

**Raghunath Misra Vs. Kishore Chandra Deo Bhanj and ors.**

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**Court :** Orissa

**Decided On :** Apr-15-1958

**Reported in :** AIR1958Ori260

**Judge :** P.V.B. Rao and ;G.C. Das, JJ.

**Acts :** [Representation of the People Act, 1951](#) - Sections 83, 100, 100(1), 116A, 123(1), 123(5), 123(7), 140 and 144; [Code of Civil Procedure \(CPC\), 1908](#) - Order 8, Rule 5 - Order 41, Rule 22; Limitation Act, 1908 - Sections 5; [Constitution of India](#) - Article 191 and 191(1); [Evidence Act, 1872](#) - Sections 66, 101 to 104 and 114

**Appeal No. :** Misc. Appeal No. 194 of 1957

**Appellant :** Raghunath Misra

**Respondent :** Kishore Chandra Deo Bhanj and ors.

**Advocate for Def. :** B. Misra and ;R.K. Mohapatra, Advs.

**Advocate for Pet/Ap. :** H. Mohapatra and ;R.N. Misra, Advs.

**Judgement :**

P.V.B. Rao, J.

1. The appellant Raghunath Misra of Banpur files this appeal against the judgment of the Election Tribunal (Shri T. V. Rao, District. Judge, Puri) dismissing his application under Section 81 of the [Representation of the People Act, 1951](#) (hereinafter called the Act) for declaring void the election to the Orissa Legislative Assembly of Raja Bahadur Kishore Chandra Deo Bhanj o Daspalla, respondent No. 1, from the Daspalla double-member constituency in which a seat is reserved for the scheduled caste candidate.

2. The general seat was contested by respondent No. 1 Raja Bahadur of Daspalla, respondent No. 3 Shri Durga Madhab Deo and the appellant. The reserved seat was contested by Shri Sridhar Naik (respondent No. 2), Iswar Naik, Manguli Sethi and Basudeb Naik. The last three persons were not added as parties to the application as they were not necessary parties for the reason that they contested the reserved seat and the election of respondent No. 2, Shri Sridhar Naik to the reserved seat was not challenged by the appellant.

The election was held on 27-2-57 and the result was declared on 5-3-57 in which respondent No. 1 was declared elected to the general seat having obtained 17700 votes and respondent No. 2 was declared elected to the reserved seat having obtained 14561 votes. The appellant obtained 15568 votes while respondent No. 3 obtained 3589 votes. The other three scheduled caste candidates who are not added as parties Manguli Sethi, Basudeb Naik and Iswar Naik obtained 12496, 4855 and 4688 votes respectively.

The appellant contested the election on Ganatantra party ticket, respondent No. 1 on the Congress ticket and respondent No. 3 as an independent candidate. Respondent No. 2 who was elected to the reserved seat is a Ganatantra party candidate.

3. The appellant-petitioner alleged that the nomination of respondent No. 3 was improperly accepted as he was disqualified from contesting the election to the State Legislature being a Sar-barakar of the ten villages mentioned in the schedule to the petition in the district of Nayagarh. He stated that the office of Sarbarakar is an office of profit under the State Government and by virtue of the provisions of Article 191, Clause (1) (a) of the Constitution, a Sarbarakar is disqualified from being a member of the State Assembly; and that this improper acceptance of the nomination of respondent No. 3 had materially affected the election of the returned candidate under Clause (d) (i) of Sub-section (1) of Section 100 of the Act.

He also alleged that respondent No. 3 committed a corrupt practice by exercising undue influence over the electors by obtaining their oath in the temple of Shri Dutikeswar Deb to vote for him and got him elected; and that he distributed a pamphlet giving wide publicity to the promise made by the leading members of the constituency making systematic appeal on grounds of religion for the furtherance of the prospects of his election and thus interfered with the true exercise of the electoral right of many of the voters.

Next the appellant-petitioner urged that respondent No. 1 committed corrupt practices by bribing the voters in the villages covered under the polling booths at Nijgarh Arang and Barkoli within the Banpur Police Station through his agents Ram Chandra Praharaj and others named in the petition between 10th and 24th February, 1957, for inducing the electors to vote for him.

He further alleged that respondent No. 1 being a Minister of the Orissa Cabinet distributed rugs and other garments among the 'Soura' and 'Kondh' electors under the polling booths of Nijgarh Arang and Barkoli during the period from 10th to 24th February, 1957, with the help of Tahsildar of Banpur who is a Government servant and gave the voters to understand that the articles were distributed by the Raja Bahadur so that they might vote for him.

It was also stated in the petition that a feast was held at the Balugan Palace of the Raja of Parikud who is the natural brother of respondent No. 1 to which several influential voters had been invited and they were induced to support the cause of respondent No. 1 in the election. The appellant further alleged that respondent No. 1 obtained the assistance of Sarpanches of several villages within the Banpur Police Station represented by Shri Ram Chandra Praharaj and other named persons for the furtherance of the prospects of his election and appointed some of them as his agents for doing propaganda and a pamphlet was published under the signatures of the aforesaid Sarpanches containing statements of facts in relation to the personal character and conduct of the petitioner and his father late Pandit Godavaris Misra which were false and which the said persons knew or believed to be false or at least not to be true; that the statements so made were calculated to prejudice the prospects of the petitioner's election; and that the pamphlet was widely circulated in the constituency and had materially affected the result of the election.

The petitioner stated that by this publication of the false statements in relation to the personal character and conduct of the petitioner and procuring the assistance of the Sarpanches who are revenue officers in the service of the Government as provided in Clause (f) of Sub-section (7) to Section 123 of the Act, respondent No. 1 had committed corrupt practices as a result of which his election should be set aside.

4. Respondent No. 2 did not appear in the election proceedings before the Tribunal. Respondents 1 and 3 filed separate written statements challenging the allegations made by the appellant petitioner. Respondent No. 3 denied that he was a holder of office of profit under the State Government or that he committed any corrupt practice mentioned in the petition.

5. Respondent No. 1 contended that respondent No. 3 was not a holder of office of profit to be disqualified from being a member of the Assembly; and that the acceptance of his nomination is not improper and even if it is found to be so, still it has not materially affected the result of the election of the returned candidate. He denied the corrupt practice alleged against him of offering bribe to the voters or supplying garments to the 'Soura' and 'Kondh' voters or appointing Sarpanches as his election agents.

He also denied the publication of the pamphlet by any of his agents with his consent. He also stated that the pamphlet in question did not contain any false statements relating to the personal character and conduct of the petitioner.

6. The Tribunal came to the conclusion that respondent No. 1 was not proved to have been guilty of any corrupt practice; that respondent No. 3 was guilty of the corrupt practice of undue influence; that he was not a holder of office of profit; and that the result of the election, as far as the returned candidate is concerned, was not materially affected by the improper acceptance of his nomination paper.

He disqualified respondent No. 3 for a period of six years from standing for election either to the State Legislative Assembly or to the Parliament. He held that the election of respondent No. 1 cannot be declared void and dismissed the application. Hence this appeal by the petitioner.

7. Though an appeal is provided against an order made under Section 99 of the Act that respondent No. 3 was guilty of the corrupt practice of undue influence and was disqualified for a period of six years, respondent No. 3 did not file an appeal as contemplated under Section 116A of the Act. Respondent No. 3 appeared in this Court in the appeal on 12-12-57 but he filed a memorandum of cross-objections on 6-2-58, that is, on the fourth day after the hearing of the appeal began.

The cross-objections were directed against the finding that respondent No. 3 was a holder of an office of profit and that he was guilty of the corrupt practice of undue influence. Mr. H. Mohapatra, learned counsel for the appellant contended that no memorandum of cross-objections can be received from respondent No. 3, his remedy being by a separate appeal and that even if he is entitled to file a memorandum of cross-objections, it cannot be looked into as he filed the same after a considerable delay and the cross-objections are barred by limitation.

The only ground stated in the application for condoning the delay in filing the cross-objections was that it was due to misconception of law. The affidavit was sworn by one Banshidhar Singh Samanta of Khandapara who is alleged to be working for respondent No. 3 in the election petition and the appeal. Respondent No. 3 appeared through an Advocate Mr. R. K. Mohapatra on 12-12-1957. I do not find any sufficient ground to condone the delay in filing the cross-objections.

Under Section 116A(2) of the Act, the High Court shall, subject to the provisions of this Act, have the same powers, jurisdiction and authority, and follow the same procedure, with respect to an appeal under this Chapter as if the appeal were an appeal from an original decree passed by a Civil Court situated within the local limits of its civil appellate jurisdiction; and under Clause (3), every appeal shall be preferred within a period of thirty days from the date of the order of Tribunal under Section 98 or Section 99 of the Act.

Section 116A of the Act does not provide for filing any memorandum of cross-objections by the respondent. Even assuming that by virtue of Clause (2) of Section 116A of the Act, the provision of Order 41, Rule 22, Civil Procedure Code applies to these election appeals, Order 41, Rule 22 requires that the memorandum of cross-objections shall be filed in the appellate Court within one month from the date of service of notice on the respondents.

Notice of this appeal was served on respondent No. 3 on 3-12-57. He appeared through an Advocate in this appeal on 12-12-57. The memorandum of cross-objections as already stated was filed on 6-2-58 long after the period provided under Order 41, Rule 22 C, P. C. Under the High Court Rules, framed with regard to election appeals, the respondent should appeal and file a paper book of any additional documents required by him within 15 days after the receipt of notice by him.

Taking all these factors into consideration and the bald statement in the affidavit attached to the petition to condone the delay that it was due to misconception of law, I do not see any sufficient cause to condone the delay. The petition filed by Mr. S. K. Ray on behalf of respondent No. 3 to condone the delay in filing the cross-

objections is accordingly dismissed and the cross-objections will not be heard. Respondent No. 3 also does not suffer any irreparable loss inasmuch as he can approach the Election Commission to get the bar of disqualification removed.

8. The learned counsel for the appellant Mr; H. Mohapatra who argued this appeal in great detail contended that the Tribunal erred in holding (1) that respondent No. 3 is not disqualified as he is not a holder of an office of profit and that even if he is disqualified and his nomination paper was improperly accepted it had not materially affected the result of the election; and (2) that respondent No. 1 was not guilty of corrupt practice of publication of a statement of facts which is false in relation to the personal character or conduct of the petitioner, of the corrupt practice of obtaining & procuring assistance for the furtherance of the prospects of the election from persons in the service of the Government and belonging to the classes enumerated in Clause (f) of Sub-section (7) of Section 123 of the Act, and of the corrupt practice of bribery by giving a feast and distributing blankets.

Mr. Mohapatra fairly conceded at the outset that he would not press the corrupt practice alleged against respondent No. 1 of giving drinks to some of the voters.

9. With regard to the first point raised by him, the learned counsel for the appellant contended that the office of a Sarbarakar is an office of profit under the State Government and consequently respondent No. 3 is disqualified under Article 191(1)(a) of the Constitution for being chosen as and for being a member of the Legislative Assembly of a State. He contends that the office of Sarbarakar is an office of profit under the State Government and is not declared by the Legislature of the State by law not to disqualify its holder.

It is admittedly the case that respondent No. 3 is a Sarbarakar of ten mouzas in Oragaon within Nayagarh district. In the schedule attached to the election petition, it is stated that respondent No. 3 is the Sarbarakar of Oragaon, Korapitlia. Pali, Bandha Bhuin, Madhuban and Berua Bari. Balia Chatra, Pani Bondha, Kusa Dhipi, Chaknda. Ext. 9 is the certified copy of the Sarbarakar Kabtilyat executed, by respondent No. 3 on 19-11-32 when Nayagarh was a feudatory State governed by the Ruling Chief.

The Kabuliyat was executed for the period of the Revenue Settlement lasting for 30 years and that period has not yet expired. Nayagarh State was integrated with Orissa in 1948 and the appointment of Sarbarakars continued to be governed by the same conditions by the State of Orissa even at present, as can be seen from Ext. 10, the information supplied by the Tahsildar, Nayagarh. Ext. 4, the report of the Tahasildar shows that respondent No. 3 is the Sarbarakar of the ten mouzas.

Mr. Mohapatra relies upon the terms of the Kabuliyat Ext. 9 and the Nayagarh Settlement Report in which the incidents of a Sarbarakari Jagir have been enumerated in support of his contention that the Sarabarakari of a village is an office of profit under the State Government. Paragraph 190 of the Nayagarh Settlement Report states with reference to Sarbarakaras,

'2. In the Settlement of 1917-18 the total number of Sarbarakars of the State were 775, for 710 villages ..... Although the State neverrecognised the post of Sarbarakar as hereditary still with a view to give some relief to the ousted Sarabarakars some of the excess Bhogra lands of the village were settled with them on rayati terms'.

