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ANANGA UDAY SINGH DEO
v.
RANGA NATH MISHRA AND ORS.

OCTOBER 12, 2001

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[DR. A.S. ANAND, C.J., R.C. LAHOTI AND ASHOK BHAN, JJ.]

Election Law :

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Representation of the People Act, 1951 :

Section 123—Election Petition—Corrupt practice—Charge of—Manner of proof—Held : Charge of a corrupt practice is in the nature of a criminal charge—Manner of proof is the same as for an offence in a criminal case.

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Section 83—Election Petition—Trial of—Pleadings—Issues—Framing of—Permissible evidence—Held : No issue can be framed on the basis of vague and incomplete pleadings—Evidence can only be permitted to be led on a plea properly raised and issue framed—Irrelevant, impermissible and inadmissible evidence should not be brought on record.

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Conduct of Election Rules, 1961 : Rules 79, 80 and 81.

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Transfer of surplus votes—Procedure of—Election to Rajya Sabha—Proportional representation by single transferable vote—Four candidates in the fray—Two candidates declared elected in the first round on their having reached their quota—Surplus votes of these candidates transferred to a third candidate as the second preference was in his favour—By such transfer third candidate crossed the requisite quota—Third candidate was, therefore, declared elected under R. 79—Correctness of—Held : Once the third candidate was declared elected after following the procedure under r. 79, the reference to rr. 80 and 81 unnecessary—Hence returning officer followed the correct procedure in counting the votes and declaring the third candidate as elected, he having polled the requisite quota of value votes.

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The appellant and respondents 1 to 3 were candidates for election to the Rajya Sabha by the elected members of the State Legislative Assembly.

As respondents 1 and 2 got more than the required number of votes, called the 'quota', they were declared elected in the first round. The Returning Officer transferred the excess votes polled by respondents 1 and 2 as per the second preference in favour of respondent No. 3. After such transfer, the value of the votes polled by respondent No. 3 exceeded the 'quota' and, therefore, he was declared elected. The appellant could not get any more votes in the second round. As the value of the votes polled by the appellant was less than the 'quota' he could not be elected.

Being aggrieved the appellant filed an election petition before the High Court under Section 83 of the Representation of the People Act, 1951 challenging the election of respondents 1 and 3 on the grounds of corrupt practice and of adopting wrong procedure in the counting of votes. The High Court dismissed the petition. Hence this appeal.

On behalf of the appellant it was contended that after declaring respondent Nos. 1 & 2 elected, they having secured more votes than the minimum quota required, only two candidates having been left in the arena, further counting should have been done under Rule 81(2) of the Conduct of Election Rules, 1961 and not under Rule 79.

On behalf of the respondents it was contended that the charge of corrupt practice in an election petition was to be proved like a criminal charge and the standard of proof required was beyond reasonable doubt; and that the High Court had erred in taking evidence on which there were no proper pleadings.

Dismissing the appeal, the Court

HELD : 1.1. In a petition based on the allegation of corrupt practices the cause of action cannot be equated with the cause of action as is normally understood because of the consequences that follow in a petition based on the allegations of corrupt practices. The charge of a corrupt practice is in the nature of a criminal charge, which if proved, entails a very heavy penalty in the form of disqualification. It is for the party who sets up the plea of 'corrupt practice' to prove it to the hilt beyond reasonable doubt and the manner of proof should be the same as for an offence in a criminal case.

[103-B-C; 101-D; E]

Ram Sharan Yadav v. Thakur Muneshwar Nath Singh, [1984] 4 SCC 649,

A *Quamarul Islam v. S.K. Kanta*, [1994] Supp. 3 SCC 5 and *V. Narayanaswamy v. C.P. Thirunavukkarasu*, [2000] 2 SCC 294, relied on.

B *Atma Ram Mittal v. Ishwar Singh Punia*, [1988] 4 SCC 284 and *Administrator, Municipal Corporation v. Dattatraya Dahankar*, [1992] 1 SCC 361, held inapplicable.

C 1.2. There was no pleading at all, except some vague assertions in the grounds, with regard to the allegation of corrupt practice relating to alleged bribery indulged by respondent No. 1. No issue had been framed, as rightly none could be framed in that respect on the basis of vague and incomplete pleadings. The designated Judge, however, permitted evidence to be led during the trial by the appellant, relating to the allegations of bribery. No such evidence could have been permitted to be led. Evidence can only be permitted to be led on a plea properly raised and issue framed. Irrelevant, impermissible and inadmissible evidence should not be allowed to be brought on the record. D The evidence led in the case was inadmissible and should have been excluded and not allowed to form a part of the record. [106-C-F]

E 2.1. Each elector has only one vote in the sense that it will be capable of electing one candidate only but that vote will not be wasted in case the candidate whom he wishes to elect has got more than the required number of votes, called the quota. As the elector is required to indicate his multiple preferences his vote, which is surplus in the hands of the elected candidate, gets transferred to the next candidate. [111-E; F]

F 2.2. In the present case, the Returning Officer after declaring respondent Nos. 1 and 2 elected, they having reached their quota resorted to the procedure provided in Rule 79 of the Conduct of Election Rules, 1961. Respondent Nos. 1 and 2 had surplus votes after obtaining their required quota. Second preference in the ballot papers was indicated in favour of respondent No. 3. By transfer of the surplus votes from respondent Nos. 1 and 2 in favour of respondent No. 3 his value of votes came to cross the required quota of value of votes. Once respondent No. 3 was declared elected after following the procedure under Rule 79, the reference to the procedure provided under Rules 80 and 81 was unnecessary. The Returning Officer followed the correct procedure in counting the votes and declaring respondent G H No. 3 elected; he having polled the requisite quota of value votes. [112-D-G]

From the Judgment and Order dated 4.8.2000 of the Orissa High Court in E.P. No. 1 of 1998.

P.N. Lekhi and Ashok Kumar Panda, Ajit Kumar Bawa, Atishi Dipankar for the Appellant.

