

Achcha Bhoomanna Vs. the Court of District Munsiff (Election Court) Adilabad and Another

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Court : Andhra Pradesh

Decided On : Jun-11-1991

Reported in : AIR1992AP157; 1991(2)ALT496

Judge : Parvatha Rao, J.

Acts : Andhra Pradesh Gram Panchayats (Conduct of Elections) Rules, 1964 - Rules 38, 51, 51(2), 56(2), 60 and 61; [Representation of the People Act, 1951](#) - Sections 83 and 100(1); [Indian Penal Code \(IPC\), 1860](#) - Sections 171D

Appeal No. : Writ Petn. No. 1456, 1849 and 1215 of 1990

Appellant : Achcha Bhoomanna

Respondent : The Court of District Munsiff (Election Court) Adilabad and Another

Advocate for Pet/Ap. : Govt. Pleader for P. Raj, ;K. Ramakrishna Reddi, ;V. Ravi Kiran Rao and ;Praveen Kumar, Advs.

Judgement :

ORDER

1. These three Writ Petitions relate to the election of Sarpanch of Kajjarala village in Adilabad district held on 14-3-1988.

2. Petitioner in Writ Petition No. 1456 of 1990 is the successful candidate in the said election who was declared as elected by a majority of one vote over the 2nd respondent in the said Writ Petition -- the petitioner was declared to have polled 372 votes and the 2nd respondent was declared to have polled 371 votes. The 2nd respondent filed O.P. No. 3 of 1988 on the file of the election court i.e., 1st respondent in the said Writ Petition, for declaring the election of the petitioner as void and also for declaring him the 2nd respondent as duly elected as Sarpanch. The 1st respondent allowed the said O.P. partially by his order dated 5-1-1990 and declared the election of the petitioner herein as void and directed fresh election of Sarpanch as per Rules. The petitioner in Writ Petition No. 1456 of 1990 seeks a Writ for declaring that the said order of the 1st respondent in O.P. No. 3 of 1988 as arbitrary and illegal and for quashing the same. For convenience, the parties are referred to in this judgment as arrayed in writ petition No. 1456 of 1990.

3. Writ Petition No. 1215 of 1990 is preferred by the 2nd respondent for quashing the said order in O.P. No. 3 of 1988 to the extent fresh election is ordered and for declaring him as duly elected Sarpanch of Kajjarala village.

4. Writ Petition No. 1849 of 1990 is preferred by the petitioner against the District Collector (Panchayat Wing)/Electoral Authority, Adilabad for declaring that his action in issuing the election programme for fresh election to the office of Sarpanch of Kajjarala Gram panchayat as arbitrary and unreasonable,

5. The 2nd respondent alleges in the said O.P. No. 3 of 1988 preferred by him that the petitioner procured the election by resorting to corrupt practices, and that he procured votes of two dead persons and two votes of persons who were not in the village on the polling date, and that he committed the offence of personation at election by which the result of the election was materially affected. The material on which he relies and the particulars he alleges are mentioned in paragraph 2 of his election petition. As the main allegation of the petitioner in Writ Petition No. 1456 of 1990 is that no cause of action is made out by the 2nd respondent in his election petition, it is necessary to reproduce the entire paragraph, which is as follows :--

'(2) That the respondent procured the election by resorting to the corrupt practices. One Narayanar/o Ward No. 8 of Kajjarala village is brother-in-law of the respondent

who divorced his wife named Laxmi about two years back, and married with another lady named Vijaya. The said Laxmi resides at Vagapur, but her name appears in the electoral roll at S.No. 658 as Laxmi w/o Narayan. She did not come to Kajjarala on the date of polling and did not exercise her right of vote. But the present wife of Narayan, Vijaya voted in the name of said Laxmi at the instance of the respondent.

Aggimalla Bhoomanna s/o Ganganna r/o Ward No. 9 of Kajjarala village who died on 9-5-1986 but his name appears in electoral roll at S.No. 738. Peddanti Ashanna s/o Bhoomanna r/o Ward No. 9 of Kajjarala who died on 25-11-1987 but his name appears in the electoral roll at S.No. 715. And Ruyadi Pochanna s/o Ashanna r/o ward No. 10 of Kajjarala whose name appears in the electoral roll at S. No. 791, he was out of Kajjarala on the date of polling and he did not exercise his right of vote. But it is surprising to note that somebody voted in the name of above said three persons and it has been reliably learnt that the above said three votes have been cast in favour of the respondent. The respondent succeeded to procure these three votes in his favour too. Thus the respondent committed the offence of impersonation at election by which the result of the election was materially affected otherwise the petitioner would have been declared elected. The electoral roll which was supplied to the petitioner was not revised one, therefore it gave way for rigging.'

6. In the counter affidavit filed in the said O.P. the petitioner submits that the allegation that Vijaya voted in the name of Laxmi is false and baseless, and he denies that he 'procured the election by resorting to the corrupt practices. 'The petitioner also contends therein that the allegation of the 2nd respondent that the petitioner succeeded to procure the votes of Aggimalla Bhoomanna, Peddanti Ashanna and Ruyadi Pochanna is baseless. The petitioner also submits that the contentions averred in paragraph 2 of the election petition regarding impersonation are imaginary and vague and hence liable to be struck down and that there is no cause of action for filing the election petition because vague and imaginary facts cannot constitute a cause of action. It is to be noticed that in the counter affidavit the petitioner has not denied the specific allegation of the 2nd respondent in his election petition that Aggimalla Bhoomanna son of Ganganna,

resident of Ward No. 9 of Kajjarala village whose name appears in the electoral roll at serial No. 738 died on 9-5-1986 and that Peddanti Ashanna, son of Bhoomanna, resident of Ward No. 9 of the said village whose name appears in the electoral roll at serial No. 715 died on 25-11-1987.