The Kabuliyat Ext, 9 shows that the Sarbarakar is appointed for the term of the settlement; that he is liable for dismissal; that he is to maintain accounts; that he is to collect revenue and pay in the Treasury; and that he would be personally liable for any such arrears outstanding. The Sarbarakars are allowed commission ranging from 10 to. 15 per cent, of the muffasil jama collected by them.

The learned counsel also referred to the corresponding provisions of Sarbarakars in Orissa in Khnrda Khasmahal and Banlct Khasmahal as mentioned in the Bihar and Orissa Government Estates-Manual, 1919. There it is mentioned that ths Khurda Sarbarakar is an officer appointed to have charge of the collection of

Government revenue in a mouza of which he is appointed; that he is a public servant as defined under the definition contained in the 1. P. C., that he is governed by the provisions of Section 45 of the Cr. P. C.; that he is a public accountant being liable under the provisions of the Public Demands Recovery Act for all monies collected by him; and that he is a farmer of Government revenue and other public demands and as such liable to make good the full Sadar-jama assessed on his villages whether the same has been actually collected by him or not.

Sarbarakars are also ex-officio Patwaris for their villages under Section 3 of Regulation XXI of 1817, But this last provision is not contained in the Sarbarakari Kabuliyat of Nayagarh. Mr. B. Misra, learned counsel appearing for respondent No. 1. on the other hand contends that a Sarbarakar in Nayagarh is not a holder of an office of profit under the Government, but that he is only a commissioned agent to collect rent on behalf of the Government and that he is personally liable for the revenue of the State whether he has collected the same or not.

He also submitted that the Sarbarakar's office is generally a hereditary office and that the Jagir lands allotted to him are inherited by the heirs of the Sarbarakar along with the office. In the case of Mahendra Sahu v. Dutia Raid, 3 Ele LR 117(A) decided by the Election Tribunal, Cuttack, it was held,

'Sarbarakars in the State of Orissa are not holders of an office of profit under the State within the meaning of Article 191(1)(a) of the Constitution, inasmuch as (i) the office of Sarbarakar is heritable, (ii) a salami is paid on every appointment, (iii) an interest in land is created in favour of the Sarbarakar and he is a tenant in respect of it, and (iv) the source from which he gets his commission is not the general revenue of the State but the collection from tenants from out of which he pays the revenue'.

Mr. Mohapatra contends that this decision is not correct. He submits that office is a duty attached to a situation and that the profit in this case consists of the commission received by the Sarbarakar. He relies, in support of his contention, on a decision in the case of Ravanna Subanna v. G. S. Kag-geerappa, AIR 1954 SC 653 (B). In this case, the Supreme Court observed,

'The plain meaning of the expression seems to be that an office must be held under Government to which any pay, salary, emoluments or allowance is attached. The word 'profit' connotes the idea of pecuniary gain. If there is really a gain, its quantum or amount would not be material; but the amount of money receivable by a person in connection with the office he holds may be material in deciding whether the office really carries any profit'.

On the strength of this observation, Mr. Mohapatra contends that if there is any pecuniary gain and if he is appointed by the Government he is a holder of office. He also relied upon the case of Hansa Jiwara Mehta v. Indubhai B. Amin, 1 Ele. LR 17.1 (C):

'The source from which a person received profit is not the sole test as to whether he holds an office of profit under the Government within the meaning of Article 102(1)(a) of the Constitution. The power to appoint and remove is also one of the tests and if a person is appointed by the Government to an office of profit and is removable by the Government from the office he would be a person holding an office of profit under the Government even though he is not paid out of Government funds'.

In that case the petitioner was the Vice-Chancellor of the University of Baroda receiving an honorarium of Rs. 500/- per month, a car allowance and a free furnished house from the funds of the University, but was appointed by the Government of Baroda and was liable to be removed from office by the Government. On those facts, it was held that though the petitioner was appointed by the Government of Baroda and was liable to be removed by the Government, and though she was not paid by the Government but by the University she was disqualified under Article 102(1)(a) of the Constitution for being chosen as a member of Parliament. In the case of Krishnappa v. Narayan Singh, 7 Ele LR 294 (D), the Election Tribunal held,

'The most important test for determining whether an office is held under the Government is whether the power of appointment and dismissal vests in the Government'

approving the decision in *Hansa Jivaraj v. Indubhai B. Amin (C)*. In the case of *Hakikatullah v. Nathu Singh*, 6 Ele LR 10 (E) it was held,

'Whether the post of Chairman of any particular Municipality held by any person, is an office -of profit held under the Government of a State, will depend upon the various provisions of the Municipal Act which govern the said Municipality. As the President of the Jodhpur Municipality receives an honorarium of Rs. 130/- a month and the Jodhpur Municipal Act does not make the President and the Vice-President of the Jodhpur Municipality, absolutely independent of the Government but they are. on account of the provisions of the Act, under the control of the Government so far as their appointment, removal etc, are concerned, the President of the Jodhpur Municipality holds an office of profit under the Government of the State of Rajasthan'.

In the case of *Thakur Daoosing v. Ramkrishna Rathor*, 4 Ele LR 34 (F), it was observed that a patel in Madhya Pradesh is a holder of an office of profit. In the matter of *Vindhya Pradesh Legislative Assembly Members*, 4 Ele LR 422 (G), it was held by Mr. S. K. Sen, Chief Election Commissioner,

'(i) Membership of the Vindhya Pradesh District Advisory Councils, was an 'Office' within the meaning of Sections 16 and 17 of the Government of Part C States Act, 1951, read with the provisions of Articles 101 and 102 of the Constitution and the members held that office under the Government of Vindhya Pradesh.

(ii) Members of the Assembly who had actually attended any meeting of a council must be said to have held such office'.

In the case of *Bherusingh v. Prabhu Dayal*, 2 Ele L R 325 (H), it was held,

"Pateli is an office of profit under the Government within the meaning of Article 191 of the [Constitution of India](#) as a Patel has important duties to perform under the Land Revenue System and his appointment and removal rests with the Government and there is also profit attached to the office The actual making of profit is not necessary to make an office one of profit; it is enough if the holder may reasonably be expected to make a profit out of it'.

In the case of *Maharaj Singh v. Ratan Anmol Singh*, 7 Ele LR 320 (I), it was held,

'A lambardar appointed under the Punjab Land Revenue Act holds an office of profit under the Government within the meaning of Article 102(1)(a) of the Constitution'.

The latest pronouncement by the Supreme Court in the case of *Abdul Shakur v. Rikhab Chand*, AIR 1958 SC 52 (J) definitely enumerates the circumstances under which a person can be said to be a holder of office of profit as contemplated in Article 191 of the Constitution. It is observed in the judgment of their Lordships,

'The power of the Government to appoint a person to an office of profit or to continue him in that office or revoke his appointment at their discretion and payment from out of Government revenues are important factors in determining whether that person is holding an office of profit under the Government though payment from a source other than Government revenue is not always a decisive factor'.

From these observations, it is clear that the true test to determine whether a person holds an office of profit under the State is the power of the Government to appoint the person to the office or to continue him in that office or to revoke his appointment. In the case relied upon by the respondent in *Mahendra Sahu v. Dutia Raul (A)*, it is stated.

He is appointed by the State mainly for the purpose of collecting the revenue. He is liable to be suspended or removed by the State .....Apart from the collection of revenue his general duties are preservation of village boundaries, trees and forests, vigilance over crimes and offenders and other suspicious persons, settling

fallow lands and vacant holdings and carrying out the orders of the Ruler for the proper administration of the village'.

The Election Tribunal in this case came to the conclusion that a Sarbarakar in Athamallik is not a holder of an office of profit mainly on the grounds that he is not paid by the State as he gets his remuneration from out of the collections of the revenue made by him to a particular percentage; that in some cases salami is taken from him at the time of appointment; and that the appointment is based, upon the right of hereditary. But as it is clear that the Sarbarakar is appointed by the State and is removable by the State, the tests laid down by the Supreme Court apply and it should be held that a Sarbarakar is a holder of an office of profit under the State, especially in view of the fact that their Lordships of the Supreme Court observed that payment from a source other than Government revenue is not always a decisive factor. The duties of the Sarbarakar also, as can be seen from the Kabuliyat, clearly indicate that he is a public servant. He is liable to realise any other dues of the State, if so ordered by the State authorities; he is liable to supply the State such articles as are required by it at the appropriate rate; he is to look after the State properties in the village; he is required to send information to the police if any cognizable offence is committed in any Sarbarakari village and is also empowered to arrest all the culprits and other persons who have either committed serious offence or have been suspected for the aforesaid reason. Mr. Misra, learned counsel for the respondent contends that the conditions as laid down in Ext. 9 ought not to be relied upon, as Ext. 9 is only a certified copy of the Kabuliyat executed by respondent No. 3 in favour of the Ruler of Nayagarh, the original not having been summoned for by the appellant and the Patta granted to respondent No.5 not being in evidence. In para 6 of the election petition, the appellant stated :

'Respondent No, 3, has been and is, a Government Sarbarakar of ten villages named in the schedule below and according to the terms of the appointment, receives as remuneration from the 'State 'Government, a commission on the basis of the collections of rent and cess from the mouzas field in his charge. He has been, and is, working as a State Accountant in respect of all duties connected with the Sarbarakari to which he is appointed. The terms of appointment and remuneration are contained in the Sarbarakari Patta and Kabuliyat executed in respect of his Sarbarakarship'.

This allegation in the petition is not traversed in the written statement of respondent No. 3. The appellant-petitioner also filed an application before the Tribunal on 24-8-57 to summon the original agreement and that petition was rejected and hence he filed a certified copy of the Kabuliyat which was marked Ext. 9. In the case of Sudhakar Misra v. Nilkantha Das, AIR 1936 Pat 129 (K), a Division Bench of the Patna High Court held :

'Where a party alleges that no facts are adduced by the opposite party nor any facts proved which would justify the Court in admitting as secondary evidence a copy of an original document and it is found, that the original document is in possession or control of the party taking the objection and it fails to produce it, Proviso 2, Section 66 applies and notice to the party to produce the original is not necessary as by the nature of the case the party must be held to be knowing that it would be required to produce it'.

Respondent No. 3 in this case ought to have produced the patta of which the Kabuliyat is only a counter-part. Under those circumstances, I do not see any valid objection for relying upon the terms of the Kabuliyat to know the nature of the office of the Sarbarakar. The Tribunal mainly relied upon the decision in the case of Mahendra Sahu v. Dutia Raul (A) in arriving at the conclusion that the office of Sarbarakar is not an office of profit under the State. Taking these circumstances into consideration, in view of the latest pronouncement of their Lordships of the Supreme Court, I cannot accept the decision of the Tribunal in the case of Mahendra Sahu v. Dutia Raul (A) as correct and will hold that the office of Sarbarakar is an office of a profit under the State. I would, therefore, set aside the finding of the learned Tribunal that the office of Sarbarakar is not an office of profit under the State and hold that it is an office of profit under the State. Respondent No. 3 is therefore a holder of an office of profit under the State and is disqualified under Article 191(1)(a) of the Constitution from being a member of the State Legislature. His nomination having therefore, as held by the Tribunal, been improperly accepted, the next question to be seen is whether it has materially affected the

result of the election.

10. The contention of the learned counsel for the appellant on this point is that on account of the improper acceptance of the nomination of respondent No. 8, the result of the election of the returned candidate has been materially affected as provided in Clause (d) of Sub-section (1) of Section 100, Section 100 of the Act, as amended by Act 27 of 1956 under which the improper rejection of a nomination was placed on a different footing from the improper acceptance of a nomination (sic). Section 100 before the amendment stood as follows with regard to improper acceptance or rejection of a nomination,

'100. Grounds for declaring election to be void(1) If the tribunal is of opinion-

XX X X X (c) that the result of the election has been materially affected by the improper acceptance or rejection of any nomination, the tribunal shall declare the election to be wholly void'.

Section 100 as amended by Act 27 of 1956 with regard to this aspect is as follows:

'100. Grounds for declaring election to be void-

(1) Subject to the provisions of Sub-section (2), if the Tribunal is of opinion-

X X X XX (c) that any nomination has been improperly rejected; or

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

(i) by the improper acceptance of any nomination,

xx x x x the Tribunal shall declare the election of the returned candidate to be void'.