P.P. Rao, K. Ram Kumar and B. Sridhar for the Respondent Nos. 1 and 3.

Ms. Anjani Aiyagari for the Respondent No. 2.

P.K. Ray, Ms. M. Sarada and R.K. Mehta for the Respondent No. 4.

The Judgment of the Court was delivered by

ASHOK BHAN, J. This appeal is directed against the judgment and order dated 4th August, 2000 passed by the High Court of Orissa at Cuttack dismissing the election petition filed by the appellant challenging the election of respondent Nos.1 and 3 as Members of Council of States (hereinafter referred to as "Rajya Sabha") in the election held on 18th June, 1998.

Brief facts leading to the points raised in this appeal are as follows:-

The President of India issued a notification, which was published in the Gazette of India on 30th May, 1998, calling upon the Members of the Electoral College of some of the States to elect Members to the Rajya Sabha in accordance with the provisions of The Representation of the People Act, 1951 (for short "The Act"). Pursuant to the aforesaid Presidential Notification, the Election Commission of India by a Notification of the same date called upon the elected Members of the Orissa Legislative Assembly to elect three Members to the Rajya Sabha. In consultation with the Government of Orissa, the Election Commission also issued another notification appointing the Secretary of the Orissa Legislative Assembly as the Returning Officer and the Joint Secretary of the Orissa Legislative Assembly as the Assistant Returning Officer for the said election.

The Returning Officer issued notice of election as per the following programme:

A	(i) Filing of nomination papers Between	11.00 A.M. and 3.00 P.M. on any day (other than public holidays) not later than 6.6.1998.
B	(ii) Scrutiny of nomination papers	At 11.30 A.M. on 8.6.1998.
	(iii) Withdrawal of nomination papers	Before 3.00 P.M. on 10.6.1998.
C	(iv) Polling, if necessary	Between 10.00 A.M. and 2.00 P.M. on 18.6.1998 in Room No.54 of the Orissa Legislative Assembly Secretarial Building.

Pursuant to the above notification, four persons, i.e., the appellant and respondents 1 to 3 filed nomination papers. The appellant's candidature was sponsored by Biju Janata Dal (hereinafter referred to as 'BJD') and that of respondents 1 to 3 was sponsored by the Indian National Congress Party (hereinafter referred to as 'The Congress').

On 6th June, 1998, the Returning Officer published a list of nominated candidates indicating the names of the aforesaid four persons. After scrutiny of nomination papers, the Returning Officer issued a list in Form No.4 on 8th June, 1998 indicating therein that the aforesaid four persons were the validly nominated candidates for the election to the Rajya Sabha, 1998 by the elected members of Orissa Legislative Assembly. After the time for withdrawal was over on 10th June, 1998 and none of the candidates had withdrawn his candidature, the Returning Officer issued the list of contesting candidates indicating the aforesaid four names and the political parties which sponsored their candidature.

The polling took place on 18th June, 1998 in which the candidates polled the following value of votes (value of each vote being assessed at 100).

G	1. Ananga Vijay Singh Deo (appellant)	3500
	2. Ranga Nath Mishra (Respondent No.1)	4000
	3. Rama Chandra Khuntia (Respondent No.2)	4000
	4. Manmath Das (Respondent No.3)	2700

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Total	<u>14,200</u>
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The Orissa Legislative Assembly has got 147 members and it seems from the aforesaid that in all 142 members had validly cast their votes in the election held on 18th June, 1998. In view of the total valid votes tendered, as per calculation, a person having polled votes valued at 3551 or more could be declared elected. As respondent No. 1 and Rama Chandra Khuntia, respondent No. 2, got 4000 value of votes each in their favour, they were declared elected in the first round, leaving Ananga Uday Singh Deo, appellant and Manmath Das, respondent No. 3 for the subsequent rounds. The Returning Officer transferred the excess votes polled by respondent No. 1 and respondent No. 2, Rama Chandra Khuntia as per the second preference in favour of respondent No.3 Manmath Nath Das. As a result, 444 value of votes were transferred from respondent No. 1 and 444 value of votes were transferred from Rama Chandra Khuntia. After such transfer, the value of votes polled by Manmath Nath Das stood at 3588. This having exceeded the cut off point i.e., 3551 value of votes, respondent No.3 was declared elected. The appellant could not get any more vote in the second round. Thus, the value of votes polled by him remained at 3500, which was less than the cut off number, and, therefore, could not be elected.

The appellant challenged the election of respondent Nos.1 and 3 on the following grounds :-

- (1) Long before the scrutiny fixed on 8.6.1998, and the withdrawal fixed on 10.6.1998, the Returning Officer not only pre-judged the validity of each of the nominations but also grossly violated the mandatory provisions contained in Section 30(8) of the Act and Rule 8 of the Conduct of Election Rules in publishing the list of validly nominated candidates on 6.6.1998. Thus, the Returning Officer rendered the provisions of scrutiny nugatory.
- (2) Although the rules and guidelines issued by the Election Commission prohibit electioneering within a stipulated distance of the polling premises, Janki Ballave Patnaik, the then Chief Minister of Orissa, and the Ranga Nath Mishra, respondent No.1, while sitting in the Office of the Chief Minister in the Assembly Premises, which is very close to the polling room, compelled each and every Member of the Legislative Assembly to cast their votes as per their instruction. Before casting votes,

A each and every Congress M.L.A. entered the office of the Chief
Minister. Each of them was given a token, written in the hand
of the Chief Minister himself, indicating the preferences to be
endorsed (in favour of Congress candidates) in the ballot papers.
B With the said tokens, the elector-Members of the Legislative
Assembly entered the polling booth to cast their votes indicating
their preferences as per the direction of the Chief Minister. This
has resulted in materially affecting the election.

