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ismail Vs. P.C. Thomas

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Court : Kerala

Decided On : Oct-31-2006

Reported in : 2006(4)KLT831

Judge : C.N. Ramachandran Nair, J.

Acts : Representation People Act, 1951 - Sections 77, 84, 98, 99, 100(1), 101, 103, 123(2), 123(3) and 123(5); Code of Civil Procedure (CPC) - Sections 151 - Order 11, Rule 14

Appeal No. : El Pt. No. 1 of 2004

Appellant : ismail

Respondent : P.C. Thomas

Advocate for Def. : K. Ramakumar, Rojo J. Thuruthipara, Baby Thomas, T. Ramprasad Unni, Sunil Cyriac, A.J. Jose (Aedaiodi), Benny Antony Parel, Bobby John, P.N. Damodaran

Advocate for Pet/Ap. : G. Janardhana Kurup, P.V. Surendranath, John K.George, B. Vinod, P.K. Varghese, S. Sulochana, K.A. Akbar and;

Disposition : Petition allowed

Judgement :

C.N. Ramachandran Nair, J.

1. This Election Petition is filed by one of the defeated candidates challenging the election of the first respondent to the House of People from 12 H.P. Muvattupuzha Parliamentary Constituency in the election held on 10.5.2004. The first respondent won the election with a margin of 529 votes over the petitioner who got second largest number of votes. While the petitioner was the candidate from CPI (M), a constituent of Left Democratic Front, the first respondent was the candidate from the Indian Federal Democratic Party, a constituent of the National Democratic Alliance, and the second respondent who also contested the election on party lines was from. Kerala Congress (M), a constituent of the United Democratic Front. When the first respondent secured 2,56,411 votes, the election petitioner got 2,55,882 votes and the second respondent secured 2,09,880 votes. Respondents 3 to 15 contested the election as independents and all of them got insignificant number of votes compared to the total number of votes polled, that is, 7,45,885 out of which 7,45,871 were valid votes. Petitioner's case is that the first respondent won the election with a narrow margin of 529 votes over him by committing corrupt practices under Sections 123(3) and 123(5) of the Representation People Act, 1951, hereinafter called the 'Act' detailed in the election petition and therefore his election is liable to be declared void under Section 100(1)(b) of the said Act. Consequent relief prayed is for declaring the petitioner elected as provided under Section 101(b) of the Act.

2. Even though notices were issued to all the respondents only the elected candidate, namely, the first respondent filed written statement and contested the Election Petition. However, respondents 2, 4, 5 and 10 entered appearance through counsel and supported the Election Petition during hearing but opposed the petitioner's prayer for declaring him elected. The maintainability of the Election Petition was questioned by the first respondent and this Court vide detailed order dated 28.2.2005 sustained the maintainability of the Election Petition on two grounds of corrupt practices, one falling under Section 123(3) of the Act and the other falling under Section 123(5) of the Act. While the petitioner himself gave up grounds pertaining to allegation of excess election expenditure incurred by first respondent over the maximum limit provided under Section 77 of the Act and the

allegation of corrupt practice of undue influence under Section 123(2) of the Act arising out of the speech made by the then BJP President, Sri. Venkaiah Naidu, this Court rejected the ground of bribery alleged in the form of gratification offered by the first respondent to the 10th respondent to withdraw the letter's candidature from election. The adjournments taken by both sides particularly the first respondent on account of SLP filed in the Supreme Court against the order rejecting preliminary objections on maintainability of Election Petition caused some delay in commencement of trial of the Election Petition. However, after calling for draft issues from petitioner and first respondent, this Court framed the following issues for trial:

1. Whether the 1st respondent has committed corrupt practice as contemplated under Section 123(3) of the Representation of the People Act, 1951 by printing and publishing Annexure I notice and Annexure II photo calender and distributing and circulating Annexure I along with Annexure II by himself, his election agent, and other agents, his election workers and campaigners with the consent and connivance of the 1st respondent in various places of No. 12 H.P. Muvattupuzha Parliamentary Constituency for the election held on 10.5.2004.

2. Whether the 1st respondent, his election agent and other agents with the consent of the 1st respondent had committed corrupt practice contemplated under Section 123(5) of the representation of the People Act, 1951 by hiring and procuring vehicles, viz., autorickshaw Nos. KL-5/4400. KL-5/C 3431 and Jeep Nos. KRO 6606 and KL-5/1845 for free conveyance of the electors to and from the polling station Nos. 57 to 71 in Poonjar Thekkekara Panchayat in Poonjar Assembly Constituency of No. 12 Muvattupuzha Parliamentary Constituency for the election held on 10.5.2004.

3. Whether the election of the 1st respondent from No. 12H.P.MuvattupuzhaParliamentary Constituency be declared as void by the conduct of corrupt practices enumerated in issue Nos. 1 and 2 and is liable to be set aside.

4. Whether the petitioner has to be declared as duly elected from No. 12 H.P. Muvattupuzha Parliamentary Constituency after setting aside the election of the

1st respondent.

5. Whether the petitioner is entitled to get the cost of his election petition.

3. On behalf of the petitioner, twenty five witnesses including the petitioner were examined. Annexure I notice dated 21.4.2004 with it's English translation as Annexure I(a) and photo calendar Annexure II produced along with the Election Petition were marked through petitioner as Exts.P1 and P2 respectively. On the side of the first respondent, eleven witnesses including himself were examined and Exts.R1(a) to R1(g) were marked. After closure of evidence and during hearing, this Court felt that controversy on claim by witnesses about filing documents marked in evidence in the office of the Returning Officer, participation in the proceeding before him and compliance of legal formalities in the office of the Returning Officer, on which oral evidence produced is conflicting would be better resolved by reference to official Election records. However, instead of ordering production of entire election records to Court, this Court vide order dated 9.6.2006 issued appropriate directions to the Returning Officer to give opportunities to both the parties to verify election records, and issue them copies of documents or certificates on facts borne out by records as demanded by them for production in this Court. The petitioner accordingly obtained and produced Annexures III to VII from the Returning Officer along with I.A. No. 4 of 2006 filed under Order XI, Rule 14 read with Section 151 of the CPC to receive the documents. The first respondent objected to receipt of documents after closure of evidence, and therefore this Court vide order dated 28.6.2006 granted opportunity to the first respondent to file counter affidavit in support of his objections against receipt of documents and the same was filed on 9.7.2006. Since the documents were filed in the course of final hearing of the Election Petition, this Court felt there was no need to pass separate order on the Interim Application to receive documents, and therefore the first respondent's objections are considered while considering Annexures III to VII in this judgment.