Consequently, under Section 100, as amended, if there is any improper rejection of a nomination, that by itself is enough to declare the election void. But if there is an improper acceptance of any nomination, it is necessary for the petitioner to prove that the result of the election so far as it concerns a returned candidate has been materially affected. The decisions relied upon in this case are mostly decisions before the amendment of Section 100. The law on this aspect is laid down in the case of *Vashist Narain Sharma v. Deo Chand* decided by the Supreme Court on 20-5-1954 reported in 10 Ele L R 30: (AIR 1954 SC 513) (L). The Supreme Court held:

'Before an election can be declared wholly void under Section 100(1)(c) of the [Representation of the People Act, 1951](#), the Election Tribunal must find that 'the result of the election has been materially affected' by the improper acceptance or rejection of a nomination. The words 'the result of the election has been materially affected' in this clause indicate that the result should not be judged by the mere increase or decrease in the total number of votes secured by the returned candidate but by proof of the fact that the votes would have been distributed in such a manner between the contesting candidates as would have brought about the defeat of the returned candidate. The language of Section 100(1)(c) of the Representation of the People Act, clearly places the burden of proving that the result of the election has been materially affected on the petitioner who impugns the validity of the election, though under the English Act (Ballot Act, 1872, Section 13), the burden is upon the respondent to show the negative, i.e., that the result of the election has not been affected.

In the case of the improper acceptance of a nomination: (a) if the nomination accepted was that of the returned candidate, the result must be materially affected; (b) if the difference between the number of votes is more than the wasted votes the result cannot be affected at all; (c) if the number of wasted votes is greater than the margin of votes between the returned candidate and the candidate securing the next highest number of votes it cannot be presumed that the wasted votes might have gone to the latter and that the result of the election has been materially affected. This is a matter which has to be proved and, though it must be recognised that the petitioner in such a case is confronted with a difficult situation, he cannot be

believed of the duty imposed upon him by Section 100(1)(c) and if the petitioner fails to adduce satisfactory evidence to enable the court to find in his favour on this point, the inevitable result would be that the Tribunal would not interfere in his favour and would allow the election to stand.

It is impossible to accept the ipse dixit of witnesses coming from one side or the other to say that all or some of the votes would have gone to one or the other on some supposed or imaginary ground. The question is one of fact and has to be proved by positive evidence. If the petitioner is unable to adduce evidence the only inescapable conclusion to which the Tribunal can come is that the burden is not discharged and that the election must stand. The language of Section 100(1)(c) is too clear for any speculation about possibilities'. In view of this definite pronouncement of the Supreme Court, it is not necessary to refer to all the decisions cited by either side of the Election Tribunals. The case before us comes under the third category of cases, enumerated by the Supreme Court. The returned candidate respondent No. 1 secured 17700 votes, the appellant obtained 15568 votes and respondent No. 3 obtained 3589 votes. We are not concerned with the votes obtained by the other candidates. The number of wasted votes is 3589 in case the nomination of respondent No. 3 is improperly accepted. This number of 3589 of wasted votes is greater than the margin of votes between respondent No. 1 and the petitioner, the difference between them being only 2132 votes. In such a case, as laid down by the Supreme Court, it cannot be presumed that all these wasted votes might have gone to the petitioner.

The petitioner must prove that all those votes would have gone to him and that the result of the election has been materially affected. The petitioner examined P. Ws. 10 to 12 and 15 to show that respondent No. 1 who was the sitting M.L.A. for that area during the period of election was not popular with the electorate as he never visited the area or made any developments there and that the electorate were not in favour of voting for that candidate. These witnesses said that Durga Babu being a local influential person was favoured by the electorate and was preferred to the Raja Bahadur of Daspalla.

But D. W. 2 on behalf of respondent No. 1 stated that the Raja Bahadur visited the constituency several times during, his period of office both as a member of the assembly and as a Minister of the Cabinet and that he has made several development works like construction of roads in the Odagaon area. But there is no evidence on the side of the petitioner to show that the petitioner who was a Ganatantra candidate would have been preferred to the Raja Bahadur of Daspalla in case Durga Babu had not contested the election.

On the other hand there is evidence on his own side to show that he was not known to all in that area. The petitioner admitted in his evidence that when he approached the electorate and some influential persons, they all told him that he could not expect any votes in that area. Mr. Mohapatra relies upon some statements in the evidence of P Ws. 10 to 12 & 15 to show that there is evidence on his side to come to a finding that the appellant would have secured the wasted votes.

P. W. 10 stated that they were not in favour of Raja Bahadur. P. W. 11 stated likewise. P. W. 12 stated that Raja Bahadur did not do anything and P. W. 15 stated that Raja Bahadur was not popular. Mr. Mohapatra contends that the Tribunal erred in saying that there was no evidence on the side of the petitioner to come to a conclusion that the wasted votes would have been secured by him and that the statements made by P. Ws. 10 to 12 and 15 go to show that the result might be in favour of the appellant as against the Raja Bahadur.

Mr. Mohapatra relied upon the case of Hoshiarpur West General Constituency 1946, reported in S. and P. Indian Ele Cases 945 (LI). It was observed in the judgment of the Tribunal, 'What is required is that the Commissioners must on the materials on the record and the surrounding circumstances come to the conclusion that but for the improper acceptance of the nomination paper of a particular candidate the result in all probability would have been different'.

Mr. Mohapatra relies upon the circumstance that the reserved seat was secured by a Ganatantra candidate and on the strength of that contends that but for the improper acceptance of respondent No. 3's nomination, the votes polled by him could have gone to the Ganatantra candidate, that is, the appellant-petitioner. The

successful Ganatantra candidate for the reserved seat obtained 14561 votes and the next highest vote was secured by the Congress candidate for the reserved seat Manguli Sethi who polled 12496 votes.

There is every possibility that the votes secured by respondent No. 3, in case his nomination was rejected, would have been polled by Manguli Sethi, the Congress defeated candidate for the reserved seat and if the wasted votes are added to the votes obtained by him, he would be declared elected. Further the petitioner failed to adduce evidence as to the number of votes obtained by each candidate in Odagaon and Nuagaon areas as that would have been the basis to arrive at a conclusion whether the petitioner proved as a fact that the result of the election would have been affected in his favour.

From the evidence of P. W. 17 we find that respondent No. 3 obtained 3589 votes at the election in the constituency and out of this from Nuagaon respondent No. 3, got 386 or 368, from Odagaon 1583, from Gania 268, from Daspalla 574 and from Banpur 809. But there is no evidence and he has not stated as to how many votes he or the returned candidate obtained from these places. Had there been evidence of the number of votes obtained by either appellant or respondent No. 1 it would have been of some help to come to a conclusion whether it was proved that the result of the election of the returned candidate might have been materially affected.

It is also possible that the voters who voted in favour of respondent No. 3 would not have given their votes in the absence of respondent No. 3 to the petitioner as it is in evidence that the voters of Odagaon and Nuagaon areas wanted a local candidate to represent them in the Assembly. In the case of Jamuna Prasad Mukheriya v. Lachhi Ram reported in 10 Ele L R 120: (AIR 1954SC 686) (M), the Supreme Court observed with regard to the conclusion of the Tribunal in the judgment under appeal to the effect.

'Considering the scandalous nature of the false statement regarding respondent No. 6 and the mode of systematic appeal on the basis of caste made by respondent No. 2 we have no doubt in our minds that ..... respondent No. 1 ..... got more votes simply because of ..... corrupt practices and if these corrupt practices had not been there respondent No. 6 ..... undoubtedly would have obtained a majority of valid votes'

as follows

'This, in our opinion, is pure speculation and is not a conclusion which any reasonable mind could judicially reach on the date set out above. There is nothing to show why the majority of the 1st respondent's voters would have preferred the 6th respondent and ignored the 3rd and 4th respondents.'

In my opinion, therefore, the appellant failed to prove that he would have secured the wasted votes and that the result of the election had been materially affected. In the case of Vashist Narain Sharma v. Dev Chand (L) already cited it was observed in the judgment :

'It will not do merely to say that all or a majority of the wasted votes might have gone to the next highest candidate. The casting of votes at an election depends upon a variety of factors and it is not possible for any one to predicate how many or which proportion of the votes will go to one or the other of the candidates. While it must be recognised that the petitioner in such a case is confronted with a difficult situation, it is not possible to relieve him of the duty imposed upon him by Section 100(1)(c) and hold without evidence that the duty has been discharged. Should the petitioner fail to adduce satisfactory evidence to enable the court to find in his favour on this point, the inevitable result would be that the Tribunal would not interfere in his favour and would allow the election to stand.'

I am, therefore, of opinion that the petitioner failed to prove that the result of the election of the returned candidate is affected by the so-called improper acceptance 'of the nomination of respondent No. 3.

11. Mr. Mohapatra next contended that it cannot be said that the acceptance of the nomination of respondent No. 3 is an improper acceptance of the nomination. There was nothing in the nomination paper to show his disqualification. No objection was taken at the time of the scrutiny that he was a holder of an office of profit. It

is only in the election petition for the first time that challenge was made that respondent No. 3 was disqualified for election to the Assembly as he is a Sarbarakar and as such a holder of an office of profit.

Consequently Mr. Mohapatra contends that it is a case of a constitutional disability to stand for election to the Assembly and not a case of improper acceptance of a nomination. He relies in support of this contention on the decision of the Supreme Court in the case of Durga Sankar Menta v. Raghuraj Singh, AIR 1954 SC 520 (N). In this case it was held by the Supreme Court:

'If the want of qualification of a candidate does not appear on the face of the nomination paper or the electoral roll, but is a matter which could be established only by evidence, an enquiry at the stage of scrutiny of the nomination papers is required under the Act only if there is any objection to the nomination. The Returning Officer is then bound to make such enquiry as he thinks proper on the result of which he can either accept or reject the nomination.

But when the candidate appears to be properly qualified on the face of the electoral roll and the nomination paper and no objection is raised to the nomination, the Returning Officer has no other alternative but to accept the nomination. This would be apparent from Section 36, Sub-section (7) of the Act, under which the electoral roll is conclusive as to the qualification of the elector except where a disqualification is expressly alleged or proved. The acceptance of the nomination paper' of the returning officer in the latter case must be deemed to be proper acceptance.

It is certainly not final and the Election Tribunal may, on evidence placed before it, come to a finding that the candidate was not qualified at all. But the election should be held to be void on the ground of the constitutional disqualification of the candidate and not on the ground that his Domination was improperly accepted by the returning officer.

A case of this description comes under Sub-section (2) (c) of Section 100 (present Section 100, Clause (1) (d) (iv)) and not under Sub-section (1) (c) of the Section (now Section 100(1)(d)(i)), as it really amounts to holding an election without complying with the provisions of the Constitution.'

In my opinion, Mr. Mohapatra's contention is correct, but it does not in any way help him as both under Section 100(1)(d)(i) and Section 100(1)(d)(iv) it is necessary that the result of the election in so far as it concerns a returned candidate has been materially affected.

As has already been found by me, respondent No. 3 is a holder of an office of profit under the State Government and as such his nomination was not in compliance with the provisions of the Constitution, but the result of the election in so far as it concerned the returned candidate has not been materially affected thereby.

12. Tho remaining contentions raised by the learned counsel for the appellant are with regard to the corrupt practices alleged in the petition against respondent No. 1. They are three in number. The first is bribery; the second is the publication by respondent No. 1 and his agents of a pamphlet Ext. 8 containing statements which are false and which he believed to be false in relation to the personal character and conduct of the appellant and in relation to his candidature; and the third is obtaining and procuring by respondent No. 1 assistance for the furtherance of the prospects of his election from Sarpanchas who according to Mr. Mohapatra are Revenue Officers and village Accountants.

13. Para 22 of the petition gives the names of the Sarpanches who were appointed by respondent No. 1 as election agents, polling agents or counting agents for doing propaganda for him. They are Ram Chandra Praharaj, Satrughna Satrusal, Banchhanidhi Mhaaritha, Hari Bandhu Parida, Batakrishna Jena, Rama Chandra Mahartha, Krushna Chandra Jagadev and Udayanath Sarangi who are the Sarpanches of Balugaon, Ankula Nairi, Nandapur, Bhatieswar and Nachuni Grama Sabhas within the Banpur Police Station respectively,

Respondent No. 1 has denied that, he appointed any of these persons as his agents for doing propaganda

and also denied knowledge of any of those people except Ram Chandra Praharaj who is the President of the Banpur Thana Congress Committee and is a Sarpanch of the Balugan Grama Panchayat. The Tribunal held that respondent No. 1 was contesting the election on the Congress ticket and it was quite natural for the President of the Thana Congress Committee to work for the party candidates during the election.