(3) Respondent No.1 Ranga Nath Mishra had held the office of a
C judge of high Court of Orissa and also the office of the Chief
Justice of the said High Court. Thereafter, on, he had held the
office of a judge of Supreme court of India and had also become
the Chief Justice of India. On retirement, he had also held the
office of Chairman, Human Rights Commission of India. As
D per the constitutional mandate incorporated in Article 124 (7)
of the Constitution of India, respondent No.1 is disqualified to
act or plead. The constitutional bar renders him disqualified
under the Act to be chosen/elected to fill up the seat of the Rajya
Sabha. As such, acceptance of his nomination paper for the
E Rajya Sabha election held in June, 1998 was improper and has
materially affected the election. Had the candidature of
respondent No.1 been rejected, the other three candidates
(including the petitioner) would have been automatically elected
against the three vacancies.

(4) As per the petitioner had polled 3500 value of votes out of the
F total of 14200 value of votes (total valid votes polled 142), the
Returning Officer was not correct in declaring Returning Officer
and the officer assisting him for counting votes committed gross
irregularities and acted in violation of the provisions of rules
71 to 85 of the Conduct of Election Rules.

G (5) After Ranga Nath Mishra and Rama Chandra Khuntia (respondents
1 and 2 respectively) had been declared elected in the first round
the petitioner having received higher value of votes than
respondent No.3 (petitioner polled 3500/35 votes whereas
H respondent No.3 polled 2700/27 votes) should have been declared
elected. Transfer of votes in favour of respondent No.3 is

violative of Rule 81 of the Conduct of Election Rules. Declaration of respondent No.3 as elected by the purported transfer of surplus votes is vitiated, which has materially affected the election.

- (6) At the material point of time, the Indian National Congress had only 80 Members in the Orissa Legislative Assembly as against 66 Members belonging to various other parties. Ranga Nath Mishra was never a member of the congress Party as per its rules and bye-laws. His name was not there in the list of proposed candidates prepared by the Pradesh Congress Committee, Orissa. However, he was imposed on the Pradesh Congress Committee by the Congress High Command from Delhi. Thereafter, Janaki Ballave Patnaik prepared a master plan to prove his strength before the High Command and planned for a "cross-voting" and induced respondent No.1 to indulge in "horse-trading" of appropriate number of opposition votes by which Congress could win all the three seats. Therefore, election of respondent No.1 is void.

On the aforesaid pleadings, it was prayed that the election of Respondent No. 1 be declared as void and consequently to declare the appellant to be duly elected. In the alternative, it was prayed to declare the election of Manmath Nath Das, respondent No.3, to be void and consequently to declare the appellant as elected. Prayer was also made to allow inspection and counting of all used ballots and to call for all other relevant documents regarding account of ballots.

Respondent No.1 in his written statement challenged the maintainability of the election petition in view of the provisions of Sections 81 and 82 of the Act. It was stated that as no cause of action had arisen, the election petition was liable to be dismissed as no ground under Sections 100 and 101 of the Act had been made out to set aside the election. Each of the grounds taken by the appellant to set aside the election were specifically controverted. It was denied that the Returning Officer had acted in violation of provisions of law in issuance of the validly nominated candidates on 6th June, 1998 as alleged in the petition.

Allegations that respondent No.1 sat in the Office of the Chief Minister

A in the Assembly premises and every member of the Assembly was instructed by the Chief Minister to cast votes in the manner as per his direction were denied. It was stated that respondent No.1 did not carry on any canvassing within the prohibited area of the polling. It was also stated that respondent No.1 absolutely had no knowledge about the Chief Minister issuing any instructions to any M.L.A. from his office room in the Assembly premises. B He did not meet the Chief Minister on 18th June, 1998 in his office room or elsewhere until the entire process of counting of votes was over. That the office of the Chief Minister in the Assembly premises is in the ground floor of the building and quite at a distance from the place of polling, i.e., Room No.54 which is in the first floor of the building. It was denied that respondent No.1 C was disqualified to be member of the Parliament in view of the alleged constitutional bar under Article 124 (7) of the Constitution. He gave four examples where person holding offices of the Judge in the High Court and Supreme Court had been elected as Members of the Legislative Assembly as well as the Parliament.

D It was denied by respondent No.1 that there was any irregularity in the counting and transfer of votes and drew the attention of the Court to Article 80 (4) of the Constitution. It was submitted that the appellant having secured votes valued at 3500, which was less than the required value of votes of 3551, had rightly been declared as not elected. The procedure followed by the E Returning Officer was in accordance with law and, therefore, the declaration of result in Form No.23B was not vitiated for any illegal manipulated entries as alleged by the appellant. That the transfer of surplus votes from him as well as from respondent no.2 in favour of respondent No.3 was in accordance with law.

F That upon respondent No.1 having been invited by the President of the Indian National Congress to accept the sponsorship of her party to become a Member of the Rajya Sabha, he filed his nominations. The rules and the bye-laws of the Indian National Congress could not be utilized by the appellant to seek his disqualification. It was denied that he had been imposed by the G Central leadership of the Congress on the Pradesh Congress Committee of the State of Orissa. Allegation that Shri Janki Ballave Patnaik who was then the Chief Minister of Orissa had prepared a master plan for his (Ranga Nath Mishra's) election and indulging in cross-voting, horse-trading, etc. was denied. Maintainability of the aforesaid grounds to challenge the election was H questioned in the absence of material facts pleaded in the election petition.

Rama Chandra Khuntia, respondent No.2 also filed his written statement, though no prayer had been made for setting aside his election. He also denied the correctness of the grounds for challenging the election of respondent nos.1 and 3.

Manmath Nath Das, respondent No.3, in his written statement raised the preliminary objection regarding maintainability of the election petition and stated that the appellant had no cause of action to file the petition. That the election petition was bad for non-joinder of necessary parties. The allegations regarding presence of Janki Ballave Patnaik and Respondent No. 1, in the office of the Chief Minister inside the Assembly premises to compel each and every Member of the Orissa Legislative Assembly for casting their votes as per the instruction of the Chief Minister and the allegation of written tokens given by the Chief Minister indicating the preferences to be endorsed in the ballot papers were denied. It was prayed that the appellant be put to strict proof thereof. With regard to transfer of votes in his favour, respondent No.3 stated that the same was done in accordance with rules and the declaration of result consequent upon such transfer of votes was in accordance with law.