7. The 1st respondent framed the following four issues in that said O.P.:--

'1. Whether the election of respondent is liable to be set aside on the ground of corrupt practices as alleged in petition?

2. Whether the petitioner got votes in his favour cast by intimidation?

3. Whether the petition is liable to be dismissed in limine?

4. To what relief?'

8. The 2nd respondent examined himself as P.W. 1 and examined Ruyadi Pochanna whose name appears in the electoral roll of Kajjarala village at serial No. 791 as P.W. 3. He also examined P.W. 2 the M.D.O. who sent the ballot papers and counterfoils of the ballot papers relating to the election in question in sealed covers to the 1st respondent pursuant to the summons issued. Through him Exs. p-1 to P-10 were got marked. Exs. P-1 to P-3 are sealed covers containing the counterfoils of ballot papers of Ward Nos. 8, 9 and respectively issued to the voters in the election in question (they are not covers containing ballot papers as wrongly stated by P.W. 2 and wrongly noted in the judgment of the 1st respondent). Ex.P-5 is the sealed cover containing used and counted including rejected ballot papers. P.W. 2 opened the sealed cover marked as Ex.P-2 relating to Ward No. 9 and took the counterfoil of ballot paper relating to voter at serial No. 738 of the said electoral roll and it was got marked through him as Ex.P-4; he opened the sealed cover marked as Ex.P-1 relating to Ward No. 8 and took the counterfoil of ballot paper relating to voter at serial No. 658 of the said electoral roll and it was got marked through him as Ex. P-7; he opened the sealed cover marked as Ex.P-3 relating to Ward No. 10 and took the counterfoil of ballot paper relating to voter at serial No. 791 of the said electoral roll and it was got marked through him as Ex. P-9; and he opened Ex. P-5 and took out the ballot

papers relating to voters at serial Nos. 738, 658 and 791 in the said electoral roll and they were marked respectively as Exs. P-6, P-8 and P-10. It is seen from Exs. P-6, P-8 and P-10 that they were cast in favour of the tree symbol allotted to the petitioner. It is noted in the judgment of the 1st respondent that the 2nd respondent did not ask P.W. 2 to take out the counter-foil of ballot paper and also the original ballot paper of the voter in serial No. 715 of the electoral roll i.e., Peddanti Ashanna, as the said vote was not cast and that the allegation relating to the said voter was not pressed by the 2nd respondent. Exs. A-1, A-2 and A-3 were marked through P.W. 1, the 2nd respondent. Exs. A-1 and A-2 are the certified extracts of the death register issued by the M.R.O. of Talamadugu. Ex. A-1 gives the name of the person who died as Aggimalla Bhoomanna son of Ganganna, aged about 70 years; in column No. 2 under the heading date, '9-5-1986' is noted; and in column No. 9 under the heading 'name of the person reporting', it is noted Grama Kothawal etc. Ex. A-2 relates to Peddanti Ashanna, son of Bhoomanna, aged 57 years and the date noted therein in the relevant column is 25-11-1987. Ex. A-3 is the electoral roll of Gram Panchayat, Kajjarala for the year 1986. The petitioner examined himself as R.W. 1. No documents were marked on the petitioner's side.

9. The 1st respondent held that the 2nd respondent could not establish his case as regards the allegation of corrupt practice and rigging of the vote of Laxmi, wife of Narayana i.e., the voter under serial No. 658 in the said electoral roll Ex. A-3, but found in favour of the 2nd respondent as regards the allegation relating to corrupt practice and rigging of the votes of A. Bhoomanna the deceased voter in serial No. 738 and A. Pochanna, voter in serial No. 791 of Ex. A-3. The 1st respondent found that the 2nd respondent could prove his allegations against the petitioner as far as rigging of votes of P. W. 3 and Aggimalla Bhoomanna by impersonation and as the petitioner was declared elected as Sarpanch by a lead of only one vote over the 2nd respondent, the petitioner must be declared as having secured only 370 votes and the 2nd respondent as having secured 371 votes. The election of the petitioner was declared as void; however fresh election was ordered instead of declaring the 2nd respondent as having been elected.

10. In Writ Petition No. 1456 of 1990 the petitioner contends that the impugned order of the 1st respondent is not based on any evidence and that there is no finding against him as required by law. He contends that the 2nd respondent has not stated in his election petition or in his evidence any material facts and particulars as to who impersonated at whose sanction or connivance or consent or abetment as required by law and that therefore the allegations are vague and without basis and do not constitute any cause of action. He contends that the election petition of the 2nd respondent has not complied with the mandatory requirements of sub-rule (2) of Rule 51 of the Andhra Pradesh Gram Pan-chayats (Conduct of Elections) Rules, 1964 (hereinafter referred to as 'the Rules'). The petitioner also submits that the 2nd respondent failed to make out a charge on corrupt practice against him as required by law under Rule 60 of the Rules.