4. The first issue raised for consideration is whether the first respondent has committed the corrupt practice under Section 123(3) of the Act by printing, and circulating among electors Annexure I notice (English translation Annexure I(a))

and Annexure II picture calendar produced along with Election Petition and marked in the course of evidence as Exts.P1 and P2 respectively. For easy reference, the 'corrupt practice' defined in Section 123(3) of the Act is extracted hereunder:

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

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(3) The appeal by a candidate or his agent or by any other person with the consent of a candidate or his election agent to vote or refrain from voting for any person on the ground of his religion, race, caste, community or language or the use of, or appeal to religious symbols or the use of, or appeal to, national symbols, such as the national flag or the national emblem, for the furtherance of the prospects of the election of that candidate or for prejudicially affecting the election of any candidate:

Provided that no symbol allotted under this Act to a candidate shall be deemed to be a religious symbol or a national symbol for the purposes of this clause.

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In order to decide whether corrupt practice is committed as alleged in this case, the Court has to examine (1) whether Ext.P1 notice and P2 picture calendar independently or jointly constitute an appeal to the voters to vote on the ground of religion or community or caste of the first respondent, as alleged in the Election Petition, and (2) if the answer to the above question is in the affirmative, then whether the first respondent or his agent, or any other person with the consent of the first respondent or his election agent has printed, and distributed or at least distributed the same among electors to bring the same within the mischief of the above Section. Unless both the aspects are proved affirmatively beyond all probable doubts, the corrupt practice under Section 123(3) of the Act cannot be said to be established. Therefore if the first aspect of the question is found in the negative, then there is no need to go into the second part of it. In fact, in the written statement, the first respondent after denial of allegation of printing and

circulation of Exts. P1 and P2, in the alternative has claimed that those do not amount to appeal to vote on ground of religion, caste or community of the first respondent to attract the mischief of Section 123(3) of the Act. However, the case of the petitioner is that the independent and combined effect of Exts. P1 and P2 is a direct and unambiguous request to members of the Christian community, particularly catholics, to vote for the first respondent purely on the ground of his religion and community and the first respondent through his election agent got Ext.P1 and P2 printed and supplied the same to his party offices at various places in the constituency from where the party workers of the first respondent with his knowledge and consent distributed the same among electors in the constituency which squarely attract Section 123(3) of the Act. Therefore I proceed to consider systematically in stages whether the above allegations stand proved.

5. I have meticulously gone through Ext.P1 which is dated 21.4.2004 and published in the name of John Kachiramattam, who even according to the first respondent and his election agent, is a long standing leader and office bearer of the Catholic Congress. I find that first respondent is described therein as Former State Secretary of 'Catholic Congress' and was also the President of the Catholic Congress of Kothamangalam Diocese. His father, who was the Home Minister of Kerala, was also stated to be a prominent leader of the Community. It is stated in paragraph 2 of Ext.P1 that Holy Father, obviously meaning Pope, has exhorted that the Christian community which is about 2 per cent of the population of the country should not keep away from the National main stream. Further, in paragraph 3, it is stated that first respondent is the first person to reach Jambuva in Madhya Pradesh to help the missionaries who were abused. Acknowledgment of this through public declaration by Bishop Mar Mathew Vaniyakizhakkal is also referred to therein. It is stated in paragraph 3 of Ext.P1 that many representatives of Christian community serving in North India have, over phone and letters, praised the help and services they have received from the first respondent. After narrating about the services of the first respondent and after describing the first respondent as a well wisher of Malayalees in Delhi, it is stated in Ext.P1 that first respondent has fought in Parliament for the benefit of agriculture sector, to which great majority of members of 'our community' belong. Fourth paragraph of Ext.P1 refers to the first respondent's participation in the beatification ceremony of Mother

Teresa at Rome where he kissed the hands of Holy Father, obviously Pope. After stating that 'our community' can be proud of first respondent, it is stated in Ext.P1 that he was sent to BJP Front only because of selfish and personal interest of certain people. The first respondent is thereafter compared to the Bibilical character Joseph who was elevated as Ruler by the Aliens in the presence of Jesus Christ. In the last paragraph of Ext. P1, the publisher, namely, John Kachiramattom makes a specific request to vote for the first respondent, who is described as the representative of the Christians following the foot-steps of Lord Jesus and who follows the commandments of Holy Church. The publisher finally requested the public to extend strong prayers and support to enable the first respondent to continue as Jesus witness in Delhi.

6. The question to be considered is whether Ext. P1, gist of which is stated above, amounts to an appeal to the electors to vote for the first respondent on the ground of his religion, caste or community. The case of the first respondent is that his religion or community is not mentioned in Ext. P1 and therefore the crucial question to be considered is whether the religion or community of the first respondent itself is disclosed in Ext. P1 and if so whether there is a request in Ext. P1 to the electors to vote for the first respondent on the ground of his religion or community. The religion of the electors before whom appeal is made to vote is not relevant or material for the purpose of the Section. In order to attract Section 123 (3), what is required to be proved, as contended by counsel for the first respondent based on the decision of the Hon'ble Supreme Court in Harbinder Singh Pradhan v. Ranjith Singh Thalwandi : AIR 2005 SC2379 , is appeal to vote on the ground of religion, caste or community of the candidate. According to the first respondent's counsel there is no mention about the community or religion of the first respondent in Ext. P1 much less any request or appeal to vote on the basis of his community or religion. The Supreme Court in Ram Sharan Yadav v. Thakur Muntkeshwar Nath Singh reported in : [1985]1SCR1089 held that the Court has to examine the effect of statements made by the candidate in the minds and feelings of the ordinary average voters of the country. Therefore what is relevant is not what the Court can understand or make out by reading Ext. P1, but what is to be considered is the effect and idea that will be conveyed to ordinary electors when they read Ext. P1. Unless the language used is plain and unambiguous and main