Respondent No.4 also filed his written statement and controverted the facts alleged in the election petition. He submitted that the filing of nominations, scrutiny of nominations and counting of votes were regulated under the provisions of the Constitution of India, the Act and the Rules made thereunder, the Registration of Elections Rules, the Parliament (Prevention of Disqualification) Act, and the Prohibition of Simultaneous Membership Rules. He further submitted that the allegation with regard to the delay in supplying the documents was not correct. There was no irregularity or illegality in declaring the "validly nominated candidates" as the same was done in accordance with law on 8.6.1998.

From the above pleadings, the following issues were framed at the trial of the election petition:-

- (1) Whether the Election Petition as laid is maintainable?
- (2) Whether the written statements of the respondents are in accordance with law?
- (3) Whether respondent No.1 Ranganath Mishra is qualified to contest election to Parliament, and whether Article 124 (7) of

- A the Constitution of India, 1950 constituted a bar for such contest, and whether his nomination was improperly accepted?
- (4) Whether there was any cross-voting by horse-trading of opposition votes?
- B (5) Whether the counting was conducted according to law and result was declared lawfully?
- (6) Whether the petitioner is entitled to any other relief?

C The appellant examined five Members of the Orissa Legislative Assembly in addition to himself as witnesses in support of his case. Respondent Nos.1, 3 and 4 examined themselves as witnesses in support of the respect of the case put forth by them.

D Issue No.1 was decided in favour of the appellant. It was held that the election petition, as laid, was maintainable. Issue No.2 was decided in favour of respondents and it was held that the written statements of the respondents were in accordance with law. Issue No.3 was decided in favour of respondent No.1. It was held that Article 124(7) of the Constitution of India did not constitute a bar on a retired Judge of the High Court or the Supreme Court from contesting the elections and therefore nomination of respondent No.1 had been validly accepted. Issues Nos. 4 & 5 were also decided in favour of the respondents.

F Issue Nos.1 and 4 are interlinked. Respondents in their written statement had taken the objection that the petition was not maintainable as it did not disclose the cause of action and also lacked in "material facts" and "material particulars"; that the petition was not filed in conformity with section 83 of the Act.

G Election of Respondent No.1 had been challenged on the grounds that respondent No.1 being a former Judge and Chief Justice of India was debarred from contesting the election in view of the bar created by Article 124 (7) of the Constitution of India. Respondent No.1 not being a congressman a whip could not be issued by the congress party to its members to vote in his favour and that Shri J.B.Patnaik the then Chief Minister of Orissa while sitting in his office alongwith respondent No.1 in the ground floor which was within 200 yards of the polling station called the congress MLAs and issued instructions

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to cast their votes in the manner indicated by J.B.Patnaik. Shri J.B.Patnaik planned for cross voting and induced respondent No.1 to indulge in horse trading by appropriating the opposition votes by which the congress could win all the three seats.

Election of Respondent No.3 was challenged on the ground of wrong procedure adopted in the counting of votes. According to the appellant after declaring respondent Nos. 1 & 2 elected, they having secured more votes than the minimum quota required, only two candidates having been left in the arena, further, counting should have been carried under rule 81(2) and not under Rule 79.

Under Issue No.1 & 4 the only point to be considered is whether the appellant had disclosed material facts and "material particulars" of the corrupt practice indulged in by Respondent No.1 in securing the votes and if not so to what effect. In so far as the other grounds of challenge to the election of respondent No.1 are concerned, the same have not been pressed in this case and left open for some future case. In so far as the procedure adopted in counting of votes, the same would be discussed under issue no.5.

Although in the Statement of Facts given in the petition, the fact that respondent No.1 had indulged in horse trading or inducing the voters to cross vote is not mentioned but in the grounds the following statement is made in para 14(iii) which reads as follows:

"When Ranga Nath Mishra was imposed on OPCC from Delhi, J.B.Patnaik prepared a master plan to prove his strength to Delhi. As per its own strength, Congress could only get 2 seats from out of the 3 existing vacancies. J.B.Patnaik planned for a "Cross-voting" and induced Ranga Nath (Sonia's candidature) to indulge in horse-trading of appropriate number of opposition votes by which Congress could win all the three seats."

Allegation made in this paragraph relates to a corrupt practice. Section 83 reads:

"83. Contents of petition—(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

- A petitioner alleged 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; and
- B (c) shall be signed by the petitioner and verified in the manner laid down in the Code of Civil Procedure, 1908 (5 of 1908) for the verification of pleadings:

C Provided that where the petitioner alleges any corrupt practice, the petition shall also be accompanied by an affidavit in the prescribed form in support of the allegation of such corrupt practice and the particulars thereof.

- (2) Any schedule or annexure to the petition shall also be signed by the petitioner and verified in the same manner as the petition."

D This section provides that the petition shall contain a concise statement of the material facts and 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 practice and the date and place of the commission of such corrupt practice. It has to be verified in the manner laid down in the Code of Civil Procedure and wherever the election petitioner alleges any corrupt practice the petition shall also to be accompanied by an affidavit in the prescribed form in support of the allegation of such corrupt practice and particulars thereof. In the petition the particulars of the corrupt practice of the allegation made, the names of the parties alleged to have committed such corrupt practice, the date and place of commission of corrupt practice have not been given.

G While leading evidence the petitioner produced besides appearing himself as PW6, PWs 1, 2, 3, 4 & 5. PWs 1,2,3,4 & 5 are the sitting Members of Legislative Assembly of Orissa. They have deposed that respondent No.1 had met them and tried to persuade and induce them by offering bribe to cross vote.

