1. 1966. With an election in the near future, the political party had to do acts of a public nature. The grant of discretionary grants were part of the general scheme to better community development projects and to remove the immediate grievances of the public. The money was required to be spent in about 3 months" time. The action of the Minister had often the concurrence and recommendation of his subordinate staff. It is for this reason that the orders about the improvement of the supply of water were not pressed. They were incapable of being construed against the first respondent. Therefore emphasis was placed upon the distribution of money. The money was not distributed among the voters directly but was given to Panchayats and the public at large. It was to be used for the good of those for and those against the candidate. No doubt they had the effect of pushing forward his claims but that was inevitable even if no money was spent, but good administration changed the people"s

condition. We cannot, therefore, hold that there was any corrupt practice. If there was good evidence that the Minister bargained directly or indirectly for votes the result might have been different but there was no such evidence."

62. Om Prabha Jain Vs. Abnash Chand and Another, was also similar to the allegation here, (not proved) in respect of the grants for Dharmasalas for Harijans. The Supreme Court held that the action of the Minister could not be construed against the Minister and that it was done in the ordinary course of the Minister's duties as Minister and that there was no evidence that it was directly or indirectly, part of a bargain with voters.

63. There is absolutely nothing to connect the Minister with what is shown in Ext. P 9(a). The petitioner has no case that the respondent or his election agent made any request to the Minister. No attempt was made to prove that what has been alleged in para 13(G) was done with the consent and knowledge of the respondent or his election agent. Here there is complete lack of evidence to suggest that the result of the election was affected by the conduct of the Minister. I hold that there is absolutely no substance in the case of the petitioner in regard to the allegations based on the conduct of the Minister. I find that the petitioner has failed to establish the second charge of corrupt practice also.

64. An allegation of corrupt practice is of a quasi-criminal nature exposing the returned candidate not merely to the risk of his election being set aside, but also of his being disqualified to stand for a considerable number of years. He also runs the risk of being prosecuted. The charge of a corrupt practice should therefore be proved beyond reasonable doubt. Certainly the verdict of the polls wears a protective mantle in a democratic polity. The court will vacate such ballot decisions only on establishing beyond reasonable doubt, corrupt practices, or other valid grounds.

65. Though a number of decisions, viz. Samant N. Balkrishna and Another Vs. V. George Fernandez and Others, , Shri Harasingh Charan Mohanty Vs. Sh. Surendra Mohanty, , Rahim Khan v. Khurshid Ahmed, AIR 1975 SC 290, Kanhaiyalal v. Mannalal, AIR 1976 SC 1886, M. Narayana Rao Vs. G. Venkata Reddy and Others, , K.M. Mani Vs. P.J. Antony and Others, ; N.C. Zeliang Vs. Aju Newmai and Others, and Manmohan Kalia Vs. Yash and Others, , were cited by the counsel for the respondent, I am not quoting those decisions, except Manmohan Kalia Vs. Yash and Others, , perhaps the latest. Fazal Ali, J. said; --

"Coming now to the second category of allegations, as the appellant has confined his arguments only to the averments made regarding the application of Section 123(4) of the Act, the ambit of the case is greatly reduced. Before examining the allegations, we might mention that the learned election Judge of the High Court had dealt with all the allegations and has given convincing and cogent reasons for holding that they had not been proved either by oral or documentary evidence. It is now, well settled by several authorities of this Court that an allegation of corrupt practice must be proved as strictly as a criminal charge and

the principle of preponderance of probabilities would not apply to corrupt practices envisaged by the Act because if this test is not applied a very serious prejudice would be caused to the elected candidate who may be disqualified for a period of six years from fighting any election, which will adversely affect the electoral process."

I should certainly remember that one of the fundamental necessities of the election law is to bulwark and safeguard the purity of the election process. Nevertheless, the election of a successful candidate is not to be trivially or lightly interfered with, is a principle always to be borne in mind when trying the election cases. The law of election disputes aims at the object -- that people do not get elected to legislative bodies by arrant and egregious breaches of election law or by corrupt practices. In cases where the law of election disputes does not ordain the consequences or does not command penalty for non-observance with certain procedural requirements of law, certainly the court has to respect the verdict of the polls. I record that no corrupt practices have been proved to have been committed at the election. I hold issues 8 & 9 against the petitioner.

66. The petitioner also submitted that the process of election was vitiated on account of not allowing postal ballot in the repoll of 1984. The counsel for the petitioner very rightly did not seriously press this point. The Supreme Court's direction is unmistakably clear. I do not want to quote the direction again. The Supreme Court only set aside the election of the petitioner with respect to the 50 polling stations-where the voting machines were used and only directed a repoll to be held in those 50 polling stations. When the direction is so very clear, there is no scope for allowing postal ballot by the Election Commission. I hold that there is no merit in this contention.

In the result, the election petition is dismissed. No costs. The petitioner will be entitled to refund of the deposit made by him in this court. The Registrar shall immediately intimate the substance of this decision to the Election Commission and the Speaker of the Kerala Legislative Assembly and shall thereafter send as soon as practicable an authenticated copy of this judgment to the Election Commission as required u/s 103 of the Act.