idea conveyed to the electors is a request or appeal to vote on the ground of religion, caste or community of the candidate, Ext. P1 cannot be said to be an offensive document hit by Section 123(3) of the Act. This is a matter to be proved by evidence and therefore this Court has to refer to the evidence of independent witnesses examined on behalf of the petitioner PW2, who is a catholic when asked about the discussion he had with family members on Exts. P1 and P2, answered that after discussions with family members, they being catholics, decided to vote for the first respondent, who is a catholic. This witness further stated that there was general talk among people that if first respondent is elected, he may become a Central Minister which will be beneficial to the catholic community. In cross-examination, the witness reconfirms that until receipt of Exts. P1 and P2 they had not even decided to vote. PW6 who is also a catholic states in evidence as follows: ' I understood from the copies of Exts. P1 and P2 that PC Thomas (first respondent) stands for the catholics. I guessed the purpose is to get votes from the believers. In Ext. P1 there is a statement that first respondent stands for the catholics and the request in Ext. P1 notice to the believers is to vote for PC Thomas'. The witness further states that the person in whose name Ext. P1 was published, namely, Sri. John Kachiramattom, stated in an election meeting attended by the witness that wherever Christians were attacked, Sri. P.C. Thomas (first respondent) came to their aid and therefore believers should vote for him. In cross-examination, the witness reconfirms that he has understood from the statement in Ext. P1 that first respondent is a catholic. PW7 another witness from the catholic community has stated that on reading Ext. P1 notice, he understood that lot of things are done for the catholic community by PC Thomas (first respondent). On a specific question as to what he felt after reading Ext. P1, the witness answered as follows: 'If Catholic community has to get any benefit, we have to vote for PC Thomas, is what I understood'. In cross-examination, the witness further adds that his children after reading Ext. P1 told him that PC Thomas (first respondent) works for the catholics and first respondent represents catholic community and for catholics he should win. PW9, a Christian by religion, has stated that what is written in Ext. P1 is that if PC Thomas (first respondent) becomes a Minister, it will be beneficial to catholics. PW10, who is also a member of the catholic community, has stated that he understood from Exts. P1 and P2

that first respondent is a person who stands for the catholic community and after discussion with family members also he formed the opinion that first respondent stands for the catholics and goes for their help as and when required. The witness further concluded that he went to friends with copies of Exts.Pl and P2 and requested them to vote for the first respondent, as the latter stands for the catholic community. On being asked in cross-examination that it is not specified in Ext.Pl that first respondent is a catholic, the witness explains that first respondent was stated to be the President of the Catholic Congress of Kothamangalam Diocese and therefore he has to be necessarily a catholic because only a catholic can become the President of the Catholic Congress. The witness reconfirms this information only from Ext.Pl. PW11 another catholic witness has also stated that what is projected in Exts.Pl and P2 is that first respondent is mainly a person for catholic community. Prior to this, the witness stated that first respondent is the Leader of Catholic community and was the President of the Catholic Congress of Kothamangalam Diocese. All these answers were given against questions on Exts.Pl and P2. PW20 who is a lady from the catholic community gave evidence as follows: 'After reading Ext.Pl, I felt that Mr. P.C. Thomas is a person who helps us. Even though there is no request in Ext.Pl to vote, the idea I got is that if you vote for the first respondent, members of the community will be benefitted'. The witness further adds that she discussed with her husband, members of the community in Church and friends coming to her shop and all of them decided to vote for the first respondent because he will be helpful to the Church and the school under church management. The witness further adds that it is also a well-known fact that first respondent is a catholic. PW23 who is also a member of the catholic community has stated that on reading Ext.Pl he understood that first respondent was the previous President of the Catholic Congress and the present President is requesting vote for the success of the first respondent. The witness further adds that it is stated in Ext.Pl that first respondent is a person who has taken lot of pains for the catholic community and he works for the community. On being specifically asked in cross-examination as to whether the witness and his family members would vote based on Ext.Pl, the witness answers that 'we vote for the person who stands for the community'. From the above evidence of the witnesses whose testimony is not discredited in any way in cross-examination, it is

clear that they understood from Ext.Pl that first respondent is a catholic leader of the said community and a person who always works for the said community and offers help wherever the community's interests are in trouble and the witnesses also unequivocally state that they understood Ext.Pl as the request to believers to vote on the ground of community and religion of the first respondent on account of his past and expected services to the catholic community. It is to be noted that witnesses are ordinary people like agricultural workers, persons engaged in tailoring, etc. Besides the understanding of the ordinary electors who are examined as witnesses that Ext.Pl is an appeal to vote on the ground of religion and community of the first respondent, on going through Ext.Pl I find that all pervading references therein are the past services of the first respondent for the catholic community and what the community can expect from him in the future. By stating that first respondent was the ex-President of the Catholic Congress and his father, ex-Home Minister of Kerala, was the leader of the community, and all pervasive references of the catholic community and first respondent's services to it in Ext. P1, it is made clear beyond any doubt for any ordinary elector that first respondent is a catholic and the idea conveyed is that those who care for the said community's interest should vote for him. The first respondent and his election agent in their evidence have stated that Mr. John Kachiramattom in whose name Ext. P1 was published was the State President of the Catholic Congress. The Catholic Congress is understood by every one as an organisation of members of the catholic community formed on the diocese level and at the State level. Even the first respondent has not denied it's true nature as a religious organisation. No doubt counsel for the first respondent rightly pointed out that first respondent's services to the society as a whole as Member of Parliament are also stated in Ext. P1. Therefore what is to be further considered is whether Ext. P1 generally talks about first respondent's services to the society as a whole and reference of his service to his community is only incidental, in which case, the object and purpose of Ext. P1 cannot. be said to be an appeal to vote on the ground of religion of the candidate. However, none of the witnesses whose evidence is discussed above has understood Ext. P1 as describing the services of the first respondent to the society as a whole. On the other hand, all the witnesses have unanimously stated that Ext. P1 only highlights the services of the first respondent to the catholic

community and believers should vote for him to protect the interests of the said community. On repeated reading of Ext. P1, 1 felt that the dominant and all pervading theme of Ext. P1 is the interests of the catholic community and first respondent's past and expected services to the community. Even when first respondent's services to the agricultural sector is mentioned in Ext. P1, it is stated that community members have high stake in the agricultural sector and therefore first respondent should win in the election. Therefore central theme of Ext. P1, as understood by witnesses who satisfy the test of common man's understanding of it and on reading it, I am also convinced that a second reading is not required for any ordinary elector to understand Ext. P1 as a direct appeal to members of the catholic community to vote for the first respondent, because it is stated in so many words therein that he is a member of the said community, it's leader and the person for whom community is indebted for his past services and on whom community can bank upon for future help and services. Above all, Ext. P1 does not contain the name of the press and it has come in evidence that it was printed and circulated at the fag end of election, that too only in the catholic families secretly and in a clandestine manner. This only shows that those who have printed and circulated Ext. P1 were also aware of it's objectionable nature in as much as they were aware that if it is noticed, the same will have adverse consequences on first respondent's election results. In other words, the understanding of those who printed and circulated Ext. P1 is also consistent with the above finding. While considering the effect of Ext. P1, I am not unmindful of the consistent decisions of the Supreme Court relied on by counsel for the first respondent, particularly in Rajendra Singh v. Chandra Singh : AIR 1979 SC882 holding that the degree of proof required to establish corrupt practice in an election petition is as in a criminal case and interference will be justified only if no other possibility exists and the only conclusion possible should be corrupt practice. However, from the above discussion, I am of the view that Ext. P1 does not convey any other idea except a direct request to members of the catholic community to vote for the first respondent on the ground of his community, and his services in the past and expected for future to the community. Therefore I hold that Ext. P1 is a direct appeal to electors to vote on the ground of religion of the first respondent.