The pamphlet Ext. 8 is alleged to have been published by the Sarpanches mentioned above supporting the candidature of the Congress candidates set up for both the Lok Sabha as well as the Orissa Legislative Assembly. This Ram Chandra Praharaj was one of the signatories to the pamphlet. Though the printing of this pamphlet was seriously challenged by respondent No. 1, it was proved by P. W. 2 Hadu Raiguru who produced the manuscript copy of the pamphlet (Ext. 3/a) and the order-book (Ext. 2) showing that 1000 copies of the election manifesto were printed for the Thana Congress Committee, Banpur on 15-2-57 and that it was Rani Chandra Praharaj who came and placed the order with him. P. W. 3 proves the signature of Ram Chandra Praharaj in the order.

The signatures of Haribandhu Parida and Satrughna Satrusal were also proved. The contents of the pamphlet are alleged to be in the hand-writing of Haribandhu Parida, but he did not attend court though summoned. P. W. 3 Satrughna Satrusal denied his signature in this pamphlet, but R. W. 2 Sachitananda Ranasingh proved the signature of Haribandhu Parida though he denied the writing of the contents by the latter in the pamphlet (3/c).

He further admitted that copies of pamphlets similar to Ext. 8 were distributed under the signature of Ram Chandra Praharaj, Satrughna Satrusal and Haribandhu Parida in support of the candidature of the Congress candidates. Curiously, Ram Chandra Praharaj was not examined as a witness to deny his signature in the manuscript copy of the pamphlet or of having distributed the pamphlet with the election campaign on behalf of the Congress although he was present in court during the trial.

On this evidence the Tribunal rightly came to the conclusion that there is no manner of doubt that this pamphlet Ext. 8 was duly printed in the Orissa Printing Works on the order of Ram Chandra Praharaj, the Thana Congress Committee President and the Sarpanch of Balugaon Gram Sabha and a list of Sarpanches who had given consent of their names to be subscribed to the printing of the pamphlet has been appended to the manuscript copy and had been duly printed in the pamphlet. The pamphlet bears the Congress Party symbol of a pair of yoked bullocks. The Tribunal also came to the conclusion that this pamphlet was issued by the influential Sarpanches of the locality inducing the electorate to vote for the Congress Candidates including respondent No. 1.

14. Oral evidence was also adduced by the appellant-petitioner to the effect that respondent No. 1 visited Banpur area two or three times before the election, convened a meeting of the workers in the Balugaon Palace consisting of Ram Chandra Praharaj, Satchitananda Ranasingh, Haribandhu Parida, Satrughna Satrusal and Purusottam Harichandan and several others, for deciding the programme of the election campaign and on another occasion influential voters of the area from different mouzas were invited to a feast in the 'palace' and that at the prize distribution ceremony of the Balugaon High School, respondent No. 1 addressed the people touching upon the election and declared before the people that Ram Chandra Praharaj would speak for him at different meetings organised subsequently.

The petitioner also sought to prove that the pamphlet Ext. 8 was widely distributed among the electorates by the workers including Ram Chandra Praharaj and that cotton blankets were distributed among the Adibasis at Pratap Dak Bungalow by respondent No. 1 with the help of the Tahasildar and Naib-Tahsildar of Banpur declaring to the voters that the distribution was being made on behalf of respondent No. 1 and requesting the voters to vote for him. P. Ws. 3,4,5,6,13 and-14 speak to the aforesaid propaganda by respondent No. 1. P. Ws. 7, 8 and 9 speak to the distribution of blankets at Pratap Dak Bungalow. P. W. 16, the election agent of the appellant-petitioner, gave evidence generally about the activities of the Congress candidate and his workers consisting of Ram Chandra Praharaj and others. P. W. 17, the appellant-petitioner corroborated the

statements of all these witnesses.

For respondent No. 1, R. Ws. 2, 3 and 4 were examined to deny the allegations made in the petition relating to the corrupt practice and the Tahsildar was examined to deny the distribution of blankets on behalf of respondent No. 1., P. W. 14 produced two postcards purporting to have been written to him by Ram Chandra Praharaj asking him to attend two meetings of the Congress Committee at Balugaon in the month of January, 1957, one presided by Shri Banamali Patnaik, President of the Provincial Congress Committee and the other by the Minister for Industry, respondent No. 1. Ext. 5, the first postcard is dated 16-1-57 and was duly proved by R. W. 3 and the second postcard Ext. 6 is dated 18-1-57 and the signature of Ram Chandra Praharaj had been proved.

Both of them were written to P. W. 14 requesting him to attend the meetings in question. P. W. 14 stated that he attended the prize distribution function at Balugaon High School presided over by respondent No. 1 and attended by Ram Chandra Praharaj, Satrughna Satrusal and several others. From that meeting they went to the Congress Office at Balugaon as desired by Ram Chandra Praharaj from where they were taken to the Balugaon Palace of the Raja of Parikud, the natural brother of respondent No. 1 where a meeting of the workers for respondent No. 1 was convened to decide the election programme.

Respondent No. 1 is said to have explained to the people gathered there the benefits that would be conferred on the electorate if he is returned to the Assembly laying stress on the 'Salia Jojana' and other development projects of laying roads to the jungle which were neglected from before. According to his evidence a list of the workers was drawn up and he was asked to enlist himself, but he pleaded his inability to do so as he would be busy with his daughter's marriage.

He however stated that subsequently when respondent No. 1 came to his house ten days before the poll and requested him to accompany him to the Mal area he was unable to accompany the candidate, but in the afternoon he met him at the Pratap Dak Bungalow and obtained instruction about canvassing votes for him in his village and in the neighbourhood. He also deposed to the distribution of blankets to the Adibasis at the Pratap Dak Bungalow by the Naib-Tahsildar in presence of respondent No. 1.

The learned counsel for the respondent No. 1 challenges the veracity of this witness on the ground that he was not called to produce the postcards which he brought voluntarily; that it was not likely that he would have declined to work for respondent No. 1 during the election and that his evidence relating to the feast could not be believed as he himself did not partake in it. P. W. 13 is a relation of Ram Chandra Praharaj and he is said to have been invited to work for the cause of the Congress candidates including respondent No. 1. In his evidence he stated that he attended the prize distribution ceremony of the Balugaon High School where he saw respondent No. 1 for the first time presiding over the meeting on 24-1-57 and that seven or eight days later he attended a feast at the Balugaon Palace arranged by respondent No. 1 to which about 100 to 120 persons were invited. He also stated that Manguli Sethi and Nrusingha Charan Samanta Singhar, the two other Congress candidates for the Assembly and the Lok Sabha respectively as also Ram Chandra Praharaj and Satchitananda Ranasingh who were some of the workers also attended the feast.

It is his evidence that Ram Chandra Praharaj was explaining to the people to give votes to respondent No. 1, who was personally present there. He further stated that he distributed the pamphlet (Ext. 8) in his area; and that he declined to be a signatory to the pamphlet as there were allegations against Pandit Godavaris Misra with which he did not agree. Curiously the witness admits that after attending the feast and agreeing to canvass for respondent No. 1 he was approached by the rival candidate, the appellant, for canvassing votes for him and that he canvassed such votes where, people were in favour of Ganatantra Parishud and canvassed for the Congress where people were in its favour.

The Tribunal rightly disbelieved the evidence of this witness. P. W. 3 stated of the visit of respondent No. 1 to Banpur and calling some people to the temple with the help of Ram Chandra Praharaj and Nrusingha Charan Samanta Singhar and requesting them to vote for him. He also deposed that another meeting was held at

Balugaon where respondent No. 1 declared that Ram Chandra Praharaj is his agent who could speak at the meeting as also that pamphlet was distributed in the month of January, 1957, though the pamphlet was not printed before 15-2-57. P. W. 4 also spoke to the meetings held at Narendrapur and Gambhari Munda in which Ram Chandra Praharaj, Satraghna Satrusal, Ananta Mohapatra, Rajkishore Balabehera and Satchitananda Ransingh were present besides respondent No. 1. He also deposed about the feast at Balugaon Palace,

But he stated that he did not support the candidature of respondent No. 1 and told the villagers who consulted him to cast their votes as they pleased. This witness also was not relied upon by the Tribunal. P. W. 5 deposed about the election meeting at Baradihi by respondent No. 1. He stated that after the inspection of the school, a sum of Rs. 10/- was paid for distribution of sweetmeats to the children as also of canvassing votes by Ram Chandra Praharaj for the Congress candidates.

Mr. Mohapatra fairly conceded that he would not contend that this payment of Rs. 10/- for distribution of sweetmeats to children amounted to a corrupt practice. P. W. 4 stated that he attended the feast at Balugaon Palace being invited by Ram Chandra Praharaj who told him to canvass votes for respondent No. 1 but that he did not canvass votes. He prevaricated and when confronted again stated that he convened a meeting and explained the necessity of casting votes in favour of respondent No. 1.

The Tribunal did not place any reliance on the evidence of this witness also. Lastly, the petitioner P. W. 17 stated that on 6-2-57 he saw Haribandhu Parida and Parsuram Harichandan returning from Balugaon Palace at night and on enquiry they told him that there was a meeting of the election workers and that a feast was arranged by respondent No. 1 in which they partook. He also stated that he saw the car of respondent No. 1 standing before the gate of the Palace with the flag of the minister flying.

This statement is controverted by R. W. 4 Parsuram Harichandan who denied of having attended any feast at the Palace or of having met the petitioner and telling him of the meeting at the Palace or of having done any propaganda for respondent No. 1. The petitioner did not examine Haribandhu Parida though he summoned him. R. W. 3 also denied of having attended any feast in the Palace or the Congress Office, but admitted the postcards Exts. 5 and 6 issued by Ram Chandra Praharaj.

He denied his signature to the manuscript pamphlet (Ext. 3/b). R. W. 2 denied of having worked as election agent of respondent No. 1 or of attending any feast given by him in connection with the election or of having distributed the pamphlet Ext. 8, but he admitted that Ram Chandra Praharaj, Baidyanath Baliarsingh and Syamsundar Senapati were the persons who canvassed votes for the Congress candidates including respondent No. 1 and distributed pamphlet similar to Ext. 8, He attended the prize distribution ceremony at Balugaon High School presided over by respondent No. 1 in which Ram Chandra Praharaj was also present,

15. On this evidence the Tribunal came to the conclusion that there can be no manner of doubt that the persons named in the pamphlet Ext. 8 who are Sarpanches of the locality and as such influential persons supported the cause of the Congress candidates including respondent No. 1 and that Ram Chandra Praharaj being the President of the Thana Congress Committee had taken active part in the canvassing of votes for respondent No. 1 by convening meetings of workers, distribution of pamphlets and doing other necessary things required for propaganda in furtherance of the prospects of the candidate's election.

16. With regard to the distribution of blankets to the Adibasi voters in the polling booths of Nijgarh Arang and Barkoli, the appellant examined some witnesses to state that ten or twelve days before polling, cotton blankets were distributed by the Naib-Tahsildar, Banpur at Pratap Dak Bungalow in the presence of respondent No. 1 declaring that they had been distributed by respondent No. 1 and that they should vote for him. P. Ws. 7, 8, 9 and 14 are the witnesses examined' on this topic. P. Ws. 7 and 8 are the two Adibasi voters who also produced in court the cotton blankets alleged to have been distributed to them by the Naib-Tahsildar.

They stated that they were sent for by the Naib-Tahsildar to the Dak Bungalow to receive blankets as there was drought in that area resulting in failure of crops. They stated that the blankets were distributed in the month of Falgun by which time winter generally disappears. They also stated that they were given these blankets in order to vote for respondent No. 1.

P. W. 9 stated that the Tahsildar also was present for a short while, P. W. 14 stated that on the day the distribution of the blankets was going on, respondent No. 1 met him at his place in the morning and requested him to accompany him to the Mal area and that he attended the Dak Bungalow at noon and saw the distribution of blankets in presence of respondent No. 1 and the Tahsildar and that the Naib-Tahsildar's clerk Rajkishore Lenka told him on enquiry that the distribution of the blankets was being made as respondent No. 1 was standing for election. K. W. 1 the Tahsildar was examined by respondent No. 1 and he definitely stated that the blankets were distributed at Pratap Dak Bungalow in December 1956 as per orders of the Government as a Famine Relief Measure due to failure of crops in that area.

He also stated that he was not personally present at the distribution but his field staff consisting of the Naib-Tahsildar and others got the distribution done. He denied of the presence of respondent No. 1 at the said distribution or that the distribution was made to induce the Adibasi to vote for respondent No. 1. He admitted that lists were prepared in connection with this distribution on which the acknowledgments of the persons who received the blankets are said to have been taken, but he did not file those lists as they were sent to the Board of Revenue.

