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NOTIFICATIONS

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Dated 29th September, 1982

No. 82/MIZ-LA/2/79 — In pursuance of section 106 of the Representation of the People Act, 1951, the Election Commission of India hereby publishes the judgement and order dated 19.8.1982
Petition No. 2 of 1979.

(HERE PRINT THE ORDER ATTACHED)

By order.

S.C. Jain,
Under Secretary

IN THE GAUHATI HIGH COURT

(High Court of Assam, Nagaland, Meghalaya, Manipur & Tripura)

ELECTION PETITION NO. 2 OF 1979

Mr. R. Thangliana

PETITIONER

Versus

Mr. Zairemthanga & Qrs

RESPONDENTS

P R E S E N T

The Hon'ble Mr. Justice S.M. Ali

For the Petitioner

Mr. A.H.Mazumdar
 Mr. B.Prasad
 Mr. R.P.Kakati
 Mr. S.Latif
 Mr. N.Z.Ahmed, Advocates

For the respondents

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Mr. N.M.Lahiri
 Mr. K.K.Bezbaruah
 Mr. P.C.Katakya
 Mr. D.K.Bhattacharya
 Mr. A.C.Upadhyaya
 Mr. D.K.Das, Advocates.

Dates of argument

....

29.3.82, 30.3.82, 31.3.82,
 1.4.82, 7.6.82, 9.6.82, 10.6.82
 11.6.82, 12.6.82, 15.6.82,
 16.6.82, 17.6.82, 18.6.82
 21.6.82 to 26.6.82

Date of Judgement

....

19.8.82

JUDGEMENT & ORDER

Petitioner Shri R. Thangliana submitted this Election petition under section 80 A read with sections 81 and 101 of the Representation of People Act, 1951 (for short, the Act), challenging the election of respondent No. 1, Shri. Zairemthanga to the Legislative Assembly of the Union Territory of Mizoram in the general elections held in April, 1979 from Assembly Constituency No. 29 Aizawl West on the allegations of corrupt practices under sub-section 3, 3(A) and 4 of section 123 of the Act.

The petitioner and respondent No. 1 were among the 7 candidates contesting for the Assembly seat of 29 Aizawl west (Scheduled Tribe) Constituency and the petitioner was a nominee of the Congress I Party and respondent No. 1 was nominee of the People's Conference Party of Mizoram which was a regional party to fight for the seat in the said constituency. Notification under section 15 of the Act issued by the Administrator of Mizoram was published in the Mizoram Gazette Extra ordinary Vol. VIII, Aizawl dated 23.3.79 (Annexure -1), calling upon the voters to elect member to the Mizoram Assembly from the aforesaid constituency. The Election Commission by a notification dated 23.3.79 (Annexure-2) fixed 30th March, 1979 as last date for submitting nomination papers, 2nd April, 1979 as the last date for withdrawal of candidature and 7th May, 1979 as the date before which the election should be completed. The date of election in the constituency was fixed and election was held on 27.4.79. The petitioner as well as the respondent submitted their nomination papers in the prescribed form on due date which were scrutinised on 31st March, 1979 and the nomination

paper of the petitioner and of the respondents were declared valid on scrutiny by the Returning Officer. The election symbol of respondent No. 1 was 'scale' and that of the petitioner was 'up-right hand facing palm' which was the official reserved symbol of Indian National Congress (I). The total number of voters in 29 Aizawl West were 10,013. It is averred by the petitioner in the petition that about 80% of those voters were jhum cultivators and that most of them were either illiterate or semi literate. It is further alleged that many Nepali Gorkhas, mostly engaged in rearing cows for milk were among the voting population of the said constituency.

2. As usual on such occasions the candidates and their parties started canvassing and campaigning among the voters. It is alleged that respondent No. 1 and his partymen and workers issued appeals to the voters of the constituency not to vote for the petitioner on the ground that the petitioner's party was a non-tribal organisation. It is the petitioner's case that after he had covered almost the entire area of his constituency apprising the electors about his election symbol it was found in the later part of election campaigning that dummy ballot papers were being distributed by the workers of the People's Conference Party in 29 Aizawl west Constituency. This matter came to the knowledge of the petitioner on 25.4.79. The said dummy ballot papers (Annexure-3) contained the names and respective symbols of all the candidates of the constituency except that in place of the real election symbol of the petitioner viz., 'up-right right hand facing palm', a left hand glove with a trident in the middle of the palm was displayed in dummy ballot paper against the name of the petitioner. This hand-glove was placed in a horizontal position and all this to mislead the voters. The dummy ballot paper contained an appeal at its top made by respondent No. 1 with his name below the appeal. Dummy ballot papers containing names and symbols of the candidates of other constituencies containing the symbol of Congress (I) candidate in the same manner as in Annexure - 3 were published and distributed by the People's Conference Party in other neighbouring constituencies also including No. 27 Aizawl North (ST) Assembly Constituency. In No. 27 Aizawl North Constituency the Congress (I) candidate was Shri P.C. Bawitluanga who informed the petitioner about the distribution of wrong and offensive dummy ballot papers in his constituency. The matter was informed to Congress (I) General Secretary Shri. Lalsangzuala who took up the matter with the Returning Officer, Aizawl district but the latter did not entertain his complaint and advised him to file election petition after the elections were over. These dummy ballot papers were distributed on and from 25th April, 1979 in Khatla - Bungkawn area and on 27.4.79 in Tuikual area both within 29 Aizawl West Constituency by the workers, agents and partymen of respondent No. 1 with knowledge and consent of respondent No. 1. The further averments of the election petitioner are that respondent No. 1, his workers, agents, supporters and partymen who distributed the dummy ballot papers knew and believed that the symbol of the petitioner (symbol of Congress-I) as depicted in the offensive dummy ballot papers was wrong and false and that they published and distributed such ballot papers in order "to cause undue influence and misrepresentation in relation to the candidature of the petitioner and to prejudice the petitioner's prospect" of election. Such dummy ballot papers were also hung up in the available public notice boards in different places of the constituency. The dummy ballot papers distributed in

27 Aizawl North Constituency contained on its reverse side and appeal in the name of one Mawi's Mother asking the voters to vote for the People's Conference Party being a Mizo organisation and not to vote for the Congress (I) Party as it was a non-Mizo organisation (Annexure - 4). It is the statement that Congress (I) Party was a non-Mizo organisation is quite false due to the fact that there are members of the Congress (I) Party who belong to Mizo Scheduled Tribe community of Mizoram and that in that view the statement that Congress (I) is a non-Mizo organisation is completely false. It is further alleged by the petitioner that in Mizoram there has been a considerable hostile feeling against the non-Mizo people residing there and that due to those communal appeals, the election prospects of the petitioner were adversely affected and prejudiced. The aforesaid dummy ballot papers and the appeals on communal ground were printed and published at the instance of respondent No. 1 and distributed among the voters by his partymen, agents and workers with his knowledge and consent.

5. It is further averred by the petitioner that the said Khatla Bungkawn area covers three villages having voters numbering 3056. The four ladies who distributed the dummy ballot papers in that area : (1) Lalkros-thangi, (2) Tlangengi, (3) Lalbeisei, and (4) Zodinpui Sailo. On 27.4.79 being the date of election, dummy ballot papers were distributed in Tuikual area by Shri Thangthuama and Shri. C. Ramliana. It is also alleged that one Shri. Hrangdailova, a responsible officer of the Government Press at Aizawl and a Gezzetted officer of the Government of the Union Territory of Mizoram canvassed for respondent No. 1 from door to door under the influence of respondent No. 1. The dummy ballot papers containing misrepresentation of the election symbol of Congress (I) and a communal appeal of one Mawi's Mother were distributed in 27 Aizawl North Constituency which is contiguous to 29 Aizawl West Constituency and that such dummy ballot papers also found their way into 29 Aizawl West Constituency.

6. On realising the wrong as aforesaid done by the respondent, his partymen, agents and workers in publishing and distributing the illegal dummy ballot papers, the President of people's Conference Party, Khatla Unit, Mr. D.P. Liankaia on 25.4.79 issued a letter (Annexure-5) to the Assistant Returning Officer regretting publication and distribution of aforesaid dummy ballot papers and the appeals. The petitioner alleges that such a last minute letter could not counter the harm or damage done to his election prospects. Election was held on 27.4.79 in 29 Aizawl West Constituency and the counting of votes took place on 29.4.79 whereafter respondent No. 1 was declared elected by the Returning Officer. While respondent No. 1 got in his favour 2,448 votes, the petitioner got 1,449 votes. According to the petitioner the result of the election has been materially affected by the aforesaid corrupt practices committed by respondent No. 1, his party, workers, agents and supporters with his consent and knowledge.

7. According to the petitioner he would have been elected but for the corrupt practices adopted by respondent No. 1 just before the poll in order to gain undue advantage and to prejudice the election prospect of the petitioner. He therefore prays for declaration of the election of respondent No. 1 as void and for declaration that the petitioner was elected from 29 Aizawl West Constituency.