H It has been held in a number of cases by this Court that the petition lacking in 'material facts' and 'material particulars' as provided under section 83 is required to be dismissed. Allegations of corrupt practice is a serious allegation which entails serious consequence of disqualifying the candidate

from contesting the election for a period which may extend up to six years. The charge of corrupt practice is to be proved like a criminal charge requiring the standard of proof to be beyond reasonable doubt.

Shri P.N. Lekhi strenuously contended that a liberal and purposive construction should be put on the pleadings to serve the larger purpose of eradicating corruption from the electoral system of the country and not a technical approach which would defeat the purpose of electoral reforms. As against this, it is contended by Shri P.P. Rao, learned senior counsel appearing for respondent No.1 that compliance with the provisions of section 83 is mandatory. The charge of corrupt practice in election petition is to be proved like a criminal charge and the standard of proof required is beyond reasonable doubt. It can entail the serious consequences of disqualifying the candidate from contesting the election in future for a certain period of time. That the court below had erred in taking evidence on a point on which there were no proper pleadings

This Court in *Ram Sharan Yadav v. Thakur Muneshwar Nath Singh*, [1984] 4 SCC 649, has taken the view that the charge of a corrupt practice is in the nature of a criminal charge which if proved, entails a very heavy penalty in the form of disqualification. Therefore, a very cautious approach must be made in order to prove the charge of undue influence leveled by the defeated candidate. It is for the party who sets up the plea of 'undue influence' to prove it to the hilt beyond reasonable doubt and the manner of proof should be the same as for an offence in a criminal case.

After referring to the case law it was held by this Court:

"3.The sum and substance of these decisions is that a charge of corrupt practice has to be proved by convincing evidence and not merely by preponderance of probabilities. As the charge of a corrupt practice is in the nature of a criminal charge, it is for the party who sets up the plea of 'undue influence' to prove it to the hilt beyond reasonable doubt and the manner of proof should be the same as for an offence in a criminal case. This is more so because once it is proved to the satisfaction of a court that a candidate has been guilty of 'undue influence' then he is likely to be disqualified for a period of six years or such other period as the authority concerned under Section 8-A of the Act may think fit. Therefore, as the charge, if proved, entails

A a very heavy penalty in the form of disqualification, this Court has held that a very cautious approach must be made in order to prove the charge of undue influence levelled by the defeated candidate.

B 4. Another well settled principle is that before the allegation of 'undue influence' can be proved, it must be shown that 'undue influence' proceeds either from the candidate himself or through his agent or by any other person either with his consent or with the consent of his election agent so as to prevent or cloud the very exercise of any electoral right."

C To the same effect is another judgment of this Court in *Quamarul Islam v. S.K.Kanta and Others*, [1994] Supp (3) SCC 5. After observing that there is an increase of electoral malpractices and the Courts owe a duty to the nation to see that such objectionable assaults wounding the purity of elections during the election propaganda are not allowed to go unpunished it was held that:

D "The maintenance of purity of elections is indeed essential but the court must be clear in its approach and appreciate that the proof of commission of corrupt practices must be clear, cogent, specific and reliable as the charge of a corrupt practice is almost like a criminal charge and the one who brings forth that charge has the obligation to discharge the onus of proof by leading reliable, trustworthy and satisfactory evidence. Election cannot be set aside on mere probabilities but only if the allegations of the corrupt practice, as alleged in the petition, are satisfactorily proved, which in the instant case is found hopelessly wanting. In this case the pleadings are so vague and the evidence so scanty, unsatisfactory and unreliable, besides being partly inadmissible, that it is not possible to connect the appellant, the returned candidate or his election agent with any of the corrupt practices alleged in the petition. The High Court before invalidating the election and upsetting the verdict of the electorate, in its zeal to maintain purity of elections, ignored not only the defects in the pleadings in the election petition but also failed to analyse the evidence in its proper perspective and even relied upon such evidence as is not admissible in law. It has been informed that the High Court has not framed any rule for trial of the election petitions. If that be so the Chief Justice of the High Court is requested to look into it and frame rules for proper trial of election petitions."

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In a recent decision this Court in *V. Narayanaswamy v. C.P. Thirunavukkarasu*, [2000] 2 SCC 294, after analysing the entire case law on the subject has held that exercise of undue influence is also deemed to be a corrupt practice. Under sub-section (2) of Section 123 'undue influence' means any direct or indirect interference or attempt to interfere on the part of the candidate or his agent, or of any other person with the consent of the candidate or his election agent, with the free exercise of any electoral right. "Material facts" and "material particulars" certainly connote two different things. Material facts are those facts which constitute the cause of action. In a petition based on the allegation of corrupt practices the cause of action cannot be equated with the cause of action as is normally understood because of the consequences that follow in a petition based on the allegations of corrupt practices. An election petition seeking a challenge to the election of a candidate on the allegation of corrupt practices is a serious matter; if proved, not only does the candidate suffer ignominy, he also suffers disqualification from standing for election for a period that may extend to six years.

The Court summed up:-

"23. It will be thus seen that an election petition is based on the rights, which are purely the creature of a statute, and if the statute renders any particular requirement mandatory, the court cannot exercise dispensing powers to waive non-compliance. For the purpose of considering a preliminary objection as to the maintainability of the election petition the averments in the petition should be assumed to be true and the court has to find out whether these averments disclose a cause of action or a triable issue as such. Sections 81, 83(1)(C) and 86 read with Rule 94-A of the rules and Form 25 are to be read conjointly as an integral scheme. When so read if the court finds non-compliance it has to uphold the preliminary objection and has no option except to dismiss the petition. There is difference between "material facts" and "material particulars". While the failure to plead material facts is fatal to the election petition the absence of material particulars can be cured at a later stage by an appropriate amendment. "Material facts" mean the entire bundle of facts, which would constitute a complete cause of action and these must be concisely stated in the election petition, i.e., clause (a) of sub-section (1) of Section 83. Then under clause (b) of sub-section (1)