7. So far as Ext.P2 is concerned, petitioner has no case that it independently constitutes an appeal to vote on the ground of religion of the first respondent. Even though Pope is the Head of the Catholic Church and the picture of Pope with cross on his robes is the pre-dominant feature of Ext.P2, still petitioner does not contend that it is a religious symbol to attract corrupt practice independently under Section 123(3) of the Act. However, petitioner's case is that Ext.P2 is to be taken along with Ext. P1 and it was circulated al6ng with Ext. P1 and circulation of both among electors together constitute an appeal to vote for the first respondent on the ground of his religion. The beatification ceremony of Mother Teresa that took place at Rome wherein the first respondent participated as a Central Minister and representative of the Government of India is stated in last but one paragraph of Ext. P1. It is so printed in Ext.P2 also. In fact Ext.P2 is a pictorial representation of what is stated in the said paragraph of Ext. P1. Witnesses who have been examined in Court, and particularly PWs. 20 and 23, have stated that they attach great significance to the picture of Pope and Ext.P2 picture calendar is still hanging in the houses and shops of those witnesses. PW12 and P.W. 19 have stated that during election work for petitioner, they saw Ext.P2 calendar hanging in the houses of PW10. P.W. 11, PW6 and the houses of other people also. Ext.P2 is found to be a pictorial representation of part of what is stated in Ext. P1. and all the witnesses who have given evidence stated that they received Ext.P2 along with Ext. P1. Ext.P2 though in calendar form is an attractive colour picture of Pope and first respondent with picture of Mother Teresa in the background and witnesses have stated that they are preserving Ext.P2 calendar. It is stated in Ext. P1, and it has come in evidence, that the first respondent was originally a leader of the catholics and he was the President of the Catholic Congress of the Kothamangalam Diocese and it's State Secretary. The case of the petitioner is that later he joined Kerala Congress (M) and won Parliamentary election in party tickets on several occasions. However, while as M.P. he defected from the party, formed IFDP and became a Minister in the BJP Front. The circumstance under which his joining the BJP Front is explained in Ext. P1 as on account of selfish and personal interest of some people. The petitioner's case is that first respondent was contesting Parliamentary Election in 2004 in the same constituency where the party from which he defected had fielded second respondent as their candidate

who was the son of party Chairman, then a State Minister. According to the petitioner, the first respondent who was contesting the election as a constituent of the BJP Front obviously wanted to remove any misunderstanding among catholic voters and to convey to the predominantly catholic voters of the Constituency that he continues to be loyal to the church and his services will continuously be available to the catholic community. Therefore in order to reconfirm his faith and loyalty to the church and community, he has printed Ext.P2 calendar and distributed the same along with Ext. P1, is the case of the petitioner. As already stated, Ext.P2 is complementary to and in conformity with what is stated in Ext. P1 and it is distributed along with Ext. P1 not to serve as a calendar but mainly as a picture of Pope as an incentive to electors to receive and read Ext. P1. Obviously the object and purpose of Ext.P2 are a reconfirmation of first respondent's faith in the church and in the spiritual leadership of Pope which are stated in Ext. P1. Petitioner' contention that distribution of Ext.P2 was an incentive to the electors to receive and read Ext. P1 distributed along with it, as otherwise electors do not generally read all election notices is correct and is proved by oral testimony of witnesses. The other circumstances to connect the first respondent with Ext.P2 are (1) it is printed in Ext.P2 that it is sponsored by National Farmers Front, a wing of first respondent's party, IFDP, (2) the first respondent and at the maximum the press information department of Central Govt. of which first respondent was a State Minister at election time only had possession of the photo of first respondent with Pope copied in Ext.P2.and first respondent gave no proper explanation of it reaching the press; (3) first respondent has no case that anyone else would have got Ext.P2 printed without his consent; and lastly, he is the beneficiary of it's circulation. Therefore I hold that while Ext. P1 independently constitutes an appeal to catholic voters to vote for first respondent on the ground of his religion attracting the mischief of Section 123(3) of the Act, Ext.P2 proves, supports and strengthens Ext. P1.

8. The next question to be considered is whether Exts. P1 and P2 are printed and circulated among voters by the first respondent, his election agent or any other person with the consent and knowledge of the first respondent. The case of the petitioner as stated in the election petition and the evidence adduced comprises of two stages of the operation; one printing and distribution of copies of Exts. P1 and

P2 among election offices of the first respondent, and next distribution of the same by first respondent's party workers among catholic voters. While the first respondent denied the alleged events and his involvement in both, petitioner examined several witnesses to prove both aspects of the matter. In view of the findings above on the effect of Exts. P1 and P2 as constituting electoral offence under Section 123(3) of the Act, that is appeal to vote on the ground of religion or community of the candidate, what is to be considered next is whether there is convincing proof that Exts. P1 and P2 were distributed among the electors by the first respondent, his agent or any other person with the consent of the first respondent or his election agent. Petitioner's case also is that even if printing of Ext. P1 and Ext. P2 by the first respondent or his agent or any other person with the consent of the first respondent or his election agent is not proved, still corrupt practice is attracted, if Exts. P1 and P2 are proved to have been distributed among electors by the first respondent, his agent or any other person with the consent of the first respondent or his election agent. However, petitioner has adduced evidence on both aspects of the matter. Therefore I first proceed to consider the allegation and evidence pertaining to involvement of the first respondent and his election agent in the printing and distribution of Exts. P1 and P2 in the election offices of the first respondent prior to the alleged distribution among electors by the party workers of the first respondent.