11. The 2nd respondent filed his counter-affidavit in Writ Petition No. 1456 of 1990 contending that he stated all the material facts and particulars with regard to impersonation and also the procuring of the votes by the petitioner and that the allegations in the election petition are not vague and are not based on imaginary facts, and that they do constitute a cause of action. He also contends that he clearly proved beyond reasonable doubt that there was rigging of votes by impersonation of P.W. 3 and also Aggimalla Bhoomanna the dead person and that it had come out in the evidence that the said two votes were cast in favour of the petitioner, and that the election was materially effected due to the said impersonation, rigging, etc. He also contends that the language of Rule 51 of the Rules is different from the language of S. 83 of the Representation of the People Act, 1951. He submits that the 1st respondent was right in declaring the election of the petitioner as void.

12. According to the learned counsel for the petitioner, a reading of the election petition discloses that the petitioner's election is sought to be declared as void on the ground of the corrupt practice of procuring 4 votes by way of impersonation by the petitioner. According to him, the said allegations of corrupt practice as spelled out in the election petition is incomplete and does not constitute a cause of action because (i) the names of the persons who actually impersonated the said four voters are not stated in the election petition by the 2nd respondent and (ii) no material and particulars are furnished in the election petition in respect of the

commission of the offence of 'personation' by the petitioner. In this connection the learned counsel for the petitioner referred to S. 171-D Chapter IX-A of the Indian Penal Code, 1860 which defines the offence of 'personation at election' as follows :--

'171-D. Personation at election : Whoever at an election applies for a voting paper or votes in the name of any other person, whether living or dead, or in a fictitious name, or who, having voted once at such election, applies at the same election for a voting paper in his own name, and whoever abets, procures or attempts to procure the voting by any person in any such way, commits the offence of personation at an election.'

He also referred to Rule 60 of the Rules which, so far as it is relevant for the purposes of the contention, is as follows :--

'60. If in the opinion of the election court -

(a) a returned candidate his agent or any other person with the connivance of such candidate or agent, has committed, or abetted the commission of any election offence falling under Chapter IX-A of the Indian Penal Code or any law or rule relating to the infringement of the secrecy of an election; or

(b) the election of a returned candidate has been procured or induced or the result of the election has been materially affected, by any of the following corrupt practices, namely :

(i) any election offence falling under Chapter IX-A of the Indian Penal Code or any law or rule relating to the infringement of the secrecy of an election when committed by a person who is not a candidate or his agent or a person acting with the connivance of a candidate or his agent;

XXX XXX XXX XXX

(c) The result of election has been materially affected by any irregularity in respect of a nomination paper or by the improper reception or refusal of a nomination paper or vote or by any non-compliance with the provisions of the Act or the rules

made thereunder :--

The election of such returned candidate shall be void :

XXX XXX XXX XXX'

He submits that in the election petition of the 2nd respondent there is no allegation as to how and in what manner the petitioner procured the voting by any person and it is not stated as to who impersonated and at whose sanction or connivance or consent or abetment that impersonation was done. He submits that the sole case of the 2nd respondent as can be made out from the election petition is that the petitioner procured the voting by some person in the name of the said four voters and that unless material and particulars of the person or persons who actually impersonated and of the manner in which the voting by such person or persons was procured by the petitioner are stated, the offence under the said S. 171-D cannot be made out as the said material and particulars are necessary ingredients of the said offence which have to be proved for establishing the commission of the said offence. He contends that therefore the said election petition does not comply with the mandatory requirements of sub-rule (2) of Rule 51 of the Rules and that no cause of action is made out and that it is liable to be dismissed in limine. As regards the findings of the 1st respondent, the learned counsel for the petitioner confined his arguments only to the two votes relating to voters in serial Nos. 738 and 791 in view of the fact that the 1st respondent rejected the case of the 2nd respondent in respect of the other two votes relating to voters in serial Nos. 658 and 715. He contends that the 2nd respondent has not adduced any evidence whatsoever to establish that the petitioner procured the voting by any person in respect of the two votes relating to voters in serial Nos. 738 and 791 of Ex. A-3. The 2nd respondent in his evidence as P.W. I has clearly stated that he did not know who franchised the votes in the names of the said two voters and that only on suspicion he believes that the said two votes were cast in favour of the petitioner. The learned counsel for the petitioner therefore contends that the facts alleged and proved do not make out or establish that the petitioner committed the offence of 'personation at election' under S.171-D of the Indian Penal Code, 1860 and that the finding of the 1st respondent in this regard is

without any basis and is liable to be set aside and that therefore the election petition is liable to be dismissed.

13. After carefully going through the material facts and particulars alleged in the election petition of the 2nd respondent I am of the view that the said petition is not liable to be dismissed in limine on the ground that the requirements of sub-rule (2) of Rule 51 of the Rules are not complied with. As regards Laxmi wife of Narayan, the voter in serial No. 658 in the electoral roll, the facts alleged are that she did not come to Kajjarala village on the date of polling and did not exercise her right to vote and that the present wife of Narayan i.e., Vijaya voted in the name of the said Laxmi at the instance of the petitioner. Therefore, there is a clear allegation that the petitioner procured the voting by Vijaya and that Vijaya at the instance of the petitioner voted in the name of Laxmi who was residing at Vagapur at that time. Though there is no reference to S. 171-D of the Indian Penal Code, 1860., in the election petition, all the particulars relating to the alleged commission of offence of 'personation at election' by the petitioner are mentioned in the election petition as regards the procuring by him of the voting by Vijaya. As regards the voters in serial Nos. 738 and 715, the 2nd respondent Stated in categorical terms that they died on 9-5-1986 and 25-11-1987 respectively long before the date of policy i.e., 14-3-1988. As regards the voter at serial No. 791 the allegation of the 2nd respondent in the election petition is that he was out of the village on the date of the polling and he did not exercise his right to vote. The 2nd respondent then alleges that 'but it is surprising to note that somebody voted in the name of the above said three persons and it has been reliably learnt that the above said 3 votes have been cast in favour of' the petitioner and that the petitioner 'succeeded to procure these three votes in his favour too'. The 2nd respondent also alleges that the electoral roll which was supplied 'was not revised one, therefore it gave way for rigging'. From these material and particular relating to the said three votes, it is clear that the 2nd respondent complains of is that the said three votes improperly received and that the petitioner procured the said 3 votes. No details as to how the petitioner procured the said three votes are mentioned in the election petition and the names of the persons who actually impersonated and voted are also not stated. In this connection, it has to be noted that what is relevant for the purpose of S. 171-D of the Indian Penal Code, 1860 is 'procuring the voting by a person' and not