Mr. Mohapatra strongly urges that the evidence of the Tahsildar should not be accepted as he barefacedly denied that he did not know why he was summoned for, though he was in Pun in connection with this case for eight days and that he did not produce the documentary evidence which would support his statement that the distribution of blankets actually took place in the month of December 1956 and not as alleged by the petitioner in 1957.

The petitioner did not take any steps to summon the four programmes of respondent No. 1; who was then a minister. There is material contradiction in the evidence of the two Adibasi witnesses P. Ws. 7 and 8 who actually received the blankets. They admitted that they did not know personally respondent No. 1 and stated that the blankets were distributed for inducing them to vote only on information given by the Naib-Tahsildar.

P. W. 8 stated that the distribution of the blankets was 40 days before the polling and this materially contradicts the petitioner's case that it was in the month of Falgun a few days before the polling that they were distributed. Neither party examined the Naib-Tahsildar who actually distributed. On this evidence the Tribunal rightly came to the conclusion that the evidence showed only that there was a distribution of blankets on behalf of the Government but that evidence was not enough to connect respondent No. 1 with the distribution for the purpose of inducing the Adibasi voters to vote for him.

17. The learned counsel Mr. Mohapatra vehemently contended that the Tribunal came to a wrong finding on this point; that the non-examination of respondent 1 is a fatal defect inasmuch as it is for him to deny the allegations made on oath and that the Tribunal erred in holding that as the proceeding is a quasi-criminal proceeding it is for the petitioner to prove beyond all possibility of reasonable doubt that respondent No. 1 is guilty of the corrupt practice of bribery.

Respondent No. 1 has not examined himself in court to deny the allegations made against him on the ground of suffering from high blood pressure. He applied for being examined on commission and it was granted. Opportunity was given to him to be examined on commission at his temporary residence at Puri. He failed to avail himself of the opportunity and filed an application that he was not in a position to withstand the strain of examination by the commission.

The Tribunal fixed a day for examining him himself but just at about the time of examination he stated that he was not in a fit condition to be examined. He did not also examine Ram Chandrai Praharaj who admittedly is

one of his important workers. On this failure of respondent No. 1 to deny on oath the allegations made against him and to avoid examining himself as also Ram Chandra Praharaj, the learned counsel for the appellant contends that as it was provided in Section 90(1) of the Act that subject to the provisions of the Act and of any rules made thereunder, every election petition shall be tried by the Tribunal, as nearly as may be, in accordance with the procedure applicable under the Code of Civil Procedure to the trial of the suits, the proceedings in the election case should be treated like regular suits and the burden of proof on facts alleged by each party rests upon such party and that the respondent cannot simply throw the entire burden on the petitioner, and say that it is for him to prove beyond all possibility of reasonable doubt the corrupt practices alleged. In support of his contention, he relied upon an observation in Halsbury's Laws of England, Volume; 14. Third Edition, p. 230,

'Bribery, however, may be implied from the circumstances of the case, and the Court is not bound by the strict practice applicable to criminal cases, but may act on the uncorroborated testimony' of an accomplice.'

This observation, in my opinion, does not support the contention of the learned counsel. It only shows that as in a criminal case it is not necessary' in election proceedings that the evidence of an' accomplice should be corroborated. Just above this passage, it is definitely stated,--

'Due proof of a single act of bribery by or with the knowledge and consent of the candidate or by his agents, however insignificant that act' may be, is sufficient to invalidate the election. The-Judges are not at liberty to weigh its importance nor can they allow any excuse, whatever the circumstances may be, such as they can allow in certain conditions in cases of treating or undue influence by agents. For this reason clear and unequivocal proof is required before a case of bribery will be held to have been established. Suspicion is not sufficient, and the confession of the person alleged to have been bribed is not conclusive.'

This observation clearly shows that proof of bery in an election proceeding should be of the standard required in a criminal proceeding. Mr. Mohapatra relied upon a case of the Calcutta High Court in the case of Nasiruddin Ahmed v. Haji Mahammad Yusuf, 165 Ind Cas 489 (Cal) (O). M. C. Nair J., in the course of the judgment observed:

'The Courts in England have decided in many instances that the trial of an election petition is not governed by the rules applicable to a criminal case.'

The learned Judge quoted a passage from the decision of Mr. Baron Martin in the Tillett v. Stracey (Norwich case) (1869) 1 O'M and H 8 (P).

'If I were sitting here trying an indictment or trying an action for penalty .....before the candidate could be made responsible tor another for a crime or penalty, you would have to give evidence of direct bribery, but I am not trying a criminal case. I am trying a civil case and the rules applicable to a civil case are, I apprehend, the rules applicable to this.The law of agency which would vitiate an election is utterly different from that which would subjecta candidate to a penalty, or an indictment and the question of his right to sit in Parliament.'

In the Calcutta case as also in the case decided by Mr. Baron Martin, the question under consideration was one of the doctrine o the election agency and it was held;

'The doctrines of election agency are much wider than those of common law agency and evidence which would be inadequate to establish agency at common law has often been held sufficient in election cases to make a candidate responsible for acts committed by other persons.'

It is in connection with the discussion relating to the law of election agency that the observationsquoted were made by the learned Judges. Theydo not go contrary to the law as enunciated in Halsbury's Laws of England that the charge of bribery should be proved and that clear and unequivocal proof is required before a case of bribery will be held to have been established. Mr. Moha-patra relied also on the case of Sudhansu Sekhar

Ghosh v. Satyendra Nath Basu, 4 Ele LR 73 (Q), in which it was held,

'It cannot be laid down broadly that an enquiry into a corrupt practice is in the nature of a criminal case and that the respondent is in the position of an accused person, and, though the burden of proof is on the petitioner to prove a corrupt practice, the respondent is not absolved from all liability to adduce evidence to disprove the case of the petitioner.'

He also relied on the case of Desai Basawarajv. Dasankop Hasansab, 4 Ele LR 380 (R), in which it was held,

'An election inquiry, though quasi-criminal in nature, allows the respondent to be examined and cross-examined on oath and, while deciding whether the allegations of the petitioner are proved beyond reasonable doubt or not, the evidence of respondent on oath must also be considered.'

He also cited the case of Abdul Rauf v. Makhtar Ali, 2 Ele LR 340 (S). Repelling the contention that as an election proceeding is one of quasi-criminal character and there was therefore absolutely no obligation on the respondent who was in the position of an accused to produce any evidence it was observed in the judgment:

'Indeed, the enquiry being of a quasi-criminal character rigid proof is to be demanded of the person bringing the charge, to prove his case beyond all reasonable doubt, but that does not fully exonerate the person, charged with such corrupt practice, from producing evidence, specially evidence in proof of a fact within his special knowledge as he is bound to do under the provision of Section 106 of the Indian Evidence Act, and there is really a case like that here. It is further to be borne in mind that an enquiry such as this, though held to be of a Quasi-criminal character, cannot be said to be fully of a criminal nature, in which latter case alone, no evidence may be required of the accused.'

In my opinion those cases do not help the contention of Mr. Mohamtra. These two cases deal only with the advisability and sometimes the necessity of a person against whom a corrupt practice is alleged adducing evidence in rebuttal or examining 'himself. But though the non-examination of the respondent may be taken into consideration in weighing the evidence yet as in a criminal case it is absolutely necessary in an election proceeding' that the petitioner himself should prove beyond possibility of reasonable doubt by clear and unambiguous evidence that the respondent is guilty of a corrupt practice. In the case of Prannath Patnaik v. Banamali Patnaik, AIR 1958 Orissa 228 at p. 234 (T), sitting with my Lord the Chief Justice I observed in the judgment with which observation my Lord agreed,

'The evidence on both sides regarding the printing of Ext. 4 is worthless evidence and cannot be accepted. Under those circumstances and for the reasons stated, I am of opinion that the petitioner on whom the burden of proving the printing and publication of Ext. 4 on 21-2-1957 rests has not discharged the burden. I therefore hold that the petitioner failed to prove that it was the respondent or the Secretary of the Communist Party that got Ext. 4 printed on 21-2-1957.'

I am, therefore, of opinion that though respondent No. 1 has not examined himself nor examined Ram Chandra Praharaj and adduced some evidence in rebuttal, yet the petitioner failed to prove clearly that it was respondent No. 1 who distributed or got distributed the blankets for the purpose of securing the votes.

18. With regard to the corrupt practice of giving a feast to the workers, I do not think, it, amounts to a corrupt practice. Feeding the workers by itself does not amount to a corrupt practice as was held by a Division Bench of this Court in the case of Pyari Mohan Das v. Durga Sankar Das, AIR 1958 Orissa 125 (U). The Tribunal is therefore correct in coming to a conclusion that the corrupt practices of bribery in giving a feast to the workers and distributing blankets to the voters are not made out.

19. Mr. Misra also contends that the petitioner had not given the particulars required under Section 83 of the Act with regard to the charges of bribery in distributing the blankets and giving a feast to the workers. Section 83 deals with the contents of the election petition and says,

'(1) An election petition--(a) shall contain a concise statement of the material facts on which the petitioner relies;

(b) shall set forth full particulars of any corrupt practice that the petitioner alleges, including as full a statement as possible of the names of the parties alleged to have committed such corrupt practice and the date and place of the commission of each such practice; x x x x'

Mr. Misra contends that the date and the actual place of commission of each of such practices was not stated in the petition. In the case of *Bhikaji Keshao Joshi v. Brijlal Nandlal Biyani*, 10 EleLR 357: (AIR 1955 SC 610) (V), the Supreme Court held,

'The requirement of full particulars of all corrupt practices alleged in the petition including the names of the parties and the date and place of commission enjoined by Section 83(2) must be complied with, with sufficient fullness and clarification, so as to enable the opposite party fairly to meet them; and they must be such as not to turn the enquiry into a rambling and roving inquisition. While the Tribunal has undoubtedly the power to permit amendment of the schedule of corrupt practices by permitting the furnishing of better particulars as regards the items therein specified, there is no duty cast upon the Tribunal to direct suo motu the furnishing of better particulars. As the primary responsibility for furnishing full particulars in full compliance with Section 83(2) is on the petitioners they are not absolved from their duty to comply with the requirements of Section 83(2) merely because neither the Tribunal nor the respondent has called upon them to furnish full particulars. Where full particulars are given with regard to some of the corrupt practices alleged, but are not given with regard to others, the Tribunal will not be justified in dismissing the petition in toto at an early stage on the ground that, taking the petition as a whole, there was substantial non-compliance with the requirements of Section 83(2).

In a case of this kind, the Tribunal should exercise its powers and call for better particulars. On non-compliance with this, it should strike out such of the charges as remain vague and call upon the petitioner to substantiate those which are reasonably specific.'

Relying on this decision, the learned counsel contends that as the date and place of the corrupt practice of bribery alleged were not definitely given in the petition, the petition is liable to be dismissed. Respondents 1 and 3 filed an application that the petition should be dismissed as the particulars of corrupt practices were vague. It was urged before the Tribunal that the names of the voters and electors who were offered bribe of rugs and garments have not been specified in the election petition so that the respondent may know to meet the case of the petitioner. The Tribunal rejected the application by its order dated 12-8-1957 on the ground that the particulars stated by the petitioner were sufficient and that he need not state certain unnecessary facts. On 17-8-1957 respondent No. 1 filed another application for further particulars and that application was also rejected on 24-8-1957 on the ground that the petition contained sufficient particulars. Against the first order respondent No. 1 came up to the High Court with an application for a writ which was also dismissed.

Mr. Misra contends that the non-furnishing of the particulars has prejudiced respondent No. 1. He also submits that the petitioner did not state which portions of the pamphlet Ext. 8 were the offending passages. Mr. Mohapatra replies that full particulars as required by the Act were given by him in the petition; that the respondent adduced evidence on those allegations; that the Tribunal also was of the same opinion that full particulars were given and rejected the application filed by the respondent; and that after both sides adduced evidence on the point it is no longer open to respondent No. 1 to contend that the petition should be dismissed on the ground of vagueness of particulars or want of full particulars. He relied upon a decision of the Supreme Court in the case of *Bhagwan Dutta Sastri v. Ram Ratan Gupta*, 11 Ele LR 448 (W). In this case it was held.

'Though the requirement of full particulars of corrupt practices is of paramount importance, where notwithstanding the absence of particulars, the evidence on both sides is allowed to be given and taken, the petition cannot be dismissed for want of full particulars inasmuch as the question in such a case is not one of

absence of jurisdiction but as to whether there has been any material prejudice occasioned by the absence of particulars.'