(Editor's Note : Paras. 9 to 13 omitted being appreciation of evidence)

14. It is to be noted that this Court has already found that Ext. P1 independently and together with Ext.P2 is a direct appeal to electors to vote 'on the ground of community and religion of the first respondent'. From the evidence of petitioner's witnesses discussed above, it is proved beyond doubt that printed copies of Exts. P1 and P2 were extensively circulated in the Constituency by party workers of the first respondent. The fact that those who distributed copies of Exts. P1 and P2 are party workers is also proved by consistent evidence of the witnesses discussed above. The evidence of all the witnesses prove beyond doubt that party workers, namely, Advocate Roy, Babu Pulickal, Anil Johny, Benny George, T.M. Jacob, Baby Michael Odakkal, Sunil Kumar, etc., were mainly engaged in distribution of printed copies of Exts. P1 and P2 among the electors. The evidence of PW22 calls

for specific mention because he is the only party worker of the first respondent who has come to Court to give evidence for the election petitioner. He identifies Exts. P1 and P2 in Court and confirms that printed copies of Exts. P1 and P2 were distributed by him along with other party workers of the first respondent in Catholic houses in the Constituency. According to the witness, one Elias is the local leader of the party of the first respondent. The witness along with other party workers was engaged in door-to-door election campaign for the first respondent. The witness gives the names of some of the catholic houses, namely, Thadathil Joseph, Nedumala Jose, and John Elanjimattom, in whose houses Exts. P1 and P2 were distributed. According to the witness, along with distribution of Exts. P1 and P2 they were requesting the electors to vote for the first respondent. This witness also says that PW4, as stated by him in Court, had brought printed copies of Exts. P1 and P2. In the beginning of cross-examination, the question put to him was whether the witness has shifted loyalty from the first respondent. The answer to this question was that he is talking the truth and he still continues to be loyal to the first respondent. In fact he has stated and election petitioner has confirmed that the witness was a client of the election petitioner, who is a lawyer. The witness has further stated that his understanding is that he was not giving evidence against the first respondent and in fact prior to coming to Court he has taken permission from the local party leader of the first respondent, namely, Elias. Even though a question was asked by counsel for the first respondent that the witness is a CITU worker, it is denied by the witness and nothing is brought out in evidence to discredit the evidence of PW22. The evidence of the witness appears to be quite natural, trust-worthy and convincing. Even though the petitioner's witnesses, whose evidence is discussed above, have clearly stated the names of the party workers of the first respondent who distributed printed copies of Exts. P1 and P2 among the electors, no single question is asked in cross-examination denying any of them as party worker of the first respondent. Even though first respondent and his election agent were also examined, they have also not stated that the persons named by the petitioner's witnesses as party workers of the first respondent, found engaged in distribution of Exts. P1 and P2 were in fact not party workers of first respondent. Nothing is stated denying that they are not party workers of the first respondent and distribution of printed copies of Exts. P1 and P2 by them was

without the consent of the first respondent or his election agent. Apart from the evidence given by the witnesses on distribution of Exts. P1 and P2 among electors, it has to be noted that this Court has already accepted the evidence of PW4 who has proved distribution of bundles of printed copies of Exts. P1 and P2 by the election agent of the first respondent on 24th and 25th April, 2004 in the election offices of the first respondent at various centers. Once the bundles of printed copies of Exts. P1 and P2 are in the election offices of the first respondent at various places, then it follows that only local party workers of the first respondent have control over the copies and they can only distribute or arrange for distribution of the same among electors. As already found, Exts. P1 and P2 are printed and circulated for advancing the election prospects of the first respondent and therefore he is the beneficiary of it's circulation among the electors. Obviously the purpose of distribution of printed copies of Exts. P1 and P2 in the election offices of the first respondent by his election agent is for circulation among the electors. This being the purpose of distribution of printed copies of Exts. P1 and P2 in the election offices of the first respondent, the only possible inference is that the first respondent and his election agent wanted and desired follow-up action by party workers, that is, distribution of printed copies of Exts. P1 and P2 among the electors. Since the party offices of the first respondent are under the control of the party workers, it is natural that his party workers distributed printed copies of Exts. P1 and P2 among electors which is what is proved by the witnesses. In order to establish an electoral offence under Section 123(3) of the Act, what is to be established is that appeal to vote on the ground of religion, community, etc., of the candidate was done with the consent of the candidate or his election agent. In this case, even though consent of first respondent or his election agent for distribution of Exts. P1 and P2 is not proved by direct evidence, the question is whether it can be inferred from the circumstances and the facts proved. Counsel for the petitioner relied on the decision of the Supreme Court in N. Balakrishna v. George Fernandez : [1969]3SCR603 , wherein the Supreme Court has held as follows:

There is no doubt that consent need not be directly proved. The principle of law is settled that consent may be inferred from circumstantial evidence, but the circumstances must point unerringly to the conclusion and must not admit of any other explanation. Although trial of an election petition is made in accordance with

the Code of Civil Procedure, it has been laid down that corrupt practice must be proved in the same way as a criminal charge is proved. In other words, election petitioner must prove every hypothesis except that of guilt on the part of the returned candidate or his election agent.

The question is whether consent of the first respondent or his election agent for the distribution of printed copies of Exts. P1 and P2 can be inferred in the facts of this case strictly following the law stated by the Supreme Court above, which is the consistent view taken by the Supreme Court in all election cases. The proved facts found above are that election agent of the first respondent arranged for printing of Exts. P1 and P2, the first respondent paid printing charges and the election agent distributed the bundles of printed copies of Exts. P1 and P2 in the election offices of the first respondent. Thereafter the party workers of the first respondent distributed printed copies of Exts. P1 and P2 in the houses of electors who are catholics. From these proved facts, the only inference possible is that circulation of printed copies of Exts. P1 and P2 by the party workers of the first respondent is with the knowledge and consent of the first respondent and his election agent. In fact in view of the finding that Exts. P1 and P2 constitute appeal to vote on the ground of community and religion of the first respondent, the proof of circulation of Exts. P1 and P2 among electors with the consent of the first respondent and his election agent is sufficient to establish corrupt practice under Section 123(3) of the Act. However, in this case I have already found that there is convincing evidence of election agent of the first respondent arranging printing of copies of Exts. P1 and P2, first respondent paying printing charges and the election agent distributing the printed copies of Exts. P1 and P2 in the election offices of the first respondent prior to distribution of the same among electors by party workers. What was originally a corrupt practice under Section 123(3) was 'systematic appeal' to vote on the ground of religion, community, etc. However by a later amendment the word 'systematic' was deleted and at present corrupt practice is attracted even if a single appeal is made to vote on the ground of caste, community, religion, race, etc. It only shows that the object of the amendment is to achieve purity in the election process. May be in reality, many politicians violate the law which may go unnoticed or uncomplained of or may not get established in court. However these are not justifications which should weigh with the court while deciding an election

petition. If the corrupt practice under Section 123(3) is established beyond doubt, then it is the duty of the election court to declare the election void as required under Section 100(1)(b) of the Act. The Supreme Court has in Kalmatha Mohan Rao v. Narayana Rao Dharmana reported in (1995) 6 SCC-758 held that the contents of a poster amount to an appeal by the candidate for vote on ground of religion. It necessarily follows that circulation of Exts. P1 and P2 amount to violation of Section 123(3) of the Act. Based on the above findings, I hold that the first respondent has committed corrupt practice under Section 123(3) of the Act by appealing to the electors to vote on the ground of his community and religion through printing and circulation of Exts. P1 and P2 among the electors. Consequently, his election is liable to be declared void under Section 100(1)(b) of the Act.