8. The first respondent submitted a petition under section 97 of the Act on 30.7.79 on the following allegations. That the election petitioner did not comply with the requirements of section 33(5) of the Act, that the election petitioner took recourse to some corrupt practices on the poll day i.e. on 27.4.79 which are detailed in the application but which are not required for the purpose of adjudicating the election petition because no evidence on recrimination has been adduced by the respondent in this proceeding. It is contended that the election petitioner was a voter of 28 Aizawl East Constituency;

paper he did not submit a copy of the electoral roll of No. 28 Aizawl East Constituency or the relevant part thereof or certified copy of the relevant entries in such roll thereby contravening the mandatory provisions of section 33(5) of the Act. The election petitioner also did not produce before the Returning Officer the time of scrutiny on 31.3.79 a copy of the electoral roll of No. 28 Aizawl East A

or a certified copy aforesaid section. The further allegation is that on the date of scrutiny the election petitioner was absent from the Office of the Returning Officer at the time of scrutiny of the nomination papers there being nobody to represent him at the relevant time before the Returning Officer. Therefore the petitioner should not be treated as a candidate with respect to 29 Aizawl West Constituency for which he has no locus standi file the Election Petition.

9. The election petitioner submitted a written statement in connection with the recrimination petition filed by respondent No. 1 under Section 97 of the Act denying point-wise the alleged corrupt practices stated in the recrimination application and reiterating that the first respondent took to corrupt practices by publishing the dummy ballot

As regards the allegation made by the respondent regarding non-compliance of the provisions of section 33 (5) of the Act, the petitioner states that he was present on 31.3.79 in the office of the Returning Officer along the Secretary of Congress (I) (P.W 3) when the nomination papers of No. 29 Aizawl West Assembly Constituency

a voter of 28 Aizawl East Constituency and not of the 29 Aizawl West and that he did not file a copy of the electoral roll of No. 28 Aizawl East Constituency or relevant entries thereof along with the nomination paper but at the time of scrutiny he showed the electoral roll of No. 28 Aizawl East Assembly Constituency to the Returning Officer who verified

was lying with him. The Returning Officer got satisfied and to the petitioner being a voter of 28 Aizawl East Constituency and accepted the nomination paper of the petitioner.

representatives objected to the acceptance of the nomination paper of the election petitioner at the time of scrutiny. The petitioner therefore having complied with the requirements of section 33 (5) of the Act has sufficient locus standi to file the election petition as a candidate against the respondent.

10. In his written statement dated 19.6.81, first respondent Mr. Zairen Thanga reiterates the non-competence of the election petitioner as alleged in his application under Section 97 of the Act to challenge election of respondent No. 1 from 29 Aizawl West Constituency. It is added in the written statement that the election symbol allotted to the election petitioner was a "hand" and not "an up-right hand facing

palm" as claimed. Further averments of the respondent are that the percentage of cultivators in 29 Aizawl West was not 80% but was only 5.01.% vide "Urban Census 1979, Mizoram" issued by the Bureau of Economics and Statistics, Mizoram Administration and that the percentage of literacy in that constituency were Nepali Gurkha people most of whom were retired Government servants and that in the constituency there were only seven villages and one sub-village at the relevant time. The respondent

the election petitioner on the ground that his party was non tribal. He also denies that his party men or workers carried on any propaganda branding Congress (I) Party as a non-tribal organisation.

People's Conference Party published any dummy ballot paper showing a wrong symbol against the petitioner's name in order to prejudice the prospect of the petitioner's election. It is further contended by the respondent that "Even if any such dummy ballot papers were printed or published, the same was done without the knowledge, consent or connivance of respondent No. 1. In any view purported circulation of dummy ballot papers can never be reasonably calculated to prejudice the prospect of the election of the election petitioner." The respondent disowns any corrupt practice whatsoever as defined under section 133 of the Act having been resorted to by him or his election agent and categorically denies having taken assistance of any Government official or of Government machinery in connection with his election campaign. He further denies that on 25.4.79 the stated dummy ballot papers were distributed among the voters in Khatla Bungkawn area and that the ladies named in the election petition distributed the same dummy ballot papers. He pleads his ignorance about any ballot paper containing wrong symbol of Congress (I) party or/and alleged communal appeal of Mawli's Mother having found its way to 29 Aizawl West Constituency from 27 Aizawl North Constituency and denies any appeal having been made depicting the Congress (I) party as a non-tribal organisation. The respondent denies that there was any hostile feeling in Mizoram against the non-Mizo people residing there. He adds under para 26 of the written statement "In this connection the answering respondent begs to state that Shri. D.P. Liankaia was merely a President of the Khatla P.C. unit which is nothing but a village unit and the alleged letter dated 25.4.79 was written to the Assistant Returning Officer, Election to the Mizoram Legislative Assembly, Aizawl by him on his own and without authority and knowledge and consent of respondent No. 1 and/or the agent. Even if the Khatla village unit of the party did not authorise Shri. D.P. Liankaia to write this letter".

11. A written statement was submitted by respondent No. 7, Shri. Anand Nath, Returning Officer for 29 Aizawl West Assembly Constituency contending that in Mizoram the percentage of literacy is 53.79 and that the same extent of literacy was there in the 29 Aizawl West and that there were only 427 Nepali voters in the said constituency. He further states "That with regard to the allegations on various counts of propaganda alleged to have been made by respondent No. 1 the respondent begs to state that no report of such propaganda was brought to the notice of the respondent". He denies that he did not take any action when he was informed about the distribution of the dummy ballot paper by the People's Conference Party in No. 27 Aizawl North Assembly Constituency. The respondent referred the matter to the Superintendent of

Police, Aizawl district for taking necessary action, immediately after the report was made to him. He admits that the letter referred to under para 19 of the election petition was submitted by Shri. D.P. Liankaia, President of the People's Conference Party, Khaila on 26th April, 1979 to the Assistant Returning Officer and that the said letter was immediately referred to the Superintendent of Police, Aizawl district for necessary action. He does not admit that there was any mistake in the electoral roll "in violation of the provision of the Registration of Electors Rolls or other laws".

12. On the pleadings of the parties the following issues have been struck for decision of the case :-

(1) Whether appeals were issued by Respondent No. 1 in his dummy ballot papers exhorting the voters not to vote for the petitioner on the ground that his party (the petitioner's party) was a non-tribal organisation ? Whether it was done for the purpose of prejudicially affecting the prospect of the petitioner's election ? If so, whether it amounted to corrupt practice under section 123 of the Representation of the People Act, 1951 ?

(2) Whether Respondent No. 1's party published dummy ballot papers showing wrong election symbol of the petitioner ? Whether the said dummy ballot papers were issued with the knowledge and consent of Respondent No. 1 and distributed in several villages referred to in paras 12, 13 and 14 of the election petition ?

(3) Whether Respondent No. 1 procured the assistance of Shri. Hrangdailova, an important Officer of the Government Press at Aizawl ? Whether the said Shri. Hrangdailova canvassed for Respondent No. 1 from door to door and whether he was a Gazetted Officer of the Government of Mizoram at the relevant time ? If so, whether these amounted to corrupt practices committed by Respondent No. 1 contemplated u/s. 123 of the Representation of the People Act, 1951 ?

(4) Whether the President of Respondent No. 1's party issued a letter to the Assistant Returning Officer on 25.4.79 regretting about the issue of the dummy ballot papers ? Did the Returning Officer take any action in respect of the complaint made by Shri. Lalsangzuala on 23.4.79 ?

(5) Whether amount to corrupt practice u/s 123 of the Representation of the People Act or can be grounds for setting aside the election of Respondent No.1?

(6) Whether the election petitioner R. Thangliana is an elector of No. 29 Aizawl West Assembly Constituency or of No. 28 Aizawl East Assembly Constituency and whether the petitioner complied with the provisions of Section 33(5) of the Representation of the People Act, 1951 by submitting along with his nomination paper a copy of the Electoral Roll and/or by producing the Electoral Roll at the time of scrutiny of nomination papers on 31.3.79 and whether his nomination is a nullity and is void abinitio due to contravention of Section 33 (5) of "the said Act" and whether the election petitioner has locus standi to call in question the election of the Respondent No. 1 by filing the election petition and whether in the aforesaid view of the matter the election petition is maintainable?

(7) To what relief or reliefs the parties are entitled to ?

13. The election petition was filed on 12.6.79 and after framing of issues, the matter came before me on 10.7.81 and thereafter both parties took adjournments on several occasions and hence the delay.

14. During the course of hearing, the third Issue was abandoned by the election petitioner and to evidence was adduced in this respect and the reprimination matter has been put off to a later stage.

15. Before entering on decision of the Issues, it is felt convenient to set out the principles indicating the nature of and approach to an election dispute as enunciated in several cases by the Supreme Court. Out of a large number of decisions on the principles guiding election matters, only a few are mentioned below which are though quite sufficient to point out the correct nature of the proceeding, and the proper scope of enquiry in such a case.

16. In *D. Venkata Reddy V. R. Sultan & Ors*, AIR 1976 Sc 1599, their Lordships observed :

“In a democracy such as ours, the purity and sanctity of elections, the sacrosanct and sacred nature of the electoral process must be preserved and maintained. The valuable verdict of the people at the polls must be given due respect and condour and should not be disregarded or set at naught on vague, indefinite, frivolous or fanciful allegations or on evidence which is of a shaky or prevaricating character. It is well settled that the onus lies heavily on the election petitioner to make out a strong case for setting aside an election. In our country election is a fairly costly and expensive venture and the Representation of the people Act has provided sufficient safeguards to make the elections fair and free. In these circumstances, therefore, election results cannot be lightly brushed aside in election disputes. At the same time it is necessary to protect the purity and sobriety of the election by ensuring that the candidates do not secure the valuable votes of the people by undue influence, fraud, communal propaganda, bribery or other corrupt practices as laid down in the Act.”

Another principle that was laid down in that case is :

“..... the election petitioner in order to succeed must plead all material particulars and prove them by clear and cogent evidence. The allegations of corrupt practices being in the nature of a quasi criminal charge the same must be proved beyond any shadow of doubt.