'procuring the vote' of a person; voting by a person in a particular manner is not relevant i.e., procuring of a vote is not necessary. It is not the case of the 2nd respondent that the petitioner himself impersonated and voted in the name of the said three voters; his case is only that somebody voted in the name of the said three voters and that the petitioner succeeded to procure these three votes in his favour too'. The 2nd respondent did not allege in his election petition that the petitioner procured the voting by any specified person or persons. In the absence of any such allegation and in the absence of any particulars regarding the person or persons whose voting was procured by the petitioner, I am of the opinion that it cannot be said that the 2nd respondent alleged impersonation at election by the petitioner in respect of the said three votes. But all the facts and particulars necessary for the allegation of improper reception of the said three votes are stated in the election petition. I do not accept the contention of the learned counsel for the petitioner that there is no allegation of improper reception in the election petition and that the nature of the allegations cannot be read under the head of improper reception. In this connection, it is useful to refer to the decision of the Supreme Court in *Shankar v. Sakharam*, : [1965]2SCR403 . In that case, the complaint of the election petitioner was that the Presiding Officer of a polling station improperly prevented 19 voters from inserting their ballot papers into the ballot box and instead directed them to handover those papers to himself. The Presiding Officer after taking possession of the said ballot papers kept them inside a sealed envelope and forwarded them to the Returning Officer who received the said 19 ballot papers, but did not count them as they were not taken out of the ballot box. The question was whether in the circumstances the election of the returned candidate was liable to be declared as void. The contention of the election petitioner in that case was that the Returning Officer improperly refused to count these 19 votes. This contention was rejected by the Election Tribunal and upheld by the High Court and the Supreme Court because the said 19 ballot papers were not valid votes as they never went inside the ballot box. The Election Tribunal in that case held that the election of the returned candidate could not be set aside under Section 100(1)(d)(iv) of the [Representation of the People Act, 1951](#) which provides that the election of the returned candidate shall be declared as void if the result of the election has been materially affected 'by any non-

compliance with the provisions of the Constitution or of this Act or of any rules or orders made under this Act'. On appeal, the High Court upheld the said finding of the Election Tribunal but went further and held that the Election Tribunal was in error in focussing its attention on the provisions of the said S. 100(1)(d)(iv) and that the 19 votes did not voluntarily refrain from inserting their ballot papers into the ballot box and that therefore by refusing to allow the said voters to insert those ballot papers into the ballot box, the Presiding Officer improperly refused to receive those votes and this improper refusal of votes was a ground for declaring the election as void under S. 100(1)(d)(iii) of the said Act. In the Supreme Court it was argued that the High Court was in error in making out a new case for the election petitioner and while rejecting the said argument, the Supreme Court observed : [1965]2SCR403 :-

'We are not inclined to accept this argument. All the relevant facts are set out in the election petition. The petition definitely charged that the Presiding Officer improperly prevented the 19 voters from inserting the ballot papers into the ballot box. The pleadings are broad enough to cover a case of breach of S. 100(1)(d)(iii).'

In the present case also. I am satisfied that the pleadings of the 2nd respondent are sufficient for the election court to consider whether the result of the election has been materially affected by improper reception of the said three votes. I therefore hold that the election petition of the 2nd respondent is not liable to be dismissed at the threshold. The contention of the learned counsel for the petitioner that the nature of the allegation in respect of the said three votes in the election petition cannot be read under the head of improper reception is without any merit. In *Shankar v. Sakham* : [1965]2SCR403 referred to above, dealing with 'the improper reception, refusal or rejection of any vote or the reception of any vote which is void' in Sec. 100(1)(d)(iii) of the [Representation of the People Act, 1951](#), the Supreme Court held that (at P. 1429 of AIR):--

'Section 100(1)(d)(iii) covers not only an improper rejection of votes by a Returning Officer at the time of counting, but also an improper refusal of a vote by the Presiding Officer at the time of polling.'

and rejected the contention that Section 100(1)(d)(iii) contemplated breaches of duty by the Returning Officer and the improper refusal of votes by the Presiding Officer at a polling station cannot be considered as rejection under S. 100(1)(d)(iii). The same principle applies also to improper reception of any vote and it must be held that the said S. 100(1)(d)(iii) covers also in improper reception of a vote by the Presiding Officer at the time of polling. The language of Clause (c) of Rule 60 of the Rules is in pari materia with the said Section 100(1)(d)(iii) to the extent it is relevant for the said interpretation and I hold that Clause (c) of Rule 60 of the covers also an improper reception of a vote at the time of polling. I gain strength for this view from the following observations of the Supreme Court in *P. Malai Chami v. M. A. Ambalam*, : [1973]3SCR1016 :

'The improper reception or rejection, therefore, would include not merely cases, where a voter appears before the presiding officer at the time of polling and his vote is received where it should not have been received and his vote rejected where it should not have been rejected. The improper rejection or reception contemplated under Section 100(1)(d)(iii) would include mistakes or wrong judgments made by the returning officer while counting and exercising his powers under Rule 56(2), clauses (a) to (h).'

which proceeds on the basis that there can be no doubt that the said S. 100(1)(d)(iii) definitely includes cases where a voter appears before the Presiding Officer at the time of polling and his vote is received where it should not have been received.