15. The next issue raised in support of the challenge against election of the first respondent is corrupt practice in hiring or procuring vehicles free of charges to the electors to go to and from the polling booths falling under Section 123(5) of the Act. While the allegation is generally stated in paragraph 24 of the Election Petition, details of vehicles provided to the electors, such as registration number of the vehicles, names of the electors to whom vehicles are provided, etc., are given in paragraph 25 of the Election Petition. Even though the allegations of use of, as many as, 13 vehicles, registration particulars of which are furnished in paragraph 25 of the Election Petition, in violation of Section 123(5) are raised, this Court while disposing of objections raised against maintainability of election petition, held that there is no correlation between all the vehicles allegedly provided and the electors to whom they are provided, except for four vehicles, i.e., two autorickshaws bearing registration Nos. KL-5-4400 and KL-5C-3431 and two jeeps bearing registration Nos. KRO 6606 and KL-5-1845, and so much so, the allegation of use of remaining nine vehicles is not included in the issues framed for trial. Consequently, the election petitioner in the proof affidavit and in the evidence adduced confined the allegations only in respect of four vehicles, registration particulars of which are given above.

16. The election petitioner in the election petition and in the proof affidavit stated that he has no direct knowledge of hiring or procuring vehicles for the use of

electors in violation of Section 123(5) of the Act. but, according to him, the details are collected and furnished to him by Sri. V.N. Sasidharan, election committee convenor of LDF at the Poonjar Assembly segment of the Constituency who was examined as PW25. The grounds sustained pertain to use of vehicles for transport of electors to and from polling booth Nos. 57 to 71 of Poonjar Thekkekara Panchayath, which is within the Poonjar Assembly segment of the Constituency. The electors who have been provided with facility of vehicle free of cost are examined as P.W. 3 and P.Ws. 13 to 17. PW3 has deposed that his house is 3 kms. away from the polling booth, which is booth No. 64, in Poonjar Assembly Constituency. According to him, he had worked till noon and while he planned to take rest in the afternoon, one party worker of the first respondent by name Vakkachan came in autorickshaw bearing registration No. KL-5C 3431 to his house and he insisted him to go for vote, and though he was not interested, he went in the autorickshaw to vote only on the insistence of said Mr. Vakkachan. The witness further stated that three passengers whose names are given by him were already in the autorickshaw and he also joined them. He has clearly stated that they were first taken to the election booth office of the first respondent where he and other three passengers were given slips from that office. According to the witness, the autorickshaw took them very near to the polling booth. The witness further stated that after he cast his vote, he was asked to wait for some time in the polling booth; and the autorickshaw came after 15 minutes, took the witness and dropped him at his house. The witness has corroborated the evidence of the petitioner that information was passed on by him to the election petitioner through Mr.Sasidharan, PW25. In the cross-examination, the witness has stated that he knows the autorickshaw number only because there are only three autorickshaws running in that area, and he even stated the registration numbers of other two autorickshaws and the names of the drivers are also disclosed by him. Nothing has come out in the cross-examination to discredit the detailed evidence given by the witness. PW13 has stated that he was taken to polling booth No. 67 to cast his vote from his house, which is 10 kms. away from the polling booth in a jeep brought by Mr. George Mathew, who the witness states is an important party worker of the first respondent. The witness has stated that the said party worker requested him to go to polling booth and vote for the first respondent. He has

given the registration number of the vehicle as KL-5 1845 which is the registration number given in the election petition and proof affidavit. Witness says that he is familiar with the vehicle and that he was taken to the first respondent's booth office, where he was given slip and then he was taken to the polling booth. After he cast his vote, he states he was dropped at his house in the same vehicle. PW14 has deposed that one Mr. Mathew, who was working for the first respondent provided a jeep bearing registration No. KRO 6606 to him and his wife to go from their house to polling booth No. 70 to vote. According to him, the said Mathew requested him to vote for the first respondent, whom, the said Mathew told him, will become a Minister. Witness has further stated that leftists came and fought with the driver of the jeep saying that taxis should not be arranged for the election. In cross-examination he has given the names of persons who created problem with the jeep driver. According to the witness, along with him and his wife, two other persons, whose names were also given by the witness, were also in the jeep. Though it has come out in cross-examination that the witness stood as a booth agent for the LDF candidate in the Panchayat election, nothing is brought out to discredit his evidence. PW15 has deposed that one Vakkachan who is a worker for the first respondent arranged an autorickshaw bearing registration No. KL-5-4400 for him and his wife to go from their house, which is 8 KMs. away from the polling booth, to the polling booth No. 65 to vote. The witness has stated in cross-examination that LDF people by name C.C. Chacko and Pappachan came to block the autorickshaw. According to him other LDF people saw the witness alighting from the autorickshaw to vote. PW16 has stated that one person by name Pulikakunnel Vakkachan provided an autorickshaw to the witness to go for voting. He also requested the witness to vote for the first respondent. According to the witness, the person who provided the autorickshaw had gone to the house of the witness the previous day also with a request to vote. The witness further stated that one other person and his wife were also in the autorickshaw. Further, he stated that on the way Mr. Madhu, who was examined as PW3, also boarded the autorickshaw. The witness was taken to the election office of the first respondent near the polling both where he was given slip. However, the witness does not state the registration number of the autorickshaw, but he says that the autorickshaw is usually running in that area. PW17 has deposed that he was provided with a jeep

by Pulikakunnel Vakkan @ Vakkachan to go from his house, which is 6 kms. away from the polling booth, to the polling booth, to cast his vote. The witness has stated that from the request of the said Vakkachan to vote for the first respondent, he came to know about his party politics. Witness is stated to have been given slip from the election office of the first respondent. He has given the registration number of the jeep as KL-5-1845. One Valiyaveettil Sasidharan is stated to have protested against the witness going to the booth in the jeep for voting. However, since the witness was personally known to him, Mr. Sasidharan is said to have backed out from the protest. Two other persons who went along with the witness in the Jeep are his father's brother and sister. PW18 a driver by profession has given evidence that he was the driver of autorickshaw bearing registration No. KL-5-4400 used by party workers of the first respondent for transport of electors to and from polling booth. According to the witness, he was engaged for taking electors to the polling booth by Mr. Vakkachan Pulikakunnel. He has given the place from where he has taken Mr. Saji, PW 15, and his wife to polling booth No. 65. The evidence of this witness corroborates the evidence of Mr. Saji who was examined as PW15. According to the witness he operated two more trips on the polling date at the request of said Vakkachan. who, it has come in evidence, is a party worker of the first respondent. The further evidence given by the witness is that the said Vakkachan paid him for the trips. He has also confirmed the version given by other witnesses that some people stopped the vehicle when persons were taken in it to the polling booth. In fact in the cross-examination he has named the persons who have obstructed the vehicle when used to take electors to the polling booth as CC Chacko, who is the Secretary of the local CPM committee, one Pappachan, etc.