Where the election petitioner seeks to prove charge by purely partisan evidence consisting of his workers, agents, supporters and friends, the Court would have to approach the evidence with great care and caution, scrutiny and circumspection, and would, as law, require collaboration of such evidence from independent quarters, unless the Court is fully satisfied that the evidence is so credit-worthy and true, spotless and blemishless, cogent and consistent, that no corroboration to lend further assurance is necessary”.

In **Bhanu Kumar V. Mohanlal**, AIR 1971 SC 2025 it was laid down:—

“The Court is always vigilant to watch not only the conduct of the candidates and protect their character and conduct of the public is not corroded by corrupt motive or evil purposes of candidates. The genuine and bonafide aims and aspirations of candidates have to be protected on the one hand and malafide abuse and arrogance of power will have to be censured on the other”.

In **Abul Hussain Mr V. Samsul Huda**, AIR 1975 SC 1612, it was observed:—

“Even so certain basic guidelines can not be lost sight of while adjudging the election dispute. The verdict at the polls wears a prospective mantle in a democratic polity. The Court will vacate such ballot count return only on proof beyond reasonable doubt of corrupt practices. Charges, such as have been imputed here, are viewed as quasi-criminal, carrying other penalties than losing a seat, and strong testimony is needed to subvert a returning Officer's declaration”.

In **N. Bimala Devi V. K.M. Reddi**, AIR 1975 SC 1135, it was laid down that where a corrupt practice is alleged against a returned candidate it must be scrutinised with considerable care because a finding to that effect has very serious consequence and that it not merely sets aside the popular verdict but also subjects the successful candidate to the penalty of being disqualified for election and even criminal prosecution.

In **Inamiti Mallappa Basappa v. Desai Bagararaj Ayyappa & ors.**, AIR 1958 SC 698 it was laid down that “An election contest is not an action at law or a suit in equity but is a purely statutory proceeding unknown to the common law and the Court possesses no common law power. An election petition is not a matter in which the only persons interested are candidates who strive against each other in the elections. The public also are substantially interested in it and this is not merely in the sense that an election has news value. An election is an essential part of the democratic process. An election petition is not a suit between two persons, but is a proceeding in which the constituency itself is the principal party interested” The same view was expressed in **Harcharan Singh V. Mahendra Singh**, AIR 1968 SC 1500.

16. These principles have to be kept on mind while assessing the evidence and coming to findings in the case.

17. We now proceed to deal with the Issues. For the sake of convenience Issue No. 6 regarding maintainability of the election petition is taken up first.

18. It is contended by Respondent No. 1 that the election petition is not maintainable in as much as the election petitioner cannot be taken to have been a candidate at the election from 29 Aizawl West Constituency on the ground that he being a voter of a different constituency viz. 28 Aizawl East he did not file along with the nomination paper, nor did he produce before the Returning Officer at the time of the scrutiny of nomination papers of 29 Aizawl West Constituency, a copy of the electoral roll of 28 Aizawl East Constituency or a copy of the relevant part of the electoral roll or a certified copy of the relevant entries of such roll. It is further alleged that the petitioner was not present in the Office of the Returning Officer at the time of scrutiny of nomination papers on 31.3.79

Admittedly the election petitioner did not file along with his nomination paper any copy as aforesaid Section 81 of the Act says that the election petition must be presented by a candidate at such election. Therefore according to the Respondent, the election petitioner having failed to comply with the requirement of sub-section (5) of Section 33, his nomination was void abinitio and that he was not entitled to present the petition under section 81 of the Act. On the other hand it is the case of the election petitioner that though he did not file a copy of the electoral roll of the constituency of which he was a voter, or the relevant part thereof or a certified copy of the relevant entries of such roll along with the nomination paper, he appeared before the Returning Officer on 31.3.79 at the time of scrutiny and produced a copy of the electoral roll of 28 Aizawl East Constituency during scrutiny by the Returning Officer.

17. In the election petition under para 1, it is stated that the petitioner is an elector of 29 Aizawl West (Scheduled Tribe) Constituency but on 25.3.80 a petition was submitted by way of amendment of the petition with respect to the number of Constituency to which the petition actually belongs, alleging that due to typographical mistake in para I of the election petition, in place of "and is an elector of No. 28 Aizawl East" "and is an elector of 29 Aizawl East" was written. So amendment of the petition was prayed for. It has been pointed out on behalf of the respondent No. I that no order was passed allowing the petition for amendment and that therefore the election petition is not maintainable on the ground that though the petitioner is not an elector of 29 Aizawl West, he presented the petition as an elector of 29 Aizawl West Constituency. Mr. Mazumdar for the petitioner argued that this is merely minor technical matter and that it not being of any substantial nature, it should not stand in the way of adjudicating the election dispute itself. He frankly pointed out that even in the amendment petition clerical mistake crept in as is found now with regard to naming of the paragraph of the election petition under which the mistake was to be rectified. In place of para I which is the relevant para, by mistake para seven was mentioned in the amendment petition though page number seven in the amendment petition was correct. Mr. Mazumdar further argued that for such matters the election petition cannot be thrown away because Respondent No. I admits in his written statement that the petitioner is an elector of 28 Aizawl East Constituency and that his name appears in the electoral roll of 28 Aizawl East Constituency. It is of course in evidence of both sides that the election petitioner belongs to 28 Aizawl East Constituency. Learned counsel for the petitioner urged that the petitioner fought the election and that he having been a candidate in the election has presented the election petition and that the only question in this respect as formulated in the Issue under discussion is whether the petitioner being an elector of a different constituency complied with the requirements of sub-section (5) of section 33 of the Act. In view of the materials on record, it does not require any elaboration for the finding that the petitioner belongs to 28 Aizawl East Constituency as an elector.

18. This leads us to the question whether the petitioner complied with the provisions of section 33 (5) of the Act and if his nomination was void abinitio due to alleged contravention of section 33 (5) of the Act and whether he has any locus standi to call in question the election of respondent No. I and whether in view of the above, the election petition is maintainable.

19. In his deposition the election petitioner states that the Returning Officer had a copy of his own of the electoral roll of 28 Aizawl East Constituency at the time of scrutiny of the nomination paper of 29 Aizawl West Constituency and that he verified the copy of the electoral roll produced by the petitioner and got satisfied and found the nomination of the petitioner valid. He further deposes that there was no objection from Respondent No. 1 who was present at the time of scrutiny regarding acceptance of petitioner's nomination paper by the Returning Officer, nor was there any objection from any other candidate present there. Ext. P.1 is the nomination paper of the petitioner and P.1 (1) is the signature of the Returning Officer accepting the nomination. In cross-examination it has not been challenged on behalf of respondent that the election petitioner did not produce any copy of the electoral roll before the Returning Officer at the time of scrutiny. It has been elicited in his cross examination that the petitioner did not make any statement either in his original election petition or in the amendment petition dated 25.3.80 that he produced a copy of the electoral roll before the Returning Officer. P.W. 3 Shri. Lalsangzuala who contested in 1972 elections as the candidate of Congress (I) from Aizawl South Constituency and got elected and who joined the Mizoram Ministry in 1974 and remained so till May, 1977 and who again contested the Assembly elections in 1978 as well as in 1979 as Bongs (I) nominee from Aizawl East Constituency but got defeated on both occasions and who was General Secretary of Congress (I) in 1979 claims to have been present on 31.3.79 in the Office of the Returning Officer at the time of the scrutiny of the nomination papers. He says "I was present during the scrutiny. I was present during the scrutiny of the nomination paper of Aizawl West Constituency. Mr. R. Thangliana the election petitioner produced the electoral roll of Aizawl East Constituency. It is No. 28 Aizawl East Constituency

Returning Officer checked the electoral roll of Aizawl East Constituency and he was satisfied and asked the persons present there if anybody had objection against his nomination. No objection was raised by anybody. "In the cross-examination on behalf of Respondent No. 1, the witness says that the scrutiny of the nomination papers was being done number-wise and that he attended the office of Returning Officer during scrutiny before lunch and at the time when scrutiny of nomination papers of 27 Constituency was in progress. He does not remember the exact number of candidates of 29 Aizawl West due to lapse of time for which he also does not remember "that all the candidates were present for all constituencies". So far as he remembers many candidates were present. He did not represent Mr. R. Thangliana during scrutiny. But as General Secretary of the Party, he remained present in the interest of the party. On the other hand Respondent No. 1 deposes "At about 2 P.M. scrutiny was held regarding my constituency. After completion of the scrutiny of 28 Aizawl East Constituency, candidates of 29 Aizawl West were called for in the room of R.O. Out of 7 candidates of this constituency 5 were present. Mr. R. Thangliana and Mr. K. Zoliana of People's Conference Party (B) were absent". The respondent names the candidates who were present at the time of scrutiny and further says "Nomination papers were kept each in separate file. After opening the file, the R.O. enquired from the candidates present if any had any objection regarding any of the nomination papers. No candidate raised objection regarding any of the nomination papers

He accepted the nomination paper and wrote some endorsement." In this cross-examination Respondent No. 1 states "I remember all the members who were present during the scrutiny of 29 Aizawl West. There were 7 people present in the room of R.O. during the scrutiny, none objected. Mr. Thangliana is a voter of 28 Aizawl East Constituency There is no legal bar if he fulfils other formalities. The R.O. and the election officer might have had the electoral rolls with them at the time of scrutiny. I know Mr. Lalsangzuala. At the time of election he was the Secretary of the Congress (I) Party. He was candidate in the last election. He was a candidate from 28 Aizawl East. I do not know whether Mr. Lalsangzuala who was a candidate of 28 Aizawl East was present at the time of scrutiny of his constituency. I do not remember if he was there inside or outside the R.O.'s room. I do not know if a Secretary of the party was entitled to remain present at the time of scrutiny of the nomination paper of the party candidates" He further says that except himself, Mr. A.B. Pakunga and Mr. K. Zoliana, the other 4 candidates of 29 Aizawl West were electors of other constituency. But at the time of scrutiny he was not very serious and when the R.O. enquired as to whether the Respondent and others had any objection, they replied in the negative. He further states "It did not strike me at the time of scrutiny that these 4 non-electors had to go through certain formalities".