14. As already stated above, the learned counsel for the petitioner confined his arguments, so far as the findings of the 1st respondent are concerned, only to the two votes relating to the voters in serial Nos. 738 and 791, I already held, in view of the material and particulars mentioned in the election petition that it cannot be said that the 2nd respondent alleged personation at election by the petitioner in respect of the said votes as no details as to how the petitioner procured the said votes are mentioned in the election petition and the names of the persons who impersonated and exercised the franchise of voters in serial Nos. 738 and 791 in Ex,A-3 are not stated in the election petition. In his evidence as P.W. 1 the 2nd respondent has

clearly stated that he did not know who franchised the votes in the names of the said two voters and no evidence whatsoever was adduced by him to establish that the petitioner procured the voting by any person. Indeed, it is difficult to conceive of such proof unless the name of the person voting is known. I am therefore satisfied that the allegation of corrupt practice of 'personation at election' is not properly made out by the 2nd respondent and even otherwise the facts alleged and proved do not make out or establish any offence of personation at election under S. 171-D of the Indian Penal Code, 1860. I am constrained to observe that the 1st respondent has not given a clear finding in this regard. Though S. 171-D of the Indian Penal Code and Rule 60 of the Rules are referred to in the impugned order dated 5-1-1990, there is no mention therein whether a finding is being given under Clause (a) or under Clause (b) of Rule 60 of the said Rules. The 1st respondent holds that:--

'Here in this case the petitioner could prove that there was rigging of votes by impersonation of P.W. 3 and also Aggimalla Bhoomanna the dead person. Even abetment or procuring the voting by such method is an offence under Section 171-D, I.P.C. Under Rule 60 of A.P. Gram Panchayat (Conduct of Election) Rules if any election offence falling under Chapter IX A of the Indian Penal Code inclusive of Section 171-D or any law or rule relating to the infringement of secrecy of an election when committed, due to which the result of the election has been materially affected, the election of such returned candidate shall be declared void. Here in this case as earlier said the petitioner could prove the allegation levelled by him against respondent, as far as the rigging of votes of P.W. 3 and Aggimalla Bhoomanna by impersonation.'

From the above it is clear that there is no finding as to whether the petitioner himself committed or abetted the commission of an election offence under the said S. 171-D in which case Clause (a) of Rule 60 of the said Rules is attracted, or whether someone else other than the petitioner or his agent or a person acting with the connivance of the petitioner or his agent committed the said offence in which case Clause (b) of Rule 60 of the said Rules is attracted -- in the latter case alone the question whether the election has been materially affected arises, if at all. I am of the view that the finding of the 1st respondent in this regard is erroneous and

cannot be sustained. The 1st respondent holds that as the votes polled in respect of voters in serial Nos. 791 and 738 were cast in favour of the petitioner 'the un rebuttable presumption would be that it was the respondent (the petitioner herein) that asked one of his followers to impersonate P.W. 3 to cast the vote in his favour' and that 'the un rebuttable presumption would be that it was the respondent (the petitioner herein) that instigated some of his followers to impersonate Aggimalla Bhoomanna the dead person and cast his vote in his favour and at his instance somebody impersonated and cast his vote'. This is an unwarranted and an impermissible reasoning. The Supreme Court has laid down repeatedly that the trial in election petitions in respect of allegations relating to corrupt practices is quasi-criminal in nature and that strict proof is necessary in the case of corrupt practices; therefore there is no place for presumptions or pre-conceived notions. In *Rahim Khan v. Khirshid Ahmed*, : [1975]1SCR643 the Supreme Court observed as follows :--

'Indeed election petitions where corrupt practices are imputed must be regarded as proceedings of a quasi-criminal nature wherein strict proof is necessary. The burden is therefore heavy on him who assails an election which has been concluded.'

Referring to this case, the Supreme Court in its recent decision in *Manohar Joshi v. Damodar Tatyaba*, : [1991]1SCR759 held :

Where, therefore, a corrupt practice is alleged, the trial of an election petition on such charge is of a quasi-criminal nature, and a heavy burden rests on the person alleging the corrupt practice to prove strictly all the ingredients of the charge.'

In *Mahani Shreo Nath v. Choudhry Ranbir Singh*, : (1970)3SCC647 , the Supreme Court held :

'A plea in. an election petition that a candidate or his election agent or any person with his consent has committed a corrupt practice raises a grave charge.....The charge in its very nature must be established by clear and cogent evidence by those who seek to prove it. The Court does not hold such a charge proved merely on preponderance of probability: the Court requires that the conduct attributed to

the offender is proved by evidence which establishes it beyond doubt.'