17. The question to be considered is whether the evidence of witnesses discussed above would prove the allegation of corrupt practice under Section 123(5) of the Act. The evidence of witnesses has to be considered with reference to the ingredients of the offence which is elaborated by the Supreme Court in Dharthipakar v. Rajive Gandhi : [1987]3SCR369 as follows:

(1) Hiring or procuring of vehicle by a candidate or his agent or any other person with his consent.

(2) The hiring and procuring of vehicle must be for conveyance of the voters to and from polling station, and

(3) The conveyance provided to electors should be free of charges.

The facts that stand proved through the evidence of independent witnesses whose evidence is discussed above are that autorickshaws bearing Registration No. KL-5-4400 and KL-5C-3431 and Jeeps bearing registration No. KRO 6606 and KL-5-1845 were provided by party workers of the first respondent to transport electors from their houses to the polling booth and back to their houses. Each witness has given the booth number, registration of the vehicle, the person who arranged the vehicle, etc. precisely. The evidence of none of the witnesses stands discredited by anything brought out in cross examination or through any other evidence. PW 25 is an Advocate and a local leader of petitioner's party, and his evidence pertains to the electors and the vehicles provided to them by party workers of the first respondent for going to polling booth. Even though he is an interested witness, and his evidence cannot be relied on independently, it cannot be ignored because it goes along with and corroborates the evidence given by independent witnesses discussed above. He specifically named the party workers of the first respondent who arranged vehicle for transport of voters to polling booths. Even though counsel for the first respondent contended that no documentary evidence was produced to establish that PW3, and PW 13 to PW 17 are in the rolls of the electors, I do not think any documentary evidence is required to prove the same because witnesses when examined in Court have stated even the number of polling booth they went to vote in the vehicle provided by the party workers of the first respondent. If the first respondent has any case that they have not figured in the voters' list published for the said polling booths, it is for the first respondent to produce the voters' list to establish his case that the witnesses have no vote in the said booths as claimed by them. Therefore I do not find any basis for this contention. Since hiring and procuring of four vehicles stated above by the party workers of the first respondent for transport of electors to and from the polling booth stand established beyond any reasonable doubt, the two other ingredients to be proved for the purpose of establishing electoral offence under Section 123(5) of the Act are that hiring and procuring of vehicles by party workers of the first

respondent are with the consent of the first respondent or his election agent and that facility was given to the electors free of charges. No direct evidence is produced to prove the consent given by the first respondent or his election agent to his party workers who arranged the vehicles. The Supreme Court has, in Balwan Singh v. Prakash Chand : [1976]3SCR335 , held as follows:

It is not always possible for an election petitioner to adduce direct evidence to prove that a particular vehicle was hired or procured by the candidate or his agent or by any other person with the consent of the candidate or his election agent, but this can be inferred from the proved circumstances where such inference is justifiable.

The question therefore is whether in the absence of direct evidence of consent given by the first respondent or his election agent to his party workers, such consent can be inferred from the conduct of the parties in arranging vehicles for the first respondent.

It is important to note that the first respondent has no case that those persons, who arranged vehicles for the witnesses, were not his party workers. In fact not even suggestive questions were asked on behalf of the first respondent to any of the witnesses that the party worker of the first respondent named by the witness is not really the party worker of the first respondent and that the first respondent has nothing to do with him. Even though first respondent was examined as RW 1 and his election agent as RW 11, both of them have not denied that the persons named by witnesses who arranged vehicles to them to go to polling booth to vote, are not party workers of the first respondent. In the circumstances the case proved by the election petitioner through the witnesses is that persons who arranged vehicles, particulars of which are given above, were the party workers of the first respondent. At least one witness examined, namely, PW 18, has stated that for hiring his vehicle he was paid charges by a party worker of the first respondent. Election funds normally are used for purposes authorised by the candidate and invariably funds flow from the candidate for use in specific election purposes. It is also to be noted that Supreme Court in Harcharan Singh v. Sajjan Singh : [1985]2SCR159 , held that while insisting on standard of strict proof, the court

should not entend or stretch this doctrine to such an extreme extent as to make it well-nigh impossible to prove an allegation of corrupt practice. Such an approach would defeat and frustrate the very laudable and sacrosanct object of the Act in maintaining purity of the electoral process. Keeping this principle in view, from the facts proved and attendant circumstances, and the natural presumption that party workers engaged in election work go by the instruction of the candidate and his election agent, I am of the view that the only inference possible is that the party workers, including unit level leaders, named by the witnesses arranged vehicles with the consent of the first respondent. The ground for this inference is further strengthened by my earlier finding that the party workers with the consent and knowledge of the first respondent and his election agent have distributed Ext. P1 notice and Ext.P2 calendar among electors. Therefore their hiring vehicles to electors to go to the polling booth also to further the election prospects of the first respondent in the circumstances should have been done with the consent of the candidate.

18. The last ingredient to be proved is whether the vehicles were provided to the electors free of charges. Of course, witnesses have not specifically stated that the vehicles provided to them were free of charges. So far as the vehicle provided to PW 15 is concerned, it was driven by PW 18, who when examined stated that vehicle charges were paid to him by Mr. Vakkachan a party worker of the first respondent, which obviously means that it was not paid by electors who were transported to the polling booth. The statements of all the witnesses are that party workers of the first respondent volunteered to provide vehicles and though they were reluctant to vote on account of distance to polling booths from their houses, they were persuaded to go to the polling booth to vote because the party workers of the first respondent provided vehicles to them. The evidence given by the witnesses clearly prove that none of the witnesses hired the vehicle for his purpose, but, on the other hand, vehicle service was offered to each of them by first respondent's party workers. In these circumstances, the only possible inference is that witnesses were provided vehicles free of charges and it is absurd to assume that the party workers of the first respondent who provided vehicles to the electors to go to polling booth to vote, collected charges for the same from such electors. In view of the above findings. I hold that first respondent has

committed corrupt practice under Section 123(5) of the Act by providing autorickshaws bearing registration No. KL-5-4400 and KL-5C-3431 and Jeeps bearing registration No. KRO 6606 and KL-5-1845 free of charges to the electors to go to the polling booths to vote for the first respondent.