20. R.W. Shri.A.B. Pakung who was one of the candidates of 29 Aizawl West Constituency deposes that the scrutiny of nomination papers of 29 Aizawl West by R.O. was taken up at about 2 P.M. on 31.3.79 one after another. He states that during the scrutiny of 29 Aizawl East, the candidates of the constituency were present except election petitioner Mr. R.Thangliana and Mr.K. Zoliana. The Returning Officer took up nomination papers one after another and enquired from those present if they got any objection and the nomination papers were accepted. In his cross-examination he states that on the day of scrutiny of nomination papers he went to the election office at about 1 P.M. when nomination papers of 26 Assembly Constituency were being scrutinized. He was waiting outside the Office of R.O. and does not remember of all the candidates of 29 Aizawl West were waiting outside. He did not see Mr. Lalsangzuala there. Mr. Zairemthanga was standing outside. He also saw "the other candidates of 29. Aizawl West standing outside." He specifies that no candidate had electoral roll with him on that day and that he himself had a copy of the electoral roll for his own purpose. He also does not know the exact number of persons inside the R.O.'s Office at 1 P.M. At about 2 P.M. he entered the Office of the R.O. being the first person to do so. The R.O. according to the witness took up nomination papers one by one calling the name of each candidate concerned and at the time of scrutiny of each nomination paper he ascertained from those present whether they had any objection and on none raising any objection the R.O. accepted nomination paper. The witness further states that he did not see Mr. Lalsangzuala, General Secretary of Congress (I) sitting inside or standing outside.

21. Regarding P.W Lalsangzuala who deposes that he was present when scrutiny of nomination papers relating to 29 Aizawl West was taken up and continued in the Office of R.O. Mr. Lahiri learned counsel pointed that this witness cannot be taken to have been present at scrutiny of the nomination paper of the petitioner as section 36 of the Act excludes presence of others except those enumerated under the section at the place of scrutiny. So according to Mr. Lahiri the Returning Officer could not allow any person to be present in his room at the time of scruti-

tiny other than those entitled to be present there under section 36 of the Act. P.W. 3 did not belong to any of the categories of persons mentioned under section 36 who are entitled to be present at the time of scrutiny. But Mr. Majumder has to say that if it so happened that P.W. 3 being General Secretary of a party was allowed by the R.O. to remain present, thereby nothing was done which could invalidate the act of scrutiny done by the R.O. Learned counsel added that when this witness affirms his presence on oath, no suggestion was put to him by the other side that he was not present. From the evidence of R.W. 2, Shri Pakunga it is found that P.W. 3 was a candidate from 28 Aizawl East and was present at the Office of the R.O. on 31.3.79. R.W. 2 does not categorically say that the P.W. 3 was not present at the scrutiny of nomination papers of 29 Aizawl West in the room of R.O. Any way the evidence regarding the presence of P.W. 3 at the scrutiny cannot be brushed aside.

22. Mr. Majumder for the petitioner submits that when the R.O. found valid on his scrutiny the nomination paper of the petitioner, it has to be presumed that all formalities regarding the nomination paper were complied with inclusive of the provisions of section 33 (5) of the Act. He further argues that scrutiny of nomination papers is a quasi-judicial function which call upon the R.O. to discharge his duty with high judicial standards. The R.O. need not record reasons for finding the nomination paper valid although it is there that he is to give reasons for rejecting a nomination paper. It has to be taken that the R.O. was quite aware of the law and the rules in that behalf and he acted according to the law and the rules in disposing of the nomination paper. There is no allegation of bias on the part of the R.O. and therefore the natural presumption goes in favour of validity of the nomination paper. Nothing contrary has been made out nor is there anything prima facis obvious to find the nomination paper invalid. The other candidates including respondent No. 1 and R.W. 2 though they had the opportunity of raising objection regarding the nomination paper of the petitioner refrained from raising any objection in spite of their knowledge that the petitioner was not a voter of 29 Aizawl West constituency. It is therefore to be concluded that there was nothing objectionable regarding the nomination paper of the petitioner.

23. In this connection Mr. Majumder relied on the definition of "candidate" under section 79(b) of the Act and addressed at the bar that if it is taken for the sake of argument that the petitioner has not been duly nominated still he is a candidate for the purpose of section 81 of the Act in as much as he claims to have been duly nominated at the election. Mr. Majumder cited Madan Singh V. Laduram Choudhury & Ors., Election Law Reports Vol. XI 1955-56 wherein the Election Tribunal held that under section 81 of the Act read with section 79 any person who claims to have been a duly nominated candidate can present an election petition. He also referred to Dr. Poul Choudhury v. State of Assam, AIR 1960 SC 131 in which it was held that the acceptance of a nomination paper after scrutiny is not final or conclusive but it can be set aside; yet the acceptance of the nomination paper under section 36(8) makes the candidate whose nomination paper is accepted after scrutiny a validly nominated candidate at least for the purpose of receiving votes at the election. That being so, the candidate who received votes at the election has to be considered as a candidate for the purpose of section 81 of the Act. The submission of Mr. Majumder has force in it.

24. Mr. Lahiri learned counsel for the Respondent debated that had the election petitioner produced a copy of the electoral roll or a relevant part thereof or a certified copy of the relevant entries in the roll before the R.O. at the time of scrutiny, such a copy would have been a part of Ext. Pt. 1 nomination paper. But such a copy of the electoral roll or a certified copy of the relevant entries in electoral roll is not found along with Ext. P. 1. But Mr. Majumder submitted that mere non-finding of such a copy attached of such a copy attached to Ext. P. 1 does not constitute rebuttal of the presumption that every formality was observed in scrutiny of the nomination paper of the election petitioner inclusive of production of the aforesaid copy as claimed by the election petitioner. The dictionary meaning of the term "produce" is "to bring forward, to bring out, to extend, to bring-forth etc." It is not synonymous with the transitive verb "submit".

24. Mr. Lahiri relied on *Charanlal v. Sanjeeva Reddy*, AIR 1978 SC 499. In that case election of N. Sanjeeva Reddy was challenged. But the petitioner admittedly did not himself comply with the provisions of section 5(B) or section 5(C) of Presidential and Vice-Presidential Election Act (1952). Section 5(B) enacts that each candidate shall deliver to the Returning Officer at the place specified in this behalf in the public notice issued under section 5 a nomination paper completed in the prescribed form and subscribed by the candidate as assenting to the nomination and (a) in the case of Presidential election also by at-least 10 electors as proposers and at-least 10 electors as seconders. Section 5(C) provides that a candidate shall not be deemed to be duly nominated for the election unless he deposits a sum of Rs. 2500/-. The petitioner, however, admits in his petition that he did not deposit this sum of money as required under section 5(C) of the said Act. Therefore on his admission in the petition or plaint the petitioner was not a candidate either duly nominated or one who could claim to be so nominated. It was held that his nomination paper was rightly rejected by the Returning Officer and that the petitioner had no locus standi to challenge the election of the respondent. Relying on this decision Mr. Lahiri printed out that Madan Singh (*supra*) cannot prevail over the aforesaid decision of the Supreme Court. But obviously the two cases have different facts and circumstances. In *Charanlal* (*supra*) the very nomination paper of the petitioner was rejected by the R.O. and the petitioner admitted in his petition that he did not comply with the provisions of section 5(C) of the said Act. His nomination was rejected by the primary authority. The Supreme Court rightly held that the petitioner cannot be taken to be a person who has been or claims to have been duly nominated as a candidate at the election as provided under the section 13(a) of the said Act. Therefore *Charanlal* (*supra*) cannot be invoked in aid of the submission made by Mr. Lahiri. It should not be omitted here that Mr. Lahiri also cited *P.H. Jugal Singh v. P.H. Narasibhai*, AIR 1974 SC 951 therein it was held that the provisions of section 33 (5) are of mandatory nature in order to satisfy the Returning Officer in the mode enacted by those provisions that the candidate is an elector of a different constituency and that non-compliance of those provisions is not covered by section 36 (4) of the Act. *Narmada Prasad v. Chaganlal*, AIR 1969 SC 395, was also relied on by Mr. Lahiri. In that case it was held that compliance of section 33 (5) of the Act was not done by furnishing before the Returning Officer a certificate from an Officer who was also not proved to be an authorised Officer regarding his being elector of another Constituency. In that case it was laid down that the only mode of such compliance

is as provided in the provisions of section 33 (5) of the Act. On the same point Mr. Lahiri relied on *Avadh Raj Singh v. Jugal Kishore Gupta*, AIR 1979 SC 1148.

There is no doubt about the mandatory nature of the provisions of section 33 (5) of the Act and the mode of compliance with the provisions assaid therein. But as found above the petitioner in the instant case being an elector of 28 Aizawl East Constituency produced a copy of the electoral roll of 28 Aizawl East before the R.O. at the time of the scrutiny of the nomination paper and this part the petitioner has the status of a candidate as defined under section 79 (b) of the Act and as such he has sufficient locus standi to present the petition and therefore the petion is maintainable.