In *Manmohan Kalia v. Shri Yash*, : [1984]3SCR383 , the Supreme Court reiterated the same view in the following terms :--

'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.....'

Though this is said in cases arising under the [Representation of the People Act, 1951](#) the same principles govern the questioning of elections under the Andhra Pradesh Gram Panchayats Act, 1964 and the Rules, and more so when the corrupt practice alleged relates to the commission of an election offence falling under Chapter IX-A of the Indian Penal Code. These principles are lost sight of by the 1st respondent.

15. Then there remains the question of improper reception of votes in respect of voters in serial Nos. 738 and 791 of the electoral roll. As regards the vote in respect of voter in serial No. 791 who was examined as P.W. 3, the 1st respondent believes the oral evidence of P.W. 3 and finds as follows :--

'P. W. 3 himself entered into the witness box and swears to the effect that he did not cast his vote and his evidence cannot be simply brushed aside. Therefore there is no reason to disbelieve the evidence of P.W. 3 and believing the evidence of P.W. 3 I hold that the vote of P.W. 3 was cast by some other person impersonating him.'

Apart from the evidence of P.W. 3 there is nothing else to establish that P.W. 3 did not exercise his franchise on 14-3-1988 the date when the poll took place. An examination of the evidence of P.W. 3 discloses that it is not his case that it was impossible for him to be present in Kajjarala village to exercise his franchise and cast his vote on 14-3-1988. According to him, though he belonged to Kajjarala village, in the year 1988 he was at Ruyyadi village as farm servant of one M. Ganga Reddy, and the said Ruyyadi village is about 3 K.Ms, away from his village i.e., Kajjarala village. These facts by themselves do not improbabilize the exercise of

his franchise. Therefore, there is nothing to corroborate his statement that he did not cast his vote in the Sarpanch election. In *Laxmi Narayan Nayak v. Ramratan Chaturvedi*, (1990) 2 SCC 173 at 177 : (AIR 1991 SC 2001 at p. 2003) the Supreme Court observed that in a catena of cases it has laid down the following principles, among others, as regards election cases :

'The evidence produced before the court in support of the. pleadings must be clear, cogent, satisfactory, credible and positive and also should stand the test of strict and scrupulous scrutiny;

It is unsafe in an election case to accept oral evidence at its face value without looking for assurances for some surer circumstances or unimpeachable documents.'

Against in *M. J. Zakharia Sait v. T. M. Mohammed*, : [1990]2SCR719 the Supreme Court observed :--

'Time and again, the courts have uttered a warning against the acceptance of a non-corroborated oral testimony in an election matter because it is not only difficult to get a non-partisan witness but is also easy to procure partisan witnesses in such disputes. The courts have, therefore, insisted upon some contemporaneous documentary evidence to corroborate the oral testimony when in particular such evidence could have been maintained.'

In the present case, by the time P.W. 3 was examined the counterfoil relating to the voter in serial No. 791 was already marked as Ex. P-9 and the corresponding ballot paper was also got marked as Ex. P-10. An examination of Ex. P-9 discloses that it contains fairly clear finger print impression, presumably the thumb impression of the person to whom the ballot paper Ex. P-10 was issued. It is inexplicable why Ex. P-9 was not put to P.W. 3 and his finger print impressions compared to the finger print impression in Ex. P-9. That would have conclusively established whether the ballot paper was issued to him and whether he exercised his franchise or not. In fact, the proper course ought to have been : first ascertaining whether a prima facie case was made out by the 2nd respondent that P.W. 3 did not exercise his franchise and for that the counterfoil Ex. P-9 only ought

to have been brought out and put to him and the signature or finger print impression thereon ought to have been compared with the signature or finger print of P.W. 3; and only after ascertaining conclusively that he did not exercise his franchise, the corresponding ballot paper ought to have been brought out and not before that. It is unfortunate that the said corresponding ballot paper relating to voter in serial No. 791 was got marked as Ex. P-10 violating the secrecy of the ballot in an unwarranted manner. The Supreme Court observed in *P. K. K. Shamsudeen v. K. A. M. M. Mohindeen*, : AIR 1989 SC640 that :

'The preservation of the secrecy of the ballot is a sacrosanct principle which cannot be lightly or hastily broken unless there is *prima facie* genuine need for it. The right of a defeated candidate to assail the validity of an election result and seek recounting of votes has to be subject to the basic principle that the secrecy of the ballot is sacrosanct in a democracy and hence unless the affected candidate is able to allege and substantiate in acceptable measure by means of evidence that a *prima facie* case of a high degree of probability existed for the re-count of votes being ordered by the Election Tribunal in the interests of justice, a Tribunal or court should not order the recount of votes.'

In *Ram Sewak Yadav v. Hussain Kamil Kidwai*, : [1964]6SCR238 the Supreme Court observed (at P. 1252 of AIR) :

'An order for inspection may not be granted as a matter of course; having regard to the insistence upon the secrecy of the ballot papers, the Court would be justified in granting an order for inspection provided two conditions are fulfilled :

- (i) that the petition for setting aside an election contains an adequate statement of the material facts on which the petitioner relies in support of his case; and
- (ii) The tribunal is *prima facie* satisfied that in order to decide the dispute and to do complete justice between the parties inspection of the ballot papers is necessary.

But an order for inspection of ballot papers cannot be granted to support vague pleas made in the petition not supported by material facts or to fish out evidence to support such pleas. The case of the petitioner must be set out with precision

supported by averments of material facts. To establish a case so pleaded an order for inspection may undoubtedly, if the interests of justice require, be granted. But a mere allegation that the petitioner suspects or believes that there has been an improper reception, refusal or rejection of votes will not be sufficient to support an order for inspection.'