19. The next question to be considered is petitioner's prayer under Section 84 of the Act for declaring him elected in terms of Section 101(b) of the Act. On behalf of the first respondent, the LDF Convenor was examined as RW7. The purpose was to establish that the defeat of the election petitioner was for want of proper election work by the constituents of the Left Democratic Front. Questions were asked to the said witness about the report prepared by Mr. Panniyan Ravindran after conducting enquiry about the causes of defeat of the election petitioner. Besides this, questions were also asked about the newspaper reports pertaining to reasons for election defeat of the election petitioner. In fact, Ext.R1 (d) and R1(g) series of newspaper reports are also produced pertaining to appointment of Commission, Inquiry and Opinions about the defeat of the election petitioner. Evidence of RW7 does not advance the case of the first respondent that petitioner lost the election for want of election work by his party workers. Secondly Exts.R1(d) and R1(g) series of newspaper reports without any independent evidence are inadmissible as evidence. In any case the other reasons for defeat of election petitioner are not relevant while considering his prayer under Section 84 of the Act. The prayer under Section 84 of the Act by the petitioner is not only opposed by first respondent but by respondents 2, 4, 5 and 10 also. In order to grant the relief, in the first place, there should be a prayer in this regard which is very much there in this case and the specific issue on petitioner's entitlement for being declared elected was framed prior to trial. It is clear from the section that after holding the election of the returned candidate void the court can declare the petitioner or any other candidate elected only if it is of opinion:

that but for the votes obtained by the returned candidate by corrupt practices, petitioner or such other candidate would have obtained majority of the polled votes

20. The statute therefore expects the court to estimate the number of votes that would have been obtained by the claimant but for the proved corrupt practices of

the elected candidate. Since the prayer in the Election Petition is to declare only the petitioner elected, the relevant aspects to be considered are the relative number of votes obtained by the first respondent, petitioner and other candidates and the possible number of votes which the petitioner or other candidates would have got, but for the corrupt practices practised by the first respondent, in other words, while considering petitioner's case, the Court should consider chances of any other candidate other than the petitioner succeeding, irrespective of whether relief to such candidate can be granted or not. In this case, the first respondent won the election over the petitioner with a majority of 529 votes. The third largest votes were polled in favour of the second respondent, over whom the petitioner and first respondent have got over 55,000 votes. Therefore petitioner will be entitled to the relief if this Court is satisfied that from out of the votes polled in favour of the first respondent, petitioner would have got at least 265 votes more, but for the corrupt practices engaged by the first respondent. As already held, corrupt practice is committed by the first respondent both under Section 123(3) and Section 123(5) of the Act. So far as the corrupt practice under Section 123(3) of the Act is concerned, it has come in evidence that 50,000 copies each of Exts. P1 and P2 were printed and circulated among the catholic voters. In fact entire printed copies of Exts. P1 and P2 were taken delivery from the Press by the evening of 25.4.2004. Even though evidence adduced does not prove circulation of all the printed copies, in view of availability of two weeks' time upto the date of election, and in view of the proved earnestness of the party workers of the first respondent in distribution of copies of Exts. P1 and P2 in the houses of catholic voters, obviously all the printed copies or at least substantial portion of it, would have been circulated. It is in evidence and normally at least an average of two votes are there from every house and independent witnesses examined in court have given evidence that communal considerations incited through Exts. P1 and P2 prompted them to vote for the first respondent. This only means that but for the influence of Exts. P1 and P2 they would have gone by political considerations and in which case petitioner could have been the beneficiary. If the whole of the printed copies of Exts. P1 and P2 were circulated, the exposure of the same would have been over to minimum one lakh voters, keeping in mind a minimum of two voters from every house. It is pertinent to note that independent witnesses who have

given evidence on Exts. P1 and P2 in favour of the petitioner were catholics which only shows that though they cast their vote in favour of the first respondent under the temporary influence of Exts. P1 and P2, they are not ardent political supporters of the first respondent and were loyal to the petitioner. Therefore the possible inference is that, but for the influence of Exts. P1 and P2 the catholic witnesses examined in court and very many people with same view would have cast their vote in favour of the petitioner as against their voting in favour of the first respondent under the influence of Exts. P1 and P2. Even assuming that but for corrupt practice some votes secured by the first respondent would have gone in favour of the second respondent, who is a catholic candidate contested in the election in the party ticket of Kerala Congress (M), still the election result would not have gone in favour of him because the votes required for him to win in the election were above 55,000 over the petitioner and the first respondent. If the second respondent has any case that he would have got votes of such number in his favour, but for the corrupt practice of the first respondent, he would have filed election petition and prayed for same relief which he has not done. However, assuming the worst for the petitioner that he would not have got any of the votes canvassed by the first respondent through the corrupt practice engaged by him and the votes but for the corrupt practice would have gone in favour of the second respondent and other candidates, then a reduction of just 530 votes for the first respondent would have resulted in victory for the petitioner. Even though votes secured by first respondent through corrupt practice under Section 123(5), i.e., by providing vehicles to electors are not high, it assumes significance because of the low margin in votes between petitioner and himself. In the circumstances, and in view of the findings above, I am of opinion that but for the corrupt practices proved to have been practised by the first respondent, petitioner would have got at least 285 more of the votes polled in favour of the first respondent in which case he would have won the election. Therefore I hold that petitioner is entitled to be declared elected under Section 100(1)(b) of the Act.

21. In the result, the election petition is allowed as follows:

(a) In exercise of powers conferred under Section 98(c) of the Act, I declare the election of the first respondent, the returned candidate, to the House of People

from No. 12 HP Muvattupuzha Parliamentary Constituency in the election held on 10.5.2004 to be void and I further declare the petitioner elected in the place of the first respondent from the same constituency.

(b) The findings on commission of corrupt practice by the first respondent under Section 123(3) and 123(5) of the Act will hold good for the purpose of Section 99 of the Act also.

(c) For the purpose of Section 99(1)(b) I direct the parties to bear their respective costs.

As required under Section 103 of the Act, the Registry will forward one copy each of the judgment in the Election Petition to the Election Commission and also to the Speaker, through Secretary-General, Lok Sabha Secretariat, New Delhi.

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