A of Section 83 the election petition must contain full particulars of any corrupt practice. These particulars are obviously different from material facts on which the petition is founded. A petition levelling a charge of corrupt practice is required by law to be supported by an affidavit and the election petitioner is obliged to disclose his source of information in respect of the commission of corrupt practice. He must state which of the allegations are true to his knowledge and which to his belief on information received and believed by him to be true. It is not the form of the affidavit but its substance that matters. To plead corrupt practice as contemplated by law it has to be specifically alleged that the corrupt practices were committed with the consent of the candidate and that a particular electoral right of a person was affected. It cannot be left to time, chance or conjecture for the court to draw inference by adopting an involved process of reasoning. Where the alleged corrupt practice is open to two equal possible inferences the pleadings of corrupt practice must fail. Where several paragraphs of the election petition alleging corrupt practices remain unaffirmed under the verification clause as well as the affidavit, the unsworn allegation could have no legal existence and the court could not take cognizance thereof. Charge of corrupt practice being quasi-criminal in nature the court must always insist on strict compliance with the provisions of law. In such a case it is equally essential that the particulars of the charge of allegations are clearly and precisely stated in the petition. It is the violation of the provisions of Section 81 of the Act which can attract the application of the doctrine of substantial compliance. The defect of the type provided in Section 83 of the Act on the other hand can be dealt with under the doctrine of curability, on the principles contained in the Code of Civil Procedure. Non-compliance with the provisions of Section 83 may lead to dismissal of the petition if the matter falls within the scope of Order 6, Rule 16 and Order 7 Rule 11 of the Code of Civil Procedure. Where neither the verification in the petition nor the affidavit gives any indication of the sources of information of the petitioner as to the facts stated in the petition which are not to his knowledge and the petitioner persists that the verification is correct and the affidavit in the form prescribed does not suffer from any defect the allegations of corrupt practices cannot be inquired and tried at all. In such a case the petition has to be rejected on the threshold

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for non-compliance with the mandatory provisions of law as to pleadings. It is no part of the duty of the court suo motu even to direct furnishing of better particulars when objection is raised by the other side. Where the petition does not disclose any cause of action it has to be rejected. The court, however, cannot dissect the pleadings into several parts and consider whether each one of them discloses a cause of action. The petition has to be considered as a whole. There cannot be a partial rejection of the petition.”

As the entire case law has been discussed in *V. Narayanaswamy's* case (supra), we need not refer to other cases on the subject which were cited before us at the bar.

Counsel for the appellant had referred to the following decisions to press the point that liberal and purposive construction should be put on the pleadings in order to do substantial justice.

1. *Atma Ram Mittal v. Ishwar Singh Punia*, [1988] 4 SCC 284.
2. *Administrator, Municipal Corporation v. Dattatraya Dahankar*, [1992] 1 SCC 361.
3. *Shrisht Dhawan v. Shaw Brothers*, [1992] 1 SCC 534.

None of these judgments are applicable to the facts of the present case and the law pertaining to the election petition in which the allegation of corrupt practices have been made. *Atma Ram Mittal v. Ishwar Singh Punia* (supra) deals with a case under the Rent Control and Eviction Act. Similarly, in *Administrator, Municipal Corporation v. Dattatraya Dahankar*, [1992] 1 SCC 361, this Court was interpreting Section 127-A(2)(b) of the M.P. Municipalities Act, 1961, regarding imposition of property tax. In the context of that case, it was observed that the mechanical approach to construction is altogether out of step with the modern positive approach. The ratio of the said case would have no applicability to the present case. Likewise, in *Shrisht Dhawan v. Shaw Brothers*, [1992] 1 SCC 534, again the Court was dealing with a case under the Delhi Rent Control Act, 1958. In view of the specific provisions of the Representation Act regarding the pleadings and the standard of proof required to prove the corrupt practices, the ratio of any of these cases would have no applicability.

This apart we are in agreement with the finding recorded by the High Court on issue No.4. It is true that the congress had only 80 members in

A legislative assembly whereas it polled 107 votes i.e.27 more than its strength in the assembly. But this by itself does not mean that there was a cross voting due to any inducement on the part of respondent No.1. On facts it has not been proved that respondent No.1 or any other person with his consent or the consent of his agent had indulged in cross voting by horse trading. The finding recorded by the High Court that respondent No.1 was not sitting with J.B.Patnaik in his room when J.B.Patnaik gave instructions to congress MLAs to vote in a particular manner and that the office where J.B.Patnaik was sitting was within 200 yards of the polling station where the polling took place is also affirmed. Counsel for the appellant could not putforth any plausible argument to set aside the finding of the High Court on facts.

C As already noticed, there was no pleading at all, except some vague assertion in the grounds, with regard to the allegation of corrupt practice relating to alleged bribery indulged by respondent No. 1. No issue had been framed, as rightly none could be framed in that respect on the basis of vague and incomplete pleadings. The learned designated Judge, however, permitted evidence to be led during the trial by the appellant, relating to the allegations of bribery. No such evidence could have been permitted to be led. The learned designated Judge appears to have ignored salutary principles that evidence can only be permitted to be led on a plea-properly raised and issue framed. A designated Judge trying an election petition must be careful to see that irrelevant, impermissible and inadmissible evidence is not allowed to be brought on the record. Let alone allowing evidence to be led, for which there were no pleadings, even respondent No. 1 was subjected to unnecessary cross-examination on the allegations of bribery, which of course he stoutly denied. The evidence led in the case was inadmissible and should have been excluded and not allowed to form a part of the record. The designated Judge trying the election petition appears to have lost control over the proceedings and conducted the trial of the election petition in a manner not acceptable in law. In so far as the allegations relating to the charge of horse trading and bribery are concerned, we must in fairness to Mr. P.N.Lekhi, learned senior counsel appearing for the appellant, record that he did not pursue this charge before us any further.