I am therefore of the view that the finding of the 1st respondent that the vote of P.W. 3 was cast by some other person impersonating him cannot be sustained merely on the uncorroborated evidence of P.W. 3 because the 2nd respondent has not established clinchingly that it was impossible for P.W. 3 to cast his vote at Kajjarala village on 14-3-1988 because Ex. P-9 was not put to P.W. 3 and it was not established that the finger print in Ex. P-9 was not that of P.W. 3. The said finding is vitiated by errors apparent on the face of the record and is contrary to law and well established principles laid down by the Supreme Court. In the circumstances improper reception of the vote of P.W. 3 is not established.

16. But it is a different story in the case of the vote relating to serial No. 738 of the electoral roll. The 2nd respondent clearly alleged in his election petition that Aggimalla Bhoomanna the person whose name appears in serial No. 738 died on 9-5-1986. As already stated by me earlier, the said fact was not controverted by the petitioner in his counter-affidavit to the election petition, even though the said counter was filed on 4-11-1988 long after P.W. 1 was examined in chief on 16-9-1988 and Exs. A-1 to A-3 were got marked by him. Ex. A-1 is the certified extract of the death register relating to the said Aggimalla Bhoomanna. P.W. 1, the 2nd respondent, was cross-examined on 24-2-1989 on behalf of the petitioner after the petitioner filed his counter. In the cross-examination of P.W. 1 no question was put to him as regards Ex. A-1. The marking of Ex. A-1 is not questioned also in the affidavit in support of Writ Petition No. 1456 of 1990 and the learned counsel for the petitioner has also not raised any contentions questioning the same. By the time the petitioner was examined as P.W. 1 on 2-11-1989, the counterfoil in respect of voter in Serial No. 738 was marked as Ex. P-4 while examining P.W. 2 on 20-7-1989, From Ex. P-4 it is clear that some one came forward in the name of Aggimalla Bhoomanna, voter in serial No. 738, and received the ballot paper and cast it on 14-3-1988 -- as already stated above, the said ballot paper in respect of

voter in serial No. 738 was marked as Ex. P-6 in the course of examining P.W, 2. R.W. 1 deposed that Aggimalla Bhoomanna was alive on 14-3-1988 and that he himself in fact exercised the franchise and cast his vote and that none impersonated him. Even though no suggestion put to P.W. 1 that Aggimalla Bhoomanna was alive on 14-3-1988 and that he himself cast the vote, and even though the averment of the 2nd respondent in his election petition that Aggimalla Bhoomanna died on 9-5-1986 but his name appeared in the electoral roll at serial No. 738 was not denied by the petitioner in his counter to the election petition, for the first time the petitioner in his evidence as R.W. 1 stated that the death certificate of Aggimalla Bhoomanna marked as Ex. P-1 (obviously, he means Ex. A-I) is not correct. It is also significant that P.W. 1 asserts that Aggimalla Bhoomanna died about 6 months after the elections, and yet he does not file any death certificate of Aggimalla Bhoomanna to establish his case that Aggimalla Bhoomanna died after 14-3-1988 and not on 9-3-1986 and that Ex. A-I is not correct. I am therefore, satisfied that the finding of the 1st respondent that Aggimalla Bhoomanna died in May, 1986 and that he was not alive on the date of election cannot be disturbed in this Writ Petition. The 2nd respondent asserted in categorical terms in his election that somebody voted in the name of Aggimalla Bhoomanna in his evidence as P.W. 1 also be asserted that somebody voted in the name of Aggimalla Bhoomanna, In his cross-examination also P.W. 1 stated 'I do not know who franchised the votes in the names of A. Bhoomanna, P. Ashanna and R. Pochanna. Nobody informed me that the votes polled in the name of above persons were polled in favour of respondent. On suspicion I am giving these details. I cannot say whether in the name of dead persons anybody franchised their votes or not. I do not know whether any votes were polled in the name of dead persons apart from the names of the persons I have stated.' The petitioner has omitted the last sentence in the extract given by him of P.W. 1's evidence at page 3 in this affidavit in support of the Writ Petition. P.W. 1 also states in his evidence in cross-examination :--

'As the polling agents marked on the voter's list, I am able to say that these three votes were polled in favour of respondent. I did not file the voter's list in which there is markings by agents.....Except these 4 votes the remaining votes were polled properly.'

It is to be noted in this connection that R.W. 1 states categorically that the vote of the voter in serial No. 738 was in fact cast and it is not his case that it was not cast. As the petitioner was declared elected with a majority of only one vote, I am of the view that the 2nd respondent made out a case for examining the counterfoil relating to the voter in serial No. 738; and if it is found that the vote in the name of the dead person Aggimalla Bhoomanna was in fact cast, to examine the ballot paper relating to the voter in serial No. 738 and reject the vote cast therein on the ground of improper reception under Clause 1 (c) of Rule 60 of the Rules. In *Manphul Singh v. Surinder Singh*, : [1974]1SCR52 the Supreme Court has laid down the manner in which the trial has to proceed in the case of the votes cast in the name of dead persons and absent persons in the following terms :