In my opinion, therefore, as evidence was adduced in this case by both the sides and no prejudice is shown to have been caused to respondent No. 1, the contention of Mr. Misra cannot be accepted. I therefore find that the Tribunal is correct in holding that the appellant failed to prove the corrupt practice of bribery against respondent No. 1.

20. The next contention raised by Mr. Mohapatra is with regard to the corrupt practice under Section 123, Clause (5) of the Act. This charge relates to the publication of Ext. 8 the pamphlet and its distribution in the various meetings held by respondent No. 1 or his agents. I have already discussed the evidence relating to the printing and publication of the pamphlet Ext. 8.1958 Orissa D.F./18

The Tribunal held correctly that the pamphlet was published at the instance and under the order of Ram Chandra Praharaj, a Sarpanch of Balugaon and admittedly an agent of respondent No. 1 who carried on the propaganda work on behalf of the congress candidates. The original manuscript is also signed by several Sarpanchas who worked on behalf of respondent No. 1. The only point to be considered in this connection is whether the pamphlet contains a false statement known to respondent No. 1 to be false or believed by him to be false and that it is in respect of the personal character or conduct of the appellant.

In the pamphlet Ext. 8 it is stated that the petitioner's late father Pandit Godavaris Misra who was returned from the Banpur constituency during the last three elections to the Assembly had not cared to look to the development of the area but kept the people under ignorance and as an instance of such negligence the Salia project was mentioned in the pamphlet.

It was also stated therein that the petitioner was claiming to be elected on the ground that he is a man of Banpur while the rival congress candidate was of Daspalla, a distant place and that to defeat the election of the Banpur candidate the constituency was changed from a single-member constituency to a double-member constituency by tacking Banpur to Daspalla with the help of the delimitation commission.

It was mentioned that Pandit Godavaris Misra had not raised any protest before the commission or criticised it in any public meeting to the tacking of Banpur area to Daspalla but that he meekly submitted to the decision of the commission in the matter. Mr. Mohapatra takes particular exception to the following passages, as referring to false statements of fact relating to the personal character of the appellant. I reproduce below the transliteration of the offending passage pointed out by Mr. Mohapatra-

'Bapa Tankar chipari rajanaitika chal kheli Banapuraku dirgha eka purusuru adhika kala andharare pakai asile O bapa chori puara pitru arjita boli sthirakari bodhahue Raghunath Misra sehi chalre Banpur Bhainka manage anchalika priti akrustha karai pitru sampatirp malik heba pain ehi bondobastha kalare dakhil satwo sabyastha kariba matalabre achhanti.'

The offending passage as translated into English is as follows:

'His father kept Banpur in darkness for more than a generation with such political trick and Raghunath Misra perhaps with the impression that the son has birth right over father's fraud is going to apply the same trick creating love for own area with an intention to establish the birth right over ancestral property in this time of settlement and show himself as a Malik of the same.'

Another impugned passage is as follows, as translated into English,--

'Some say that with the motive that Godavaris Babu may not be elected for the Assembly, Banpur constituency has been amalgamated with Daspalla area which was a feudatory state. This sort of idea and propaganda is false as it is known to people of Banpur with whose help Godavaris Babu returned last time and what number of votes and how he obtained from Banpur P, S.'

The petitioner adduced evidence to show that his father Pandit Godavaris Misra who was proposing to contest the election from this constituency had protested by holding meetings and also appearing as a witness before the delimitation commission at Puri; that during his term of office as a member of the Assembly he laid foundation for the Salia Project and some work had been done in it; and that recently it was included in the Second Five Year Plan for completion. Mr. Misra for the respondent strongly contended that whatever allegations were made against Pandit Godavaris Misra or his son the petitioner in the pamphlet, they cannot be held to be in relation to his personal character and conduct. The entire pamphlet Ext, 8 was read over to us during the course of arguments as also an English translation was supplied. On going through the pamphlet, I am of opinion that the entire pamphlet is an attack on the political work of Pandit Godavaris Misra and the political aspiration of his son.

It criticises the work of Pandit Godavaris Misra as the representative of Banpur in the Legislative Assembly. It attacked him for not completing the Salia Project and not for opposing the proposal of the delimitation commission to tack Daspalla and Nayagarh with Banpur. The allegations made in the pamphlet are mere matters of opinion and not assertions of any fact in relation to the personal character of the petitioner. The pamphlet refers in many aspects to the political conduct of Pandit Godavaris Misra during the tenure of his office as a member of the Assembly and does not contain any statement of fact regarding the personal character of late Pandit Godavaris Misra.

Even if it is alleged that Pandit Godavaris Misra did not raise any protest against inclusion of Daspalla and Nayagarh in Banpur constituency that cannot be said to be the personal conduct of late Pandit Godavaris Misra not to speak of the personal conduct of the petitioner, the candidate. The expression 'Bapa chori para pitru rajita' when read in context with the pamphlet means nothing except that the political policy of the father Pandit Godavaris Misra is sought to be continued by the son, the petitioner, by standing as a candidate from the Banpur constituency and claiming the support of the electorate on the ground that he is a local man and is entitled to that by right of birth.

In the case of *Mehta Gordhandas Girdharlal v. Chavada Akbar Dalumiyan*, 7 Ele LR 374 (X), it was held.

'In order that the publication of a statement may be corrupt practice under Section 123(5), the statement must be one of fact, not one of opinion, and comment as to political conduct as distinguished from personal conduct will not come within Section 123(5). A statement referring to the speech made by a person who had left the congress party and joined the Socialist Party that he is a betrayer and unworthy son of his mother (meaning the congress) and wants to dig her grave does not amount to a corrupt practice within Section 123(5).'

In the case of *Devasharan Sinha v. Sheo Mahadev Prasad*, 10 Ele LR 461: (AIR 1955 Pat 81) (Y), it was held,

'A statement of opinion, however unjust or harsh it may be, without reference to any concrete fact, does not come within the mischief of Section 123(5). The mere statement of a defamatory opinion, unless coupled with the grounds upon which it is formed, is not a statement of fact. Further, the statement must relate to the personal character or conduct. A distinction must be drawn between the criticism of a candidate as a politician or a public man and statements in relation to his personal character or conduct.

Criticism of his public or political activities, however ill-mannered, unfair or exaggerated it maybe, is not forbidden. It is only when the man underneath the politician is attacked and his honour, integrity or veracity assailed in the statement, that the statement becomes offensive within the meaning of Section 123(5).'

The leading case on this subject followed in all the election cases before the Tribunals is the English case of *North Louth*, (1911) 6 O'M and H. p. 103 (Z). Gibson J., observed at page 162.

'A politician for his public conduct may be criticised, held up to obloquy; for that the Statute gives no redress. But when the man beneath the politician has his honour, veracity and purity assailed he is entitled to demand

that his constituent shall not be poisoned against him by false statements containing such unfounded imputations.'

In the case of Cumberland, Cockermouth Division Case, (1901) 5 O'M and H. 155 (Z1), it was observed at page 164,

'Now, it must be noted that what the Act forbids is this; You should not make or publish any false statement of fact in relation to the personal character or conduct of such candidate; if you do, it is an illegal practice. It is not an offence to say something which may be severe about another person, nor which may be unjustifiable, nor which may be derogatory, unless it amounts to a false statement of fact in relation to the personal character or conduct of such candidate; and I think the Act says that there is a great distinction to be drawn between a false statement of fact, which affects the personal character or conduct of the candidate, and a false statement of fact which deals with the political position or reputation or action of the candidate.

If that were not kept in mind this statute would simply have prohibited at election time all sorts of criticism which was not strictly true, relating to the political behaviour and opinions of the candidate. That is why it carefully provides that the false statement, in order to be an illegal practice, must relate to the personal character and personal conduct. One can easily imagine this kind of thing. To say of a person that he was a fraudulent bankrupt, it would be necessary probably, to give examples; but that sort of thing would, undoubtedly, be within this statute.'

The latest decision in the case of Mast Ram v. S. Iqbal Singh, 12 Ele LR 34 (Z2), is also to the same effect. It was held,

'A distinction, must be drawn between criticism of a candidate as a politician or a public man and statements in relation to his personal character or conduct. Criticism of his public or political activities, however ill-mannered, unfair or exaggerated it may be, is not forbidden. It is only when the man underneath the politician is attacked and his honour, integrity or veracity assailed in the statement, that the statement becomes offensive within the meaning of Section 123(5).'

Mr. Mohapatra, learned counsel for the appellant on the other hand urges that if the opinion expressed in the pamphlet is supported by grounds then it becomes a statement of fact and if that is so given, then the pamphlet certainly contains false statements of fact. In support of this contention he relies upon the case of M. R. Meganathan v. K. T. Kosalram, 9 Ele LR 242 (Z3). At page 262, it was observed in the judgment of the Tribunal,

'To bring the statements contained (herein within Section 123(5)) the following conditions must be satisfied; (1) There must be a statement of fact as opposed to an expression of opinion. The mere statement of a defamatory opinion unless coupled with the grounds upon which it is formed, is not a statement of fact; (2) The statement of fact complained of must be untrue; (3) The statement of fact must be in relation to the personal conduct or character of the petitioner.'

But the Tribunal quotes with approval the observations of Justice Gibson in North Louth's case (Z), already quoted by me. In the case before the Tribunal, the allegations made are of bribery; that the candidate had a determined mind not afraid of the five great sins of whatever kind; and that he obtained permits of various kinds in his name & sometimes in false names and amassed a large fortune by dishonest and disreputable means.

These certainly amount to corrupt practice as they affected the personal character. These statements of dishonesty are accompanied by facts such as obtaining of permits. Consequently the Tribunal in that case held that the corrupt practice was made out. But in this case there are no such imputations either against Pandit Godavris Misra or against the petitioner. Mr. Mohapatra also relies upon my judgment in the case of Prannath Patnaik v. Banamali Patnaik (T), and contends that the pamphlet should be viewed in the light of

surrounding circumstances, the party attacked and the party attacking and a conclusion drawn then if the publication of the pamphlet amounts to a corrupt practice.

In Prannath Patnaik's case (T), the allegation made in the pamphlet was that the congress bribed Mr. Routroy, the independent candidate, who withdrew from the election to the extent of Rs. 20,000/-. Discussing the law on the subject and following the observation made in Halsbury's Laws of England and taking into consideration the circumstances present in that case, I came to the conclusion that the impugned pamphlet is an attack against the personal character and conduct of the respondent. I observed,

'Shri Banarnali Patnaik being the congress candidate for the election and he being, then also the General Secretary of the Provincial Congress Committee the imputation that the Congress bribed the independent candidate to make him withdraw from the contest it is certain that his constituents electors would be poisoned against him and consequently such an imputation is in relation to the personal character and conduct.'

and held that the publication in that case could be construed to be in relation to the personal character and conduct of the candidate. I must also observe that with this opinion my lord the Chief Justice did not agree and dissented in a separate judgment. This observation of mine does not in any way help Mr. Mohapatra's contention. The allegation made in the pamphlet is one of bribery by the congress and Banamali Patnaik was the Provincial Congress Committee. Under those circumstances, I held that the imputation was against the personal character of the candidate.

But in this case the pamphlet is mainly an attack on Pandit Godavaris Misra, the father and is not on the son, the candidate. The allegations are purely political in nature and they are not allegations of dishonesty, of bribery or of having committed the five great sins. The allegations are merely of not doing anything beneficial for the constituency, of not carrying out the project or of not opposing the proposal of delimitation commission.

In my opinion, therefore, it cannot be held that respondent No. 1 is guilty of the corrupt practice of publishing a statement of fact which is false relating to the character or conduct of the candidate.

21. Mr. Mohapatra next contended that the pamphlet relates also to the candidature of the candidate. Candidature is described as the bundle of rights and qualifications which entitles a person to stand as a candidate in a particular constituency as well as the factum of his being a candidate. It is one thing to say that a certain statement affects the chances of a candidate at the election and quite another to say that it is in relation to his candidature itself.

The statement to come within the meaning of Section 123(5) as amounting to a false statement relating to candidature must relate to the right or the qualifications or the factum of the candidate as such. This was the view taken by me in Prannath Patnaik's case (T), after reviewing the case law on the subject and following the decision in Krishnaji Bhimrao v. Shankar Shantaram, 7 Ele LR 100 (Z4). I am therefore of opinion that the pamphlet Ext. 8 cannot be taken as a publication of statement of fact in relation to the candidature of the appellant.