H Coming now to the last on issue No.5 it may be stated that Election to the Rajya Sabha from Legislative Assemblies of the States as per Article 80(4) is held under a system known as proportional representation by means of a single transferable vote. The system of voting by secret ballot on the system

of proportional representation by means of the single transferable vote is adopted from the Constitution of Eire. The object of introducing proportional representation in these elections is to give each minority group an effective share as per its strength.

The system of proportional representation by single transferable vote comes into operation only if there is more than one candidate to be elected. The election is held by multi member constituencies. All the candidates who compete for the seats allotted to a constituency have their names printed on one ballot paper. Each elector has only one vote in the sense that it will be capable of electing one candidate only. But that vote will not be wasted in case the candidate whom he wishes to elect has got more than the required number of votes, called the 'quota'. The elector is required to indicate his multiple preferences by placing the figures, 1, 2 and 3 in order of preferences. The surplus votes in the hands of the candidates declared elected are transferred to the then candidates.

The procedure of counting of votes is enumerated in Rules 71 to 85 of The Conduct of Election Rules, 1961 (hereinafter referred to as "The Rules").

Rule 74 provides that the Returning Officer after rejecting the ballot papers which are invalid arrange the remaining ballot papers in parcels according to the first preference recorded for each candidate; count and record the number of papers in each parcel and the total number; and credit to each candidate the value of the papers in his parcel. Rule 76 provides for ascertainment of quota. It provides that at any election where more than one seat is to be filled, every valid ballot paper shall be deemed to be of the value of 100, and the quota sufficient to secure the return of a candidate at the election shall be determined by adding the value credited to all the candidates and then dividing the total by a number which exceeds by one the number of vacancies to be filled and then to add one to the quotient ignoring the remainder, if any, and the resulting number is the quota. In simple words it would work as under:-

$$\frac{\text{Total number of valid ballot papers}}{\text{Number of members to be elected} + 1} + 1 = \text{Quota.}$$

Rule 78 provides that if at the end of any count or at the end of the transfer of any parcel or sub-parcel of an excluded candidate the value of ballot papers credited to a candidate is equal to, or greater than the quota, that

A candidate shall be declared elected.

If any vacancy remains to be filled, then the procedure required to be followed is given in Rules 79, 80 and 81. Rules 79, 80 and 81 read thus:-

B “79. Transfer of surplus. (1) If at the end of any count the value of the ballot papers credited to a candidate is greater than the quota, the surplus shall be transferred, in accordance with the provisions of this rule, to the continuing candidates indicated on the ballot papers of that candidate as being next in order of the electors preference.

C (2) If more than one candidate have a surplus, the largest surplus shall be dealt with first and the others in order of magnitude:

Provided that every surplus arising on the first count shall be dealt with before those arising on the second count and so on.

D (3) Where there are more surpluses, than one to distribute and two or more surpluses are equal, regard shall be had to the original votes of each candidate and the candidate for whom most original votes are recorded shall have his surplus first distributed; and if the values of their original votes are equal, the returning officer shall decide by lot which candidate shall have his surplus first distributed.

E (4) (a) If the surplus of any candidate to be transferred arises from original votes only, the returning officer shall examine all the papers in the parcel belonging to that candidate, divide the unexhausted papers into sub-parcels according to the next preferences recorded thereon and make a separate sub-parcel of the exhausted papers.

F (b) He shall ascertain the value of the papers in each sub-parcel and of all the unexhausted papers.

G (c) If the value of the unexhausted papers is equal to or less than the surplus, he shall transfer all the unexhausted papers at the value at which they were received by the candidate whose surplus is being transferred.

H (d) If the value of the unexhausted papers is greater than the surplus, he shall transfer the sub-parcels of unexhausted papers and the value at which each paper shall be transferred shall be ascertained by dividing the surplus by the total number of unexhausted papers.

(5) If the surplus of any candidate to be transferred arises from transferred as well as original votes, the returning officer shall re-examine all the papers in the sub-parcel last transferred to the candidate, divide the unexhausted papers into sub-parcels according to the next preferences recorded thereon, and then deal with the sub-parcels in the same manner as is provided in the case of sub-parcels referred to in sub-rule (4).

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(6) The papers transferred to each candidate shall be added in the form of a sub-parcel to the papers already belonging to such candidate.

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(7) All papers in the parcel or sub-parcel of an elected candidate not transferred under this rule shall be set apart as finally dealt with.

80. Exclusion of candidates' lowest on the poll. (1) If after all surpluses have been transferred as hereinbefore provided, the number of candidates elected is less than the required number, the returning officer shall exclude from the poll the candidate lowest on the poll and shall distribute his unexhausted papers among the continuing candidates according to the next preferences recorded thereon; and any exhausted papers shall be set apart as finally dealt with.

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(2) The papers containing original votes of an excluded candidate shall first be transferred, the transfer value of each paper being one hundred.

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(3) The papers containing transferred votes of an excluded candidate shall then be transferred in the order of the transfers in which, and at the value at which, he obtained them.

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(4) Each of such transfers shall be deemed to be a separate transfer but not a separate count.

(5) If, as a result of the transfer of papers, the value of votes obtained by the candidate is equal to or greater than the quota, the count then proceeding shall be completed but no further paper shall be transferred to him.

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(6) The process directed by this rule shall be repeated on the successive exclusions one after another of the candidates lowest on

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A the poll until such vacancy is filled either by the election of a candidate with the quota or as hereinafter provided.

B (7) If at any time it becomes necessary to exclude a candidate and two or more candidates have the same value of votes and are the lowest on the poll, regards shall be had to the original votes of each candidate and the candidate for whom fewest original votes are recorded shall be excluded; and if the values of their original votes are equal the candidates with the smallest value at the earliest count at which these candidates had unequal values shall be excluded.

C (8) If two or more candidates are lowest on the poll and each has the same value of votes at all counts the returning officer shall decide by lot which candidate shall be excluded.