25. In connection with maintainability of the petition a contention was raised by Mr. Lahiri in that the petitioner did not conform to the proviso to section 83 (1) of the Act. His submission is that the affidabit sown by the petitioner accompanying the election petition does not mention the allegations made in para 16 of the election petition. The aforesaid proviso to section 83 (1) reads "provided that where the petitioner alleges any corrup practice, the petition shall also be accompanied by an affidavit in the prescribed from in support of the allegation of such corrupt practive and the particulars there". Form No. 25 (Affidivit) was given under rule 94 (A) of Conduct of the Election Rules 1961 is the prescribed Form. In the instant case the form in which the required affidavit has been sown by the petitioner is found to be substantially the same as Form No. 25. But under para 2 of the affidavit the petitioner does not mention para 16 of the election petition as to how he believes the contents of the paragraph to be true. The effect of this aforesaid affidavit regarding para 16 of the petition is that it falls under the category of his submissions before the Court. Mr. Majumder however has to say that the principal allegations of corrupt practice committed by the Respondent No. 1 are appeal given to public to vote against Congress (I) on the ground of its being a non-Mizo organisation and giving false symbol in the dummy ballot paper and that details of these corrupt practice and their particulars are given in paras 8 to 15 of the election petition and that para 16 of the petition begins with the words "Thar thus" which means it is a submission based on what have been stated in the foregoing paragraphs viz. para 8 to 15. Learned counsel also urged that what matters is the substance and not the form. Mr. Majumder cited *K.M. Mani v. P.J. Antony*, AIR 1979 SC 234 in support of his submission that the context total and totallity of the allegations have to be taken into considetation in order to appreciate the substance of the dispute involved. In the cited case it was found that paragraphs 3 to 6 of the Election petition in the case were verified by the election petitioner as true to his information. In the written statement of the respondent the objection was that "The affidavit filed along with the petition (was) not in conformity with the requirements of law." It was decided in that case that verification of the aforsaid paragraphs of the election petition was done in the aforsaid manner quite in conformity with the proviso to section 83 (1) and rule 94 A and Form 25 of the Conduct of Election Rules 1961. In the instant case paragraph 16 of the election petitioner has been found to have been verified as submission of the elcetion petitioner. Therefore it is found that the law in that behalf has been complied with in the aforsaid manner. In view of the discussion made above, Issue No. 6 is answered in favour of the election petitioner.

26. The next Issue which can be taken up conveniently for decision is Issue No. 1. This issue is whether appeals were issued by respondent No. 1 in dummy ballot papers exhorting the voters not to vote for the petitioner on the ground that his party (the petitioner's party) was a non-tribal organisation and whether it was done for the purpose of prejudicially affecting the prospect of the petitioner's election and if so whether it amounted to corrupt practice under section 123 of the Representation of the People's Act, 1951.

27. Now, admittedly in the dummy ballot papers allegedly issued in 29 Aizawl West by/on behalf of respondent No. 1 (Ext. P. 4) contain an appeal in the name of respondent No. 1; but it does not contain any appeal to the voters on any communal or racial ground. It is written in Mizo language and when translated into English it is found to be an innocuous appeal to the voters asking them to vote for the candidate. The statement of the appeal contained a few words of justification for voting in his favour. The election petitioner in his evidence admits, "The appeal is a plain one by respondent No. 1 for voting in his favour. There is nothing serious". Mr. Majumder urged that although the words "his dummy ballot papers" occur in the Issue as framed, the Issue in substance means the appeal as found in Ext. P. 6 i.e. the appeal issued in the name of Mawi's Mother on the reverse side of the dummy ballot paper issued in the name of Brig. Sailo of People's Conference Party, a candidate of 27 Aizawl North Constituency. Learned counsel debated that the petitioner's allegations is that appeal was made to voters not to vote for Congress (I) on the ground that it is a non-Mizo organisation and that this appeal was issued in the name of Mawi's Mother in the dummy ballot paper of Brig. Sailo and distributed in 27 Aizawl North and that 27 Aizawl North and 29 Aizawl West Constituencies being contiguous to each other, those dummy ballot papers containing the Mawi's Mother appeal "found their way" into 29 Aizawl West Constituency. This dummy ballot papers according to the learned counsel were distributed in 29 Aizawl East Constituency by the workers and partymen of P.C.P. which was done in the interest of respondent No. 1 and as such the circumstances show that there was consent of respondent No. 1 in distributing such dummy ballot papers. Mr. Majumder laid much stress on the framing of the Issue and that if the Issue has to be taken to imply the dummy ballot paper of respondent No. 1, it was for no worth in as much as it is clear that the dummy ballot paper of respondent No. 1, contained no communal appeal. In the context of the Issue which has not been framed for nothing, but which came into existence for meeting with an answer in that behalf, Mr. Majumder likes to persuade the Court to accept his version of the Issue which means the dummy ballot papers containing the appeal of Mawi's Mother. Mr. Lahiri on the other hand submitted that the clear language of the Issue cannot be put under strain so as to include something which is not there in the Issue. The Issue, according to him, has been framed in the context of the allegations of the election petition and that the dummy ballot paper of Respondent No. 1 is clearly stated there. He also argued that the provisions of section 83 of the Act have not been complied with regard to the dummy ballot paper containing the appeal of Mawi's Mother. The election petition, according to him is devoid of facts and particulars of alleged corrupt practice by way of appeal on communal or racial ground. He referred to paragraph 8 of the election petition in which it is stated "Appeals were issued not to vote for the petitioner on the ground that his party was a non-tribal organisa-

tion and he did this for the purpose of prejudicially affecting the prospect of the petitioner's election" etc. Under paragraph 11 the averment is that "The dummy ballot papers distributed in the petitioner's constituency viz 29 Aizawl West Assembly Constituency contained an appeal by Respondent No. 1 Shri Zairemthanga and obviously dummy ballot papers along with appeal were issued by respondent No 1. and his party. It was also issued with the consent and knowledge of Respondent No. 1 himself and it was his workers and partymen who distributed the same among the voters going from house to house", and in paragraph 17 of the petition it is stated. "That the dummy ballot papers which were published and distributed by the People's Conference Party, particularly in No. 27 Aizawl North (ST) Assembly Constituency, which constituency is contiguous to the petitioner's constituency, same appeals found their way into the constituency of the petitioner, i.e. No. 29 Aizawl West (ST) Constituency contained an appeal on the reverse side by one Mawi's Mother. In the said appeal the party of which the petitioner was a candidate viz. the Congress Party was described as a non-tribal organisation", etc. It is therefore found as pointed out by Mr. Lahiri that the facts and particulars in the petition are not sufficient so far as the ballot paper bearing the appeal of Mawi's Mother is concerned.

28. It is found that according to the petitioner the offensive appeal is contained by Ext. P. 6 (Mawi's Mother appeal). But neither the election petition nor the evidence on the side of the petitioner disclose the requisite facts and particulars as to who distributed such ballot papers in 29 Aizawl North and in what particular places and when. The facts are not sufficient for deducting any inference under section 100 (I) (b) and/or (d) of the Act.

29. It is therefore found that the first Issue must go in favour of the respondents as there is no offensive appeal in the dummy ballot paper of Respondent No. 1. The issue is therefore answered in favour of Respondent No. 1.

30 We now proceed to deal with the crucial controversy which runs through the remaining Issues. viz. Issue Nos. 2, 4 and 5 which are being taken up together decision as it is thought to be convenient.

31. The Issues together boil down to the following questions ; (I) whether the dummy ballot paper (Ext. P. 4) allegedly issued by/or on behalf of Respondent No. 1 contains wrong and false symbol of Congress (I) being the symbol allotted to the petitioner, (2) whether the dummy ballot paper was published by Respondent No. 1 or his election agent or any other agent or other person with his consent or with the consent of his election agent, (3) whether this dummy ballot paper was published and circulated in 29 Aizawl West Constituency, (4) whether Respondent No. 1 thereby took to corrupt practice or whether the result of the election in so far as it concerns the returned candidate viz. Respondent No. 1 has been materially effected by publication and circulation of the dummy ballot paper in the interest of the returned candidate by and agent other than the election agent of respondent. No. 1.