'As and when the trial proceeds in the case of votes cast in the name of dead persons the death certificates already produced would have to be proved as relating to the particular individual whose name is found in the electoral roll and then the counterfoil relating to the particular number of the voter would have to be looked into to see whether the vote had been cast and then it would have to be found out in whose favour that vote had gone. In the case of absent voters in whose name votes have been cast, either the voters concerned or somebody closely related to them or who knows them very well would have to give evidence that on the particular polling day the voter was not in town to be able to cast the vote. It is possible that in some cases, as in the 44 instances which we have earlier referred to, it might also be proved that a particular person had cast the vote in the name of the absent person, but that is not always necessary if it is established to the satisfaction of the Court that the voter concerned was not anywhere near the polling station on that day and could not have cast the vote. Then the voting paper itself would have to be looked into to see in whose favour it has been cast. It might even be necessary to look into the counterfoils if the respondent wants to establish that the vote has been cast by the real voter. If the person who gives evidence admits that he had voted in the name of an absent voter he may have to be confronted with the counterfoil and the signature or thumb impression thereon and it may have to be compared with the signature or thumb impression of the person who gives evidence. This might even become necessary in some cases where even the voter concerned comes forward and gives

evidence that he did not cast his vote. If his statement is questioned it may be necessary to compare his signature or thumb impression with the signature or thumb impression found in the counterfoil of the voting paper issued in his name,'

It is relevant to note also that in that case the Supreme Court -rejected the contention that the person who voted in the name of dead or absent persons should be specifically alleged as follows : [1974]1SCR52 :--

'Mr. Garg then went on to argue that where it is alleged that votes have been cast in the name of dead or absent persons it should be specifically stated who exactly voted in place of the dead or absent persons. In respect of his first objection it has to be pointed out that it may very often happen that a candidate has no polling agents at all in various polling stations and polling booths. Very often the polling agent may not be a person belonging to that village so that he may not be able to challenge those votes then and there. Therefore, it is enough if he has made subsequent enquiries and come to know the facts and alleges them within the period of limitation provided in the Act.'

In *Shashi Bhushan v. Balraj Madhok*, : [1972]2SCR177 the Supreme Court observed :

'Facts naturally differ from case to case. Therefore it is dangerous to lay down any rigid test in the matter of ordering an inspection. It is no doubt true that a judge while deciding the question of inspection of the ballot papers must bear in mind the importance of the secrecy of the ballot papers. The allegations in support of a prayer for inspection must not be vague or indefinite; they must be supported by material facts and prayer made be a bonafide one. If these conditions are satisfied, the Court will be justified in permitting inspection of ballot papers. Secrecy of ballot is important, but doing justice is undoubtedly more important.....'.

In the present case, the 2nd respondent is not seeking recount of the votes, but only examination of counterfoils and ballot papers in respect of specified voters and not for fishing out information. I am satisfied that so far as the counterfoil and ballot paper relating to voter in serial No. 738 is concerned, the 2nd respondent has made out a case for their examination. In this connection, it is to be noted that

the petitioner has not questioned the examination of counterfoils and ballot papers in Writ Petition No. 1456 of 1990. An examination of the record discloses that even though I.A. No. 93 of 1989 was filed by the 2nd respondent on 12-6-1989 seeking the opening of the sealed packets containing the ballot papers and the respective counterfoils relating to all the 4 persons, no counter was filed by the petitioner opposing the same; and even though it was ordered on 6-7-1989 the petitioner did not question the said order at any time and even in this writ petition. It is to be noted also that by 6-7-1989 the 2nd respondent was not merely examined in chief but also was cross-examined on 24-2-1989 and Exs. A-1 to A-3 were also marked by then. Exs. P-4 and P-6 were taken out of the sealed covers and marked on 20-7-1989 when PW2 was examined. I am therefore satisfied that a prima facie case was made out by the 2nd respondent even by then for examining the counterfoil and ballot paper relating to the voter in Serial No. 738 i.e., Aggimalla Bhoomanna marked as Exs. P-4 and P-6. As already stated above, the 1st respondent held that Aggimalla Bhomanna died on 9-5-1986. Therefore, it follows that the vote in respect of Aggimalla Bhomanna was improperly received, and as it was cast in favour of the petitioner it has to be deducted from his tally, and as he was declared as elected by a majority of only one vote, he will lose his majority and it must be held that the petitioner and the 2nd respondent received 371 votes each. I am therefore, not inclined to interfere with the order of the 1st respondent to the extent it declared the election of the petitioner as void and to the extent it ordered fresh election. The 2nd respondent cannot be declared as elected because he also does not secure a majority. Unlike the Election Officer under Rule 38 of the Rules, the Election Court is not vested with any power under Rule 61 of the Rules to decide by lots in case of equality of votes between any candidates.

17. The learned counsel for the petitioner raised a further contention that no issue was framed as regards improper reception of votes. But the facts necessary for establishing improper reception of the votes of the 4 persons have to be enquired into under issue No. 1 which is 'whether the election of respondent is liable to be set aside on the ground of corrupt practices as alleged in the petition', though some more facts also have to be enquired into under issue No. 1. No prejudice is caused to the petitioner. I am satisfied that there is no merit in this contention of the learned counsel for the petitioner.

18. For the reasons stated above, the writ petition are dismissed. The Election Authority, Adilabad (the respondent in Writ Petition No. 1849 of 1990) is now free to hold fresh election to the Office of Sarpanch of Kajjarala Gram Panchayat in Talamadugu Mandal of Adilabad District. No costs. Advocate's fee Rs. 250/- in each.

19. Petitions dismissed.

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