D 81. Filling the last vacancies. — (1) When at the end of any count the number of continuing candidates is reduced to the number of vacancies remaining unfilled, the continuing candidates shall be declared elected.

E (2) When at the end of any count only one vacancy remains unfilled and the value of the papers of some one candidate exceeds the total value of the papers of all the other continuing candidates together with any surplus not transferred, that candidate shall be declared elected.

F (3) When at the end of any count only one vacancy remains unfilled and there are only two continuing candidates and each of them has the same value of votes and no surplus remains capable of transfer, the returning officer shall decide by lot which of them shall be excluded; and after excluding him in the manner aforesaid, declare the other candidate to be elected.”

G Rule 79 comes into operation in case a candidate or more than one candidate has received more votes than the required quota. If at the end of any count the value of the ballot papers credited to a candidate is greater than the quota, the surplus shall be transferred in accordance with the provisions of this rule, to the continuing candidates indicated on the ballot papers of that candidate as being next in order of the electors preference. After working out the surplus votes in order of preference in favour of the remaining candidates,
H the surplus votes are transferred to the remaining candidates and added to the

value of votes polled by that candidate. In this exercise if any candidate reaches the requisite quota, then he is declared elected.

If no candidate wins on transfer of the surplus votes obtained by him from the surplus of votes from the candidate who is already declared elected, then the provision of exclusion of candidates lowest on polled votes as provided under Rule 80 comes into operation. The returning officer then excludes from the poll the candidate lowest on the poll and distributes his unexhausted ballot papers among the continuing candidates according to the next preference recorded thereon. The process is continued till the total number of vacancies is filled up.

If even by this process the total number of vacancies are not filled up then Rule 81 comes into operation. Case put forth by learned counsel for the appellant is that as only two candidates remained in the field after declaring respondent nos. 1 and 2 elected and only one vacancy remained unfilled, then the counting should have proceeded under Rule 81(2) and not under Rule 79 as has been done by the Returning Officer since the appellant had polled more first preference of votes in the first count, then respondent no.3. The appellant should have been declared elected.

The proposition put forth by the counsel for the appellant is not acceptable. It goes against the scheme of proportional representation by single transferable vote. As pointed out earlier, each elector has only one vote in the sense that it will be capable of electing one candidate only but that vote will not be wasted in case the candidate whom he wishes to elect has got more than the required number of votes, called the quota. As the elector is required to indicate his multiple preferences his vote which is surplus in the hands of the elected candidate gets transferred to the next candidate. If the contention of learned counsel for the appellant is to be accepted, then the surplus votes in the hands of respondent nos. 1 and 2 would never be counted. Rules 79 to 81 which are in consonance with the scheme of proportional representation by single transferable votes provide that firstly the surplus votes in the hands of elected candidates have to be transferred under Rule 79. If on the transfer of surplus votes no candidate reaches the quota, then the procedure provided under Rule 80 of exclusion of candidates obtaining the least number of votes is to be followed. On his exclusion his first preference are transferred to the remaining candidates in order of preference indicated by the electors. If even by this process the required number of seats are not filled and no candidate reaches the quota then resort to be made to Rule 81.

A Rule 81 envisages three situations. Firstly when the number of candidates is reduced to the number of vacancies remaining unfilled. Sub-rule (1) of Rule 81 provides that in such situations the continuing candidates shall be declared elected. Sub-rule (2) of Rule 81 operates in a factual situation when at the end of any count only one vacancy remains unfilled and “the value of papers of one candidate exceeds”, the “total value of papers of all the continuing candidates together with all the surplus not transferred”, then that candidate shall be declared elected. This sub-rule cannot be pressed into service in the present factual situation. The value of votes in the hands of the appellant did not exceed the value of votes of the remaining candidate together with the transferred surplus votes. Sub-rule (3) of Rule 81 provides that when at the end of any count only one vacancy remains unfilled and there are only two continuing candidates and each of them has the same value of votes and no surplus remains capable of transfer, the returning officer shall decide by lot which of them shall be excluded; and after excluding him in the manner aforesaid, declare the other candidate to be elected.

D In the present case the returning officer after declaring respondent nos. 1 and 2 elected, they having reached their quota resorted to the procedure provided in Rule 79. On transfer of the surplus votes of respondents 1 and 2 in favour of the remaining candidates, it was found that respondent no.3 had secured the required quota of votes. Respondent nos.1 and 2 had surplus of 444 value of votes after obtaining their required quota. Second preference in all these ballot papers was indicated in favour of respondent no.3. By transfer of the value of 444 votes each from respondent nos. 1 and 2 in favour of respondent no.3 his value of votes came to cross the required quota of value of votes. He had obtained 2700 value of votes and by adding the surplus value of 888 to the value of votes, already obtained, his total value of votes came to 3558. The value of votes of the appellant remained static at 3500. Once respondent No.3 was declared elected after following the procedure under Rule 79, the reference to the procedure provided under Rules 80 and 81 was unnecessary. In our view, the returning officer followed the correct procedure in counting the votes and declaring respondent no.3 elected; he having polled the requisite quota of value votes.

H Mr. P.N. Lekhi, learned senior counsel submitted that in the judgment under appeal most of discussion has taken place regarding scope of Article 124 (7) of the Constitution of India and whether it constituted a bar for contesting election by respondent No.1. Learned counsel did not question the

correctness of the findings recorded by the High Court on issue No. 3 but went on to submit that 'he was not giving up' challenge to the findings on issue No. 3 'but he was not addressing any arguments to question the correctness of these findings recorded by the High Court either'. Thus, the challenge based on Article 124 (7) which failed in the High Court in so far as respondent No. 1 is concerned was also not pursued before us.

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No other ground was urged by the learned counsel for the appellant.

In view of the above, we do not find any merit in this appeal and dismiss it with costs.

V.S.S.

Appeal dismissed.