32. The gravamen of the election petitioner is corrupt practice as envisaged under section 123 (4) of the Act in connection with his candidature perpetrated by/on behalf of the contesting respondent with his consent. Sub-section 4 of section 123 of the Act requires (1) that there should be publication of any statement of fact

by a candidate; (2) that the fact is false; (3) the candidate believes it to be false and does not believe it to be true; (4) the statement is in relation to the candidature of another candidate; and (5) the said statement is one being reasonably calculated to prejudice the prospects of the other candidate's election. The onus on an election petitioner under section 123 (4) of the Act is to show that a statement of fact was published by a candidate or his agent or by any other person with the consent of the candidate or his election agent (*Nepal Chandra Roy v. Netai Chandra Das & Ors.*, AIR 1971 (3) SCC 303)

33. Firstly it has to be decided whether the dummy ballot paper, Ext. 4, contains a wrong and false symbol of Congress (I). It is stated under paragraph 5 of the election petition that the election symbol of the petitioner was "a upright hand facing palm" which is the official symbol of Indian National Congress (I). The same is stated under para 7 of the petition. But under paragraph 9 of the election petition the Congress (I) symbol is stated to be "Upright right hand facing palm". Under paragraph 9 of the election petition it is also stated that the questioned dummy ballot paper depicted Congress (I) symbol as a "left hand glove horizontally placed with a trident mark in the middle against the name of the petitioner." Ext. P. 4 is the dummy ballot paper under controversy. The arguments on behalf of the election petitioner are that the symbol "hand" allotted to the Congress (I) Party out of the national reserved symbols is one of upright right hand facing palm as given in Ext. P. 5 being list of free and national reserved symbols supplied by the Election Officer, and that in Ext. P. 4, not only the position of the "hand" has been placed horizontally but also the real "hand" has been depicted in a way resembling a hand glove. Over and above that, the trident mark has been impressed in the middle of the "hand". These facts according to Mr. Majumder, constitute a distorted, wrong and false symbol of Congress (I) Party which has been done only to mislead the voters and harm the election prospect of the election petitioner. Mr. Lahiri on the other hand has to say that what has been allotted as symbol to Indian National Congress (I) is a "hand" without description of the position of the "hand". He referred to Ext. P. I which is the nomination paper of the election petitioner. In this paper in the part for declaration of the petitioner, it is there that "The symbol I have chosen in order of preference - (i) Hand, (ii) X, (iii) X". He also referred to lists of political parties and symbols in relation to elections in all parliamentary and Assembly Constituencies other than the assembly constituencies in the State of Jammu & Kashmir under Notification No. 56/79 dated 28th September 1979 Part II section 3 (ii), dated 28.9.79 wherein under Table I the reserved symbol of Indian National Congress (I) is stated to be "hand". The position or description of "hand" is not given in the table. Mr. Lahiri therefore pressed the point that what has been allotted to Indian National Congress (I) is "hand" simpliciter without any description of the position or side of hand.

Therefore Mr. Lahiri would say that placing the "hand" in a horizontal position is neither wrong nor false representation of "hand" being the Congress (I) symbol. As regards it looking like a hand glove rather than genuine hand, the submission of Mr. Lahiri is that the five fingers of the hand are distinctly and separately visible as their natural exposition and that the palm is also quite visible and that what has been alleged as trident in the middle of the palm is nothing but a part of the palm linings. This being so, according to Mr. Lahiri, the "hand" as shown in the dummy ballot paper is a genuine one and not a false and wrong symbol.

34. But it is common knowledge springing from the prudence of an ordinary man of the society that a definite visible position of a physical thing has to be adopted in order to serve the distinct purpose for which it is taken. In this view of the ordinary course of human behaviour in a civilised society we have to find as to what particular position of the symbol of hand in the present case has been taken up by the persons or parties concerned. There is no dispute about the symbol of Congress (I) being a "hand" of man. The meaning of the hand as given in the Webster's 3rd International Dictionary (Unabridged) Vol. 1 is "the terminal part of the vertebrate fore limb when modified (as in man) as a grasping organ being made up of wrist meta carpus, terminal fingers and opposite thumb or of these parts excluding the wrist and exhibiting unusual mobility, flexibility both of the digits and the whole organ". The "hand" as given in Ext. P. 5 (list of free symbols and national reserved symbols) which was supplied by the Election Officer has the position of one of upright right hand facing palm. This shows that the "hand" as Congress (I) symbol has been given and accepted in a position as given by the Election Officer vide Ext. P. 5. The crux of the matter is what has been adopted and accepted in the concerned circles. This position and visual representation of the "hand" was accepted by the party to whom it was allotted and also this was known to other parties as well as the voters. The concerned party published and circulated this position and visual representation of "hand" among the voters. It has therefore to be presumed and I think there is no alternative hypothesis in this respect that this position (upright right hand facing palm) of "hand" is one which was adopted as the Congress (I) symbol.

35. On this point the evidence on record has to be taken into consideration. P.W. 2 election petitioner Mr. R. Thangliana deposes "My symbol was upright right hand facing palm. As candidates do I also started campaigning in my constituency". Again he says "My symbol was shown wrongly in the dummy ballot paper i.e. left hand glove was horizontally placed with a trident mark in the middle. That was confusing and misleading for the voters" He states that Ext. P. 5 contains this correct symbol marked Ext. P. 5 (1). In his cross-examination, he further states that Indian National Congress (I) was allocated "hand" which was "practically upright right hand facing palm". He continues "I did publish my pamphlet containing my Symbol. I tried to educate my electors about my symbol asking them to vote for Congress (I). The pamphlets were widely distributed in the Constituency". P.W. 3, Lalsangzuala states "On inspection I discovered that the dummy ballot paper was printed on white paper and that Congress symbol was falsely depicted as hand glove in a horizontal position instead of a hand in upright right facing palm position". He further says that "the symbol of Congress candidate as printed on the dummy ballot paper is shown as hand glove in horizontal position, whereas the symbol of Congress-I Party, a recognised national party is a hand in the upright position with palm. The symbol of Congress party in the dummy ballot paper was not possibly the symbol of Congress Party" His further statement is that false publication of Congress symbol in the dummy ballot paper had asverse effect on the voters particularly the illiterate voters and that Mr. R. Thangliana was defeated mainly because of the false publication of Congress symbol by the People's Conference Party and that Mr. Zairemthanga won because this created great confusion among the voters. In the cross-examination he further states that Ext. P. 4 contained a glove of hand in horizontal position with separate shape of each finger and thumb and that it looked like

a glove, not like hand of man and that the size of wrist was not proportionate to the hand wherefor it looked like a glove. P.W. 4 Shri Thanchuama says "They distributed paper showing false symbol of Congress (I). Right hand in upright position facing palm is the symbol of Congress (I). One left hand glove in horizontal position was shown in the papers distributed as Congress (I) symbol. That is the reason why we lost in the election." He continues "I distributed leaflets published by Mr. R. Thangliana in the public meeting. Those leaflets contained the correct symbol of Congress (I)." P.W. 5 Shri R. Zadawla deposes that he was given two dummy ballot papers by the girls who were distributing them on behalf of Respondent No. 1, and that he looked into the dummy ballot papers and found that Congress (I) symbol was shown in both the papers as hand glove in horizontal position. In the cross-examination he further states that the symbol of his party Congress (I) was upright right hand. He also says "In the dummy ballot paper given to me by the lady workers of People's Conference Party contained no fingers in the glove shown in the dummy ballot papers" Says he "though no fingers were seen it was clearly identified as a glove. There were marks of fingers but actual fingers were not seen. There was picture of 5 fingers in the glove."

36. Respondent No. 1 Mr. Zairemthanga categorically states in his evidence "the hand shown in Ext. P. (4) is not the symbol of Congress (I) and I have not seen such symbol in India of Congress (I). Congress (I) symbol is hand in upright position facing palm." R.W. 2 Shri A.V. Pakunga says "I knew it was simply hand. Only I knew that the symbol was hand." R.W. 7 Mr. C. Ramliana and R.W. 8 Mr. Thangthuama also affirm that the symbol of Congress (I) was upright hand facing palm.

37. It was argued for the respondent that all the PWs being Congress members are interested witnesses and that this devalues the credence of their evidence. But such evidence cannot be thrown away only on this account. In *Birbal Singh v. Keder Nath*, AIR 1977 SC 1, it was laid down that interested witnesses are not necessarily false witnesses and that the evidence of such witnesses must be subjected to closer scrutiny. The witnesses in this case have been subjected to lengthy cross-examination and nothing was elicited which could render their evidence unworthy of acceptance. The contemporary document Ext. P. 5 corroborates their evidence on this point. Mere political affiliation is no ground to think that the witnesses have no interest in telling the truth. There has been no suggestion on the part of the respondents that Ext. P. 4 or P. 6 contained correct symbol of the Congress (I) Party. There is no statement in the written statement or in the evidence of the R.Ws that what has been displayed as Congress (I) symbol in Ext. P. 4/P.6 was correct symbol of Congress (I). In view of the aforesaid discussion I find that the only inference that can be drawn in this respect is that the Congress (I) symbol was upright right hand facing palm and that Ext. P. 4/P.6 contained wrong and false symbol of Congress (I). It is to be noted that Mr. Lahiri on behalf of the respondents argued that a portion of the deposition of Respondent Mr. Zairemthanga should not be picked out of his entire deposition to ascribe such admission of the symbol to him without taking the evidence in its entirety. But Mr. Zairemthanga is ambiguous and categorical in this statement of his evidence which is separable from the rest of his deposition. The evidence for the election petitioner together with the statement of Mr. Zairemthanga as well as of RWs 7 and 8 on this point and other circumstan-

ces taken together pointedly and unerringly show that the inference as regards wrong and false representation of Congress (I) symbol in Ext. P. 4 is a compelling one without scope of any other laternative conclusion. This wrong and false symbol was printed and published in relation to the election petitioner's candidature.

38. The next question is whether this dummy ballot paper (Ext. P.4) was published and circulated in 29 Aizawl West Constituency in order to prejudice the election prospects of the petitioner and if so whethere it was done with the consent of the returned candidate or his election agent or whether such publication falls under the mischief of section 100(1) (d) of the Act.

39. Numerous authorities on both sides were cited during the course of very able arguments advanced by learned counsels of both sides on these points and those authorities spell out certain tests of proof in cases like the present one. Among the cited cases are Haji C.H. Mahammad Kōya v. T.K.S.N.A. Muthu Kōya, AIR 1979 SC 154; Sultan Salahuddin Owasi v. Mahammed Usman Shahee, AIR 1980 (3) SCC 281; B.Rajagopalo Rama v. N.G.Ranga, AIR 1971 SC 267 M. Narayan Rao v. G. Vanketa Reddy AIR 1977 SC 208.