22. Under the present law as enacted in Section 100 after the amendment of 1956, under Clause (1) (b) of that section any corrupt practice if committed by a returned candidate or his election agent or by any other persons with the consent of a returned candidate or his election agent, the election of the returned candidate may be declared void.

It is only if the corrupt practice is committed in the interests of the returned candidate by a person other than that candidate or his election agent or a person acting with the consent of such candidate or election agent that it is also necessary to prove that the result of the election in so far as it concerns a returned candidate has been materially affected.

In this case Mr. Mohapatra contends that the corrupt practice has been committed by Ram Chandra Praharaj and other Sarpanches and it is in evidence that Ram Chandra Praharaj was acting as the agent of respondent No. 1 and that respondent No. 1 admitted Ram Chandra Praharaj to be working for him in the election. One of the signatories of the pamphlet is admittedly the counting agent of respondent No. 1.

The evidence goes to show that the publication of the pamphlet must have been with the consent of the returned candidate also. But this finding is not necessary inasmuch as I have held that the contents of the pamphlet are not false statements of fact affecting the personal character and conduct or candidature of the appellant. Consequently respondent No. 1 cannot be held to be guilty of the corrupt practice covered by Section 123(5).

23. The last but the most important contention very vigorously argued by Mr. Mohapatra is the corrupt practice covered by Clause (7) of Section 138. The section as amended is as follows:

'123 (7). The obtaining or procuring or abetting or attempting to obtain or procure by a candidate or his agent or, by any other person, any assistance (other than the giving of vote) for the furtherance of the prospects of that candidate's election, from any person in the service of the Government and belonging to any of the following classes, namely:

(a) gazetted officers;

(b) stipendiary judges and magistrates;

(c) members of the armed forces of the Union;

(d) members of the police forces;

(e) excise officers;

(f) revenue officers including village accountants such as, patwaris, lekhpals, talatis, karnams and the like but excluding other village officers; and

(g) such other class of persons in the service of the Government as may be prescribed.'

The evidence in this case discussed in the course of this judgment clearly establishes that several Sarpanchas of Grama Sabhas worked as agents of respondent No. 1 in the election. The Tribunal has rightly found that as already shown it was amply proved by evidence on record that Ram Chandra Praharaj being in charge of the election office on behalf of the congress candidates at Ban-pur being the President of the Thana Congress Committee has taken active part in getting the pamphlet printed and widely distributed among the electorate besides doing other kinds of election work and respondent No. 1 having been set up by the congress party as their candidate, his election campaign was being conducted on party basis and the congress election office was conducting the campaign.

Respondent No. 1 was specifically mentioned in the pamphlet as one of the congress candidate to whom the electorate should vote on the grounds mentioned in the election manifesto. The Tribunal has also found and in my view correctly,

'There can be no manner of doubt that the persons named in the pamphlet (Ext. 8) who are Sarpanchs of the locality and as such influential persons had supported the cause of the congress candidates including respondent No. 1 and that Ram Chandra Praharaj being the President of the Thana Congress Committee had taken active part in the canvassing of votes for the Raja Bahadur of Daspalla by convening meetings of workers, distribution of pamphlets and doing other necessary things required for propaganda in furtherance of the prospects of the candidate's election.'

On this finding, the learned counsel for the appellant contends that as Sarpanches are Government servants,

respondent No. 1 is guilty of the corrupt practice as contemplated under Clause (7) of Section 123 and fall under Sub-clause (f) of Clause (7).

24. Mr. Mohapatra contends that Sarpanches come under the category of village accountants in eluded in Sub-section 7 (f) of Section 123; that their duties resemble the duties of Patwaris and Karnams and even if Sarpanches cannot be held to be village accountants, they come under the expression 'the like'; and that they are persons in the service of the Government. He took us through the several provisions of the Orissa Grama Panchayats Act as amended by Act 5 of 1957 to show the nature of the services rendered by Sarpanches and the nature of office held by them.

The Orissa Grama Panchayats Act, 1948 is an Act to establish and develop local self-Government in the village communities of the province of Orissa and to make better provision for their administration. Under Section 6 of the Act, as amended, every Grama Sasan shall be a body corporate by the name of the Grama for which it is constituted and shall have perpetual succession and a common seal with power to acquire and hold property, both movable and immovable, and, subject to the provisions of this Act or of any rules made thereunder, to transfer any property held by it, to enter into contracts and to do all other things necessary for the purpose of carrying out the provisions of the Act and may sue or be sued in its corporate name. Under Section 7,

'There shall be for every Grama Sasan a Gram Panchayat as hereinafter constituted and save as otherwise expressly provided by or under this Act, the powers, duties and functions of the GramaSasan shall be exercised, performed and discharged by the said Grama Panchayat.'

By Section 8, the executive power of the Grama Panchayat for the purpose of carrying out the provisions of the Act shall be exercised by the Sarpanch elected under Section 10, who shall act under the authority of the said Grama Panchayat. Under Section 10, every Grama Sabha shall elect in the prescribed manner from among its members an Executive Committee which shall be known as die Grama Panchayat and the Grama Panchayat shall elect in the prescribed manner a Sarpanch and a Naib-Sarpanch from among its members. Clause (9) of Section 10 says,

'(9) A person shall not be eligible to standfor election as or continue to be a member ofthe Grama Panchayat or a Panch of an AdaltiPanchayat constituted under this Act, if-

x x x xx (c) he holds any office of profit under the State or the Central Government or a Local authority other than that of a Sarpanch., Naib-Sarpanch or Member of a Grama Panchayat or President or Panch of an Adalti Panchayat;

XX XX X Mr. Mohapatra strongly relies upon the wording of this clause and submits that this is a positive authority for his proposition that a Sarpanch holds an office of profit under the State Government. But it may be that the expression 'other than that of a Sarpanchj Naib-Sarpanch .....

goeswith the expression 'a local authority' and not with 'the State or the Central Government'. Section 16 says that the office of the Sarpanch shall be honorary; provided that the Sarpanch and the Naib-Sarpanch may receive such monthly honorarium as may be prescribed.

Sub-section (2) of Section 16 lays down that the State Government shall, subject to the restrictions provided in Sub-section (1) of Section 9, make rules regarding the qualifications of a Sarpanch and a Naib Sarpanch and the grounds on which they may be removed from office for negligence, inefficiency or misbehaviour. Section 17 deals with the powers of a Sarpanch and says that the Sarpanch shall, in the execution of his duties, give effect to the decisions of the Grama Panchayat.

Under Rule 35, the Provincial Government may by notification remove any Sarpanch or Naib-Sarpanch (a) if he is disqualified under Section 6 of the Act; (b) if he, in their opinion, wilfully omits or refuses to carry out or disobeys the provisions of the Act or any rules, bye-laws regulations or lawful orders issued thereunder or abuses the powers vested in him; or (c) if such removal is recommended by a resolution of the Grama

Panchayat passed at a special meeting called for the purpose and supported by the votes of not less than two-thirds of the sanctioned strength of the Grama Panchayat.

Rule 36 provides that when the Provincial Government propose to take action under sub-rule (b) of Rule 35 they shall give an opportunity to the Sarpanch or Naib-Sarpanch concerned for explanation and the notification issued under the said rule shall contain a statement of reasons for the action taken. By this rule it is clear that the power to remove a Sarpanch is vested in the Provincial Government and he is also entitled to a reasonable opportunity to show cause against the proposed removal.

Section 40 contemplates the constitution of a Grama Fund for every Grama Sabha and to the credit of the said Fund shall be paid all the proceeds of any tax, toll, etc.; fines imposed and realised under the Act etc.; such portion of the rent or other proceeds of Government property as the Provincial Government may direct to be placed to the credit of the Grama Fund; ..... and one-third of the local cess, land cess and additional cess levied under the Bihar and Orissa Local Self-Government Act.

Under Section 43 a Grama Sabha may borrow money from the Provincial Government to carry out any of its purposes. Under Section 44 a Grama Panchayat shall impose upon the owner of immovable property and occupier of any building within its local area a tax according to the circumstances and the property of such owner and occupier. A Grama Panchayat may impose licence fee on brokers, tolls on vehicles, etc.; rent from dealers temporarily occupying open grounds, fees on the registration of animals, fees for the right to expose goods for sale, fees for use of slaughter houses, a latrine or conservancy tax.

Under Section 45, the Grama Panchayat may direct that all able-bodied persons between the ages of eighteen and fifty shall render either himself or by a proxy free manual labour to it for a fixed number of days. Under Section 48, the Grama Panchayat shall keep regular accounts for receipts to and disbursements from the Grama Fund, and such accounts shall be audited annually or at such other prescribed intervals by auditors specially appointed by the Directors of Grama Panchayat in this behalf.

Section 49 refers to the budget and says that every Grama Panchayat shall prepare and lay before the annual meeting of the Grama Sabha a budget estimate of its income and expenditure for the year commencing on the first day of April next following. Under Section 98, the District Magistrate shall also have the power in respect of the Grama Panchayats or Joint Committees situated within his jurisdiction and shall also have power to order dissolution and reconstitution or abolition of an Adalti panchayat in case of neglect of duty or abuse of power.

Under Section 114, the Provincial Government may, subject to the condition of previous publication, by notification, make rules to carry out the purposes of this Act with regard to the method of account keeping by Grama Panchayats. Under Rule 140, the receipts and payments of the Grama Panchayat shall be entered in a cash book in Form IX on the same day on which money is remitted or paid. Rules 142 to 145 also regulate how the accounts are to be maintained.

Rule 145 says that as soon as an advance is paid under Rule 144 the Sarpanch shall enter it in the Advance Register in Form XIV. Under R. 154, every transfer of immovable property vested in a Grama Panchayat shall be made by instrument under the common seal, signed by the Sarpanch and two of the members of Grama Panchayat and where these rules require the previous approval of the District Magistrate, the fact that the transfer is signed with such approval shall be distinctly expressed.

Mr. Mohapatra also read to us some provisions from the Sambalpur Manual regarding Pat-waris and the Madras Village Officers and Ryots Manual with regard to the duties of the village officers and submitted that the duties of a Sarpanch as contemplated under the Orissa Grama Panchayats Act are in most respects the same as that of the village officers in Sambalpur and Madras areas.

He placed before us some decisions of the Supreme Court, and the Election Tribunals which are under the old

Act before the amendment of 1956. The corresponding provision before the amendment is Section 123, Clause (8), which runs as follows,--

'The obtaining or procuring or abetting or attempting to obtain or procure by a candidate or his agent or, by any other person with the connivance of a candidate or his agent, any assistance for the furtherance of the prospects of the candidate's election from any person serving under the Government of India or the Government of any State other than the giving of vote by such person.'

Explanation-- For the purposes of this clause-

XX XX (b) a person serving under the Government of any State shall include a patwari, chaukidar, dafedar, zalidar, shanbagh, karnam, talati, talari, patil, village munsif, village headman or any other village officer, by whatever name he is called, employed in that State, whether the office he holds is a wholetime office or not, but shall not include any person (other than any such village officer as aforesaid) who has been declared by the State Government to be a person to whom the provisions of this clause shall not apply.'

In the case of Hari Shanker Prasad v. Sibban Lal Saksena, (S) AIR 1956 SC 314 (Z5), it was held,

'The explanation to Section 123(8) enlarges the meaning of the words 'serving under the Government of a State' so as to include 'a village headman or any other village officer, by whatever name called.' A Mukhia is a village headman or at any rate a village officer and therefore the action of a candidate in permitting him to canvass for him is a major corrupt practice under Section 123(8) and that entails a declaration under Section 100(2)(b) to the effect that the candidate's election is void.

The argument that as the Mukhia was not paid by the State he cannot be in the service of the State is not sound, for payment is not the test. All that is required under the definition is that he should be a headman employed in the State.' This case was decided by the Supreme Court in appeal against the judgment of the Tribunal in the case of Shibhan Lal v. Harishankar, 9 ELR 403 (26). At page 434 the Tribunal observed,

'In our opinion the question whether any particular officer bearing a particular designation in any particular State does or does not receive salary from the Government is not material for the purposes of the present enquiry and all that is to be seen is whether Sarpanchas, Panches, Sabhapatis, Upsabhapatis serving in villages of the State of Uttar Pradesh, who could exercise influence on the voters during the course of official duties were made to assist the respondent No. 1 for furtherance of prospects of his election or not ....'