40. The one golden thread inter alia that runs through all these decisions is that the onus of proof of corrupt practice in an election case lies on the party alleging the corrupt practice. It must at the same time be proved beyond reasonable doubt as in the case of a criminal charge. However, in M. Narayan Rao (supra) it was held "That the charge of commission of corrupt practice has to be proved beyond doubt like a criminal charge or guasi criminal charge; but not exactly in the manner of establishing the guilt in a criminal prosecution giving the opportunity to the accused to keep mum. The charge has to be proved on appraisal of the evidence adduced by both sides specially by the election petitioner."

41. It is the petitioner's case that the dummy ballot paper (Ext. P. 4) was printed at the Hnamte Press, Aizawl and that the owner of the press and printer at the relevant time was member of the People's Conference Party. But this narration is not found in the election petition. The election petitioner says in his deposition "On seeing the dummy ballot paper I say that it was printed at the Hnamte Press, Aizawl. According to me it should have been printed and published by respondent No. 1 because on top of the paper there is an appeal in his name to the People." In Prabhu Narayan v.A.K. Srivastava, AIR 1975 SC 968, it was held "the only charge made in the petition was the charge of publication of the pamphlets and not their printing. Any evidence regarding the printing was relied upon only to corroborate the evidence regarding distribution of the pamphlets. It is obvious that when section 123 (4) speaks of publication, it means distribution. Moreover, printing of the pamphlets would not fall under section 123 (4). Therefore the failure to give particulars of printing cannot lead to the dismissal of the petition. "It transpires from the evidence that a press of the name of Hnamte Press was existing in Aizawl and that the proprietor Mr. Hnamte had his political affiliation with the People's Conference Party. There appears to be no reason to think that such printing of Ext. P. 4 was done surreptitiously in any other press displaying the name of Hnamte Press and the name of

Mr. Zairemthanga therein in order to place the proprietor of Hnamte Press and respondent No. 1 in embarrassment. R.W. 3 Lalbeisei, daughter of G.L. Hnamte affirms the existence of the Press in Aizawl at the relevant time. There is no doubt that Ext. P 4 dummy ballot paper was printed at the Hnamte Press.

42. Now the question of publication and distribution of the offensive dummy ballot paper in 29 Aizawl West constituency is taken up. In *Prabhunarayan (supra)* it was held that the publication as used under section 123 (4) of the Act means distribution. In *S.N. Balakrishna v. Fernandes*, AIR 1969 SC 1201 it was laid down that the petitioner may prove a corrupt practice by the candidate himself or his election agent or some one with the consent of the candidate or his election agent in which case he need not establish what the result of the election would have been without the corrupt practice. If the petitioner does not prove the corrupt practice by the candidate or his election agent or any other person with the consent of the returned candidate or his election agent, but relies on a corrupt practice committed by an agent other than an election agent he must additionally prove how the corrupt practice affected the result of the poll. Unless he proves the consent to the commission of the corrupt practice on the part of the candidate or his election agent he must face this additional burden.

43. In the election petition the petitioner states that on 25.4.79 one Shri R. Sangkhuma of Khatla which falls within 29 Aizawl West, passed over to him copies of dummy ballot papers and that on examination of the dummy ballot papers he found that as against his name a wrong election symbol had been shown which was left hand glove horizontally placed with trident in the middle as the symbol of the petitioner against his name in the dummy ballot paper. But Shri R. Sangkhuma has not been examined as witness. It is further stated in the petition that on being informed by Bawitluanga, a Congress candidate for the assembly seat in 27 Aizawl North Constituency that similar offensive dummy ballot papers were distributed in 27 Aizawl North, General Secretary of the Congress Party Shri Lalsangzuala took up the matter with the Returning Officer, Aizawl District and that the Returning Officer advised the General Secretary to file election petition after the election. It is further stated that Mr. Lalsangzuala submitted a written complaint in that behalf to the Returning Officer but that was not accepted. In the petition it is stated that on 25.4.79 the offensive dummy ballot paper was distributed among the voters in the Khatla Bungkawn area which covers three villages having 3056 voters therein. The names of 4 ladies who distributed the dummy ballot papers are mentioned in the petition wherein 4 witnesses to such distribution have also been named, but only one of them viz. Shri R. Zadawla was examined as P.W.5. Next it is stated in the petition that on 27.4.79 being the date of election in 29 Aizawl West, dummy ballot papers were distributed in Tuikual area by Shri Thangthuama and Shri C. Ramliana, Shri Thangchuama, President Village Council, Tuikual and Shri Lalkhuma of Tuikual (D) were witnesses to such distribution of the offensive dummy ballot paper. It is also averred in the petition that such dummy ballot papers were hung in the Public Notice Boards which was seen by said President of the Village Council. Under para 19 of the petition it is stated "After causing distribution and wide circulation of the dummy ballot papers, the Respondent No. 1 and his party workers and agents came to realise the mistake of them and so as a last minute move they issued a letter to the Assistant Returning Officer under which the subject was shown as information regarding publication and withdrawal of request to voters. In

this letter the President of the Party Shri D.P. Liankaia on 25.4.79 deeply regretted the matter and sent the information to the Assistant Returning Officer." This letter according to the petitioner however did not counter-balance the prejudicial effect caused to the election prospect of the petitioner.

44. Respondent No. 1 in his written statement denied the allegations of printing and publishing the offensive dummy ballot papers, but says "Even if any such dummy ballot papers were published the same was done without the knowledge, consent and connivance of the respondent No.1. In any event purported circulation of dummy ballot papers can never be reasonably calculated to prejudice the prospect of the election petitioner" (para 14). Again he says under para 16 of the written statement "At any rate even if any such distribution was made, the same did not cause any prejudice to the election petitioner." Under para 26, the respondent states that Mr. Liankaia was merely the President of the Khatla P.C.P. Unit which is nothing but a village unit and that the alleged letter dated 25.4.79 was written to the Assistant Returning Officer by him on his own and without authority and knowledge and consent of the respondent or his agent and that even the Khatla Village Unit of the Party did not authorise him to write such letter.

45. Mr. Majumder referred to N. Bimala Debi v. K. Madhusudhan Reddy, AIR 1975 SC 1135 and stressed that the respondent has made dubious pleadings in the written statement with relation to the allegations in the petition. In the aforesaid case it was held that the Respondent cannot be allowed to draft his pleadings in a dubious way and try to shape either his evidence or his arguments to suit either theory. Mr. Majumder argued that such dubious pleadings as referred to above mean the admission of the connected allegations. But in the last analysis it is found that the respondent can not be charged with duplicity in his pleadings. His case is that to his knowledge and with his consent no such dummy ballot papers as alleged in the petition were published and distributed and that even if these were published and distributed, he had no knowledge of or consent to or connection with such publication and distribution. These two lines of approach do not dislodge each other. Learned counsel for the petitioner also referred to the pleadings of the respondent saying that the pleadings suffer from the vice of nontraverse. But I find that so far as the main allegations are concerned, these have been substantially traversed by the pleadings of the respondent.

46. The election petitioner relies on the following things to prove publication and distribution of the offending dummy ballot papers in 29 Aizawl West Constituency on 25th and 27th of April, 1979, (1) the oral evidence; (2) complaint filed by Mr. Lalsangzuala, General-Secretary of Congress (I) Party to the Assistant Returning Officer; (3) letter of regret written by Mr. Liankaia, President of Khatla P.C.P. Unit, (4) printing of the dummy ballot paper in the Hnamte Press, as well as (5) documentary evidence.

47. P.W. 2 is the election petitioner Mr. R. Thangliana who says that Mr. R. Sangkhuma showed him a dummy ballot paper on 25th April at about 10 A.M. He did not take any serious view of this, but in the following morning while he was sitting in the Congress (I) Office. Mr. Zadawla came there and told the petitioner about similar dummy ballot papers. There were some other leaders of Congress (I) in that Office at the time. All of them checked the dummy

ballot papers and found inter alia that the wrong symbol of Congress (I) was shown in those dummy ballot papers. The witness further states that the General Secretary Mr. Lalsangzuala told him that he had already taken up the matter of wrong dummy ballot paper with the Returning Officer and tried to submit a written complaint to him and that the Returning Officer did not accept the written complaint. The witness identifies Ext. P. 4 dummy ballot paper. On 28th April after the election at about 4 P.M. Mr. Thanthuama P.W. 4 came to the Congress (I) Office with copies of the same dummy ballot papers and told him that he had received the dummy ballot papers from Mr. Thangchuama a P.C. Party worker and that he had collected the dummy ballot papers, one from Mr. C. Ramliana P.C.P. worker of Tuikual village and that Mr. C. Ramliana in his turn collected the dummy ballot papers from one Mr. Lalkhuma in the morning of 27th April. The witness further states that Mr. Thanchuama had a quarrel over the dummy ballot papers with the People's Conference Party workers. The witness deposes that he published his own pamphlets containing his symbol and tried to educate the electors about his symbol asking them to vote for Congress (I). But the witness (election petitioner) did not himself see any distribution of the offending dummy ballot papers in the constituency. P.W. 3 is Mr. Lalsangzuala, General Secretary of Congress (I) at the relevant time who deposes that he came to know from his party workers that the People's Conference Party workers were distributing extensively dummy ballot papers and that a few days before the election day he found in Khatla dummy ballot papers. But he does not name his party workers from whom he learnt thereabout. On 23rd April 79 one of his Secretaries Mr. Bawitluanga who was a candidate from Aizawl North Constituency brought a dummy ballot paper issued by Brig. T. Sailo, People's Conference Party candidate from the same constituency and complained that the Congress symbol was falsely printed therein. On inspection the witness saw that wrong and false Congress (I) symbol was printed on the dummy ballot papers. He also found many other illegalities in the dummy ballot paper. He found also a communal appeal contained in the reverse side of the dummy ballot paper in the name of one Mawi's Mother which of course does not concern us here. The witness prepared a complaint report and took it along with dummy ballot paper to the Returning Officer personally. The Returning Officer told him that he could not do anything and that the witness could submit election petition after election. The Returning Officer did not accept the complaint. Ext. P. 7 is the copy of the complaint report. The witness corroborates the statement of P.W. 2 as to what happened in the Congress (I) Office on 26th April as regards the dummy ballot paper. As there was very little time left before the poll, the witness advised others of his party to discuss the matter after the election and that there was no time for dispelling the confusion created to the voters by the dummy ballot papers. The witness also identifies Ext. P. 4 dummy ballot paper saying that it contains a wrong and false publication of Congress (I) symbol in the dummy ballot paper had most adverse affect on the voters particularly the illiterate voters. He came to know from Mr. R. Zadawla that a letter of regret was sent to the Assistant Returning Officer by the People's Conference Party Unit of Khatla. The witness however did not see himself the distribution of dummy ballot papers. He did not make any enquiry from the Hnamte Press as to the dummy ballot paper. He could not himself get a Single copy of the dummy ballot paper on enquiry from his party workers.

48. P.W. 4, Shri Thangchuama was a member of the Aizawl District Congress Committee and also a village council President of Tuikual. He worked for Congress (I) candidate during the Assembly election of 1979 in 29 Aizawl West Constituency. He visited all the villages except a few which lay in the south of 29 Aizawl West and arranged for public meeting. He also participated in door to door campaign for Congress (I) in the said constituency and distributed leaflets published by Congress (I). During campaigning he was preceeding from Tuikual to Luangmual and on way saw Mr. Zairemthanga, Respondent No. 1 doing house to house campaigning at Vaivakawn and also saw workers of People's Conference Party doing house to house campaigning and distributing pamphlets and leaflets. According to the witness they were distributing papers showing wrong symbol of Congress (I) i. e. one left hand glove in horizontal position in place of right hand in upright position facing palm which is the symbol of Congress (I). On the day of election he went to Tuikual polling station at about 7 A.M. to cast his vote there. On way he saw papers showing wrong symbol of Congress (I) which were displayed and hung all about those places. He saw those papers hanging in notice boards, fences and hill sides. At the polling booth, says he "we had not arguments with the workers of People's Conference Party about those papers. On the question of displaying wrong symbol of Congress (I), we were very much disappointed and told them that we will go to law. At this time Mr. Zairemthanga appeared there "Although this witness was at the polling booth from morning till 3 P.M., he does not say what Mr. Zairemthanga did thereafter. He identified Ext. P. 4 and says that he saw similar dummy ballot papers in Tuikual area and that those papers contained symbol like Ext. P. 4 against the name of the election petitioner. On 28th April, he went to Congress Office and handed over two dummy ballot papers to Mr. Thangliana which he collected on the day of election. Of the three dummy ballot papers which he collected, one was hanging somewhere and the second one was given to him by Mr. Thangthuama, a People's Conference Party worker and the third one was collected by him from Lakhuma who had collected it from C. Ramliana. In the cross-examination he says he gave two copies of dummy ballot paper to Mr. Thanthuama on 28th April. When he handed over the dummy ballot paper containing Mawi's Mother appeal to Mr. Lalsangzuala on 28th April, the latter told him that he had already submitted one complaint. P.W. 5 Shri R. Zadawla was an Executive Member of the District Congress Committee and General Secretary of Block Congress of Aizawl West Constituency and also Secretary of Khatla Unit of Congress (I). In the elections of '79 he worked for Congress (I) candidate at Khatla and Bungkawn within 29 Aizawl West. He and other workers of Congress (I) organised public meeting, conducted house to house campaign and distributed symbol of election petition in the first part of April/79. He saw the workers of People's Conference Party distributing dummy ballot papers and names those distributors who are - (1) Tlangengi, daughter of Liankaia (President of Khatla Unit, PCP), (2) Zodinpuui Sailo, daughter of Khatla Unit Committee Member of PCP. (3) Lalkrosthangi, daughter of Zatianga, Treasurer of PCP, Khatla Unit, and (4) Lalbeiseii, daughter of G.L. Hnamte, owner of Hnamte Press. Those ladies distributed dummy ballot papers at Khatla and Bungkawn on 25th April/79 morning. These ladies were distributing those dummy ballot papers while the witness and others of his party were distributing symbol of the election petitioner. It is the evidence of the witness that those lady workers gave their dummy bollot papers to the witness and others of his party jokingly telling them to vote for their party although the witness and others belonged to a Vai Pawl Party. The witness and others also gave

their leaflets containing the symbol of Mr. Thangliana to those lady workers telling them to vote for them. This was done by them jokingly. The witness was given two dummy ballot papers by those girls. On looking into the dummy ballot papers the witness saw the Congress (I) symbol having been shown as hand glove in horizontal position. In one of those dummy ballot papers he saw an appeal in the name of Mawi's Mother. On 28th April the witness went to Congress office to meet Mr. Lalsangzuala. Before that he also visited the Congress office and handed over those dummy ballot papers to Mr. Thangliana and Mr. Bawitluanga. On 28th April he informed Mr. Lalsangzuala at the Congress office that he had heard at Khatla polling station people talking about submission of apology with regard to the dummy ballot paper to the R.O. or somebody else.

49. In his deposition Respondent No. 1 denies the allegations brought by the election petitioner and says that it is not a fact that those dummy ballot papers like Ext. P.4 were published and distributed with his consent and knowledge. He also denies such papers having been distributed by his workers or those 4 ladies named by the election petitioner. After receiving the election petition, he enquires about this and came to know that no such dummy ballot papers were distributed in Khatla Bungkawn on 25.4.79 or in Tuikual on 27.4.79. He also enquired and found that no such paper was hung in public notice boards. He also enquires of Mr. D.P. Liankaia about the alleged letter of regret written to the Assistant Returning Officer, but Mr. Liankaia denied to have issued such a letter. He further says that Mr. Liankaia was President of Khatla P.C.P. unit which is no more than a village unit and that the alleged letter dated 25.4.79 was written to the R.O. by him on his own account and without authority, knowledge and consent of the witness (Respondent No.1) or his agent. He also affirms that even the Khatla village unit of the party did not authorise Mr. Liankaia to write this letter. As regards Mr. Hnamte, Proprietor of the Hnamte Press, he says that this person might be the worker of People's Conference Party. The witness says that during the election campaign he published leaflets containing his appeal and photograph. He is not sure whether some of his papers were printed at Hnamte Press. He also does not know whether those lady workers (named above) were his workers. The witness gives out that he did not know all the activities of his party workers and that normally they work with knowledge and consent of the party units. R.W. 2 is Mr. A. V. Pakunga. He contested the assembly election in 1979 from 29 Aizawl West Constituency. He does not give any light about publication and distribution of dummy ballot papers; but he deposes that he heard Mr. Thanchhuma telling about the quarrel between Congress Workers on the one hand and the P.C.P. workers on the other hand in the shop of Thanchhuma and that he saw Thanchhuma at the polling booth of Tuikual on the day of poll. He affirms that People's Conference Party had girl workers doing house to house campaign at Dinthar which is about 3 KMS from Khatla. He came to know about the complaint lodged by Mr. Lalsangzuala to the Returning Officer regarding the dummy ballot papers afterwards and does not remember from whom he learnt this and that was about three months after the election. R.W. 3, Lalbeiseii, daughter of G.L. Hnamte is aged 18 years. It transpires from her deposition that she is not a member of any political party nor is she connected with any political party. She did not take part in any campaigning for any political party in the election of 1979. About 2/3 months after the elections respondent No. 1 met her and enquired from her regarding distribu-

tion of dummy ballot papers. She informed him that she never distributed any dummy ballot paper. She denies her acquaintance with the other girls named by the petitioner as having distributed dummy ballot paper. Hnamte Press belongs to her family. She does not know if respondent No. 1 visited Khatla before the election. She is a resident of Khatla and denies having met Mr. Zadawla on 25th April, 1979 on the way. But later she says that she does not remember if she met Mr. Zadawla before the elections. She also denies having given any dummy ballot paper to Mr. Zadawla on 25. 4. 79 telling him jokingly that he was a Vai Pawl and that he should vote for Mr. Zairemthanga.

50. R. W. 4 is Lalkrosthangi, daughter of Zatianga. She is aged 14 years and belongs to Khatla. On seeing Ext. P. 4 she says that she never saw this paper before. She did not distribute any ballot paper like this. She knows Tlangengi and Zodinpuui of Khatla. After the elections Mr. Zairemthanga met her and enquires from her as to whether she distributed dummy ballot papers. She replied in the negative. She denies having given Pu Zadawla any paper being in company with Lalbeiseii, Zodinpuui and Tlangengi on 25. 4. 79. R. W. 5 is Tlangengi, daughter of D.P. Liankaia. She is aged 24 years and belongs to Khatla. She is an L.D. Assistant in P.W. Department. She denies having worked for any candidate in 1979 elections. Her father belongs to People's Conference Party. She did not distribute any paper like Ext. P. 4 or P. 6. After 