At page 438. it was observed,

'In view of the rulings and authorities quoted above we think that the interpretation of Sub-section (8) of Section 123 and Clause (b) of the Explanation appended thereto of the Representation of the People Act put by the petitioner is correct and there is no justification for holding that only Government servants were intended to be restricted from influencing voters by (sic) the Legislature had really intended to restrict only Government servants, a clear provision would have been made in the later enactment, i. e., [Representation of the People Act, 1951](#), that servants of autonomous bodies like the Panchayats created under the Uttar Pradesh Panchayat Raj Act, 1947, would not come within the purview of Section 123(8) of the [Representation of the People Act, 1951](#).'

Mr, Mohapatra contends that these observations of the Tribunal are authorities for the proposition he is contending for, especially in view of the fact that the decision of the Tribunal was confirmed in appeal by the Supreme Court, The Supreme Court disposed of the case only on one point and that is, that Mukhia comes under Clause (8) of Section 123. But of course as contended by Mr. Mohapatra, the Supreme Court did not disapprove in express terms the observations in the decision of the Tribunal in this case. The Tribunal further observed,

'In the present set up different individuals even in the village administration have been given Governmental

authority and it is very necessary that such persons should not be allowed to abuse the powers which they are required to wield and so even if it be accepted for a moment that by any stretch of imagination the words used in Clause (b) of the explanation to Section 123(8) of the Representation of the People Act are confined strictly to Government servants, the original restricted meaning of persons employed in the State should be deemed to have been widened and persons wielding Governmental power should be barred from exercising undue influence on voters in furtherance of the prospects of any particular candidate and under such circumstances the persons exercising powers emanating from the Government ought to be held to be barred whether they come within the purview of Government servants' or not.

Maxwell on Interpretation of Statutes. 9th Edition, page 70 says that it is said to be the duty of the Judge to make such construction of a statute as shall suppress the mischief and advance the remedy. Even where the usual meaning of the language falls short of the whole object of the Legislature, a more extended meaning is to be attributed to the words if they are fairly susceptible of it.'

I am in full agreement with the observations made in this case. The words in the amended section in Clause (7), Sub-clause (f) of Section 123 'revenue officers including village accountants, such as, patwaris, lekhpals, talatis, karnams and the like but excluding other village officers' clearly are intended to include Sarpanches under the Gram Panchayats Act of 1948.

The above observations of the Tribunal apply with greater force to the amended Section 123, Clause (7) (f). Sarpanches under that Act can clearly come under the expression 'and the like'. As observed by the Tribunal in the above case, if it can be seen from a wider inspection of the scope of the legislation that the general words, notwithstanding that they follow particular words, are nevertheless to be construed jointly effect must be given to the intention of the Legislature as gathered from the larger survey. Maxwell on the Interpretation of Statutes, at page 288 observes,

'The restricted meaning which primarily attaches to the general word in such circumstances is rejected when there are adequate grounds to show that it has not been used in the limited order of ideas to which its predecessors belonged. If it can be seen from a wider inspection of the scope of the legislation that general words, notwithstanding that they follow particular words, are nevertheless to be construed generally, effect must be given to the intention of the Legislature as gathered from the larger survey.'

The particular amendment in Clause (7) of Section 123 Was made by the Legislature in 1956. By that time in various States the Acts relating to village self-Governments were passed like the Grama Panchayats Act of 1948 in Orissa, under which many of the duties of the village officers were vested in the Grama Panchayat and the Sarpanch. They exercise under the statute mostly Governmental functions like collection of taxes, maintainance of public accounts etc.

If these persons are not to be brought under Clause (7) (f) of Section 123, there will be a lot of undue influence exercised on the voters by these persons who in the village exercise a lot of influence considering the nature of their power and the ideas of the village people. And if a candidate at the time of the election is in office as minister certainly there is a likelihood he will make use of the services of Sarpanches if they are not to be construed as coming under the expression 'the like' in Clause (7) (f) of Section 123.

Therefore the Legislature in my opinion, by introducing the expression 'and the like' wanted to include all such persons as Sarpanches and Naib-Sarpanches within Clause (7) (f) of Section 123. As already stated this decision of the Tribunal was before that of the Supreme Court & though the Supreme Court disposed of the matter on a consideration that a Mukhia is a person who comes under Clause (8) of Section 123, yet the non-mention of any disapproval with the observations made by the Tribunal may be taken into consideration in holding that the observations are sound.

The evidence in the case before us which was discussed in the earlier portion of the judgment is clear that these Sarpanches acted as the agents and workers of respondent No. 1 with his consent. A Sarpanch

Lokanath Misra P. W. 2 acted as the counting agent of respondent No. 1. Ram Chandra Praharaj another Sarpanch did much work as a canvassing agent. The other Sarpanches supported the work of election.

All the signatories to Ext. 8 are Sarpanches. Respondent No. 1 thus obtained the services of Sarpanches.

25. Mr. Misra for the respondent contended that there is no allegation in the petition that Lokanath Misra acted as the counting agent. Lokanath Misra admits that he was an election agent of respondent No. 1. Ram Chandra Praharaj acted as the agent and the Tribunal also finds that respondent No. 1 had knowledge of the same. As already observed in the case reported in 11 Ele LR 448 (W), it was held that such facts though not stated in particular, if there is evidence the matter can be gone into.

Also if a person does anything with the connivance or consent, he is in law an agent and the law of agency in election matters is wider than that in the law of contract. In the Agra City, First Case in L. Buddhi Mal v. Seth Achal Singh, Doabia's Ele Cases 1 (Z7), it was held that the candidate of a party is responsible for the acts done through that party's agency.

It is admittedly the case that Ram Chandra Praharaj was the President of the Thana Congress Committee and all the Sarpanches worked for the congress party. The learned counsel for the respondent also contended that a Sarpanch cannot be taken to be in the service of the Government. He relied on a decision in the case of Ganga Prasad Parhak v. Saligram Jaiswal, 11 Ele LR 415 (Z8). In this case it was held,

'Sarpanches and members of the Nyaya Panchayats ' or Panchayati Adalats, Pradhans, Up-pra-dhans and members of Gaon Sabhas, and Chairmen, Vice-Chairmen, and members of the Land Managing Committees cannot be said to be serving under the Government of the State of, Uttar Pradesh under Sub-section (8) of Section 123 of the Representation of the People Act. 1951. Mukhias. however, are persons serving under the Government of the State under that sub-section.'

This is a decision of the Election Tribunal. Allahabad. Mr. Misra strongly relies upon the observations made by the Tribunal at page 438,

'The Government may have complete control of the manner in which those duties are performed but that duty being the duty of an autonomous body transferred to it by the statute it cannot be said that they are serving under the State Government and not under that autonomous body, specially when they are not appointed by the State but are elected by the autonomous body itself although they have to submit their resignation to the authority appointed by the Government and can be removed by such authority.

It is thus clear that even the sarpanches and panches of the Panchayati Adalats constituted under the Uttar Pradesh Panchayati Raj Act are not persons 'serving under the Government of the State' within the meaning of that term under Section 123(8) of the [Representation of the People Act, 1951](#).'

This was a decision under the Act before the amendment and the expression 'and the like' is not there. The disqualification before the amendment attached 'Only to certain specified persons. Consequently I do not think the principle laid down in this case applies to the case before us. Further some of the provisions in the Uttar Pradesh Act appear to be different from those under the Orissa Grama Panchayats Act. Mr, Misra also relied upon the case of AIR 1958 SC 52 (J), already referred to. In that case it was held by the Supreme Court

'No doubt the Committee of the Durgah Endowment under Act 36 of 1955 is to be appointed by the Government of India but it is a body corporate with perpetual succession acting within the four corners of the Act. Merely because the committee or the members of the committee, are removable by the Government of India or the committee can make bye-laws prescribing the duties and powers of its employees cannot convert the servants of the committee into holders of office of profit under the Government of India.

The Mohatmin (Manager) of Madrasa Durga Khwaja Sahib Akbari is neither appointed by the Government of India nor is removeable by the Government of India nor is he paid out of the revenues of India. The power of

the Government to appoint a person to an office of profit or to continue him in that office or revoke his appointment at their discretion and payment from out of government revenues are important factors in determining whether that person is holding an office of profit under the government though payment from a source other than government revenue is not always a decisive factor.

But the appointment of the Manager of the Madrasa does not come within this test. He is holding his appointment under a Committee which is a statutory body and such appointment cannot be called an appointment by or under the control of the Government of India nor is his salary paid out of the revenues of the Government but out of the funds of Durgah endowment.'

On the authority of this decision, Mr. Misra contends that the Grama Sabha is a body corporate under the Orissa Act, and the Sarpanch is elected by the Grama Panchayat and as such he cannot be said to be a person in the service of the Government. In the case before the Supreme Court, the committee was a statutory body and the committee appointed the Manager. This is quite different from the case of a Sarpanch who is elected under the statute but is removable by the Government.

The manager in the Supreme Court is not removable by the Government but only by the Committee. On account of this distinction, in my opinion, this decision does not support the contention of Mr. Misra. Mr. Misra also took us through Sections 37, 40, 46, 49 and 97 and Rules 32, 69, 123, 141 and 149 of the Grama Panchayats Act and contended that the Grama Sabha and the Sarpanch are all creatures of statute; that the control exercised by the Government over that body is far less than the control exercised by the Government over municipalities and local bodies; and that the Sarpanch cannot be likened to be a karnam or a patwari. But as already observed by me, the amendment in 1956 and the addition of the expression 'and the like' make all the difference.

In my opinion, a Sarpanch though not a Government servant appointed by the Government, yet is a person in the service of the Government as he performs many of the Governmental duties and is also removable by the Government. I think there is some distinction between a 'Government servant' and 'a person in the service of Government'. A Government servant is certainly one appointed by the Government. But a person in the service of Government includes a person elected to an office but performing Governmental functions and removable from service by the Government.

As such a Sarpanch comes under Section 123, Clause I (7) (1) and as the services of Sarpanches were admittedly made use of by respondent No. 1 and he was aware that they were working for him and consented to their so working and some of them were his agents it is clear he obtained their services for purposes of election.

I am of opinion that respondent No. 1 is guilty of the corrupt practice contemplated under Section 123, Clause (7) and as this corrupt practice was committed by the returned candidate, it is a case which falls under Sub-clause (b) of Clause (1) of Section 100 and it is not necessary in this case to show that the result of the election so far as it concerns the returned candidate has been materially affected. Explanation (1) to Section 123 is as follows,

'(1) In this section the expression '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.

(2) For the purposes of Clause (7), a person shall be deemed to assist in the furtherance of the prospects of a candidate's election if he acts as an election agent, or a polling agent or a counting agent of that candidate.'

Lokanath Misra, P. W. 2 is a counting agent and a Sarpanch. The evidence, as already found by me, in connection with the corrupt practice of publishing a false statement known to be false is to the effect that the Sarpanches acted as the workers of respondent No. 1 in the election to the knowledge of the respondent and the respondent No. 1 also admitted that Ram Chandra Praharaj was his agent in the election, and thus

procured his services.

26. Even if that is necessary, there is no doubt that when so many Sarpanches worked on behalf of respondent No. 1 with his consent, their influence secured many votes for him and his success in the election is mainly due to the world done by the Sarpanches. I would, therefore, declare the election of respondent No. 1 void only for the corrupt practice coming under Section 123, Clause (7) of the Act.

27. My finding that respondent No. 1 is guilty of the corrupt practice coming under Clause (7) of Section 123 for obtaining and procuring the assistance for the furtherance of the prospects of his election from Sarpanches, persons in the service of Government and belonging to the category of persons enumerated in Sub-clause (f) of Clause (7), entails on respondent No. 1 under Section 140 of the Act a disqualification for membership of Parliament and of the Legislature of every State for a period of six years.

But I must note that in this case the corrupt practice found by me is mostly based upon the interpretation of the law contained in Clause (7) of Section 123. There are decisions in support of both the views. Some decisions support the view that Sarpanches are not persons falling under sub-cl. (f) of Clause (7) of Section 123. There are also decisions that the said sub-clause includes also Sarpanches.

After a review of the decisions on the point, I took the view that Sarpanches do come under Sub-clause (f) of Clause (7) of Section 123. This position of the law might not have been known to respondent No. 1 at the time of the election. He might have been under the bona fide impression that obtaining or procuring of assistance, in the election, of Sarpanches is not a corrupt practice.

Under these circumstances, though I hold the election of respondent No. 1 to be void on account of the corrupt practice comprised by Clause (7) of Section 123, yet I think that this is a fit case for the removal of the disqualification by the Election Commission under Section 144 of the Act.

28. The appeal is therefore allowed, the order of the Tribunal declaring the election of respondent No. 1 valid is set aside and the election of respondent No. 1 is declared void. The appellant is entitled to his costs throughout. Hearing fee Rs. 250/-.

G.C. Das, J.

29. I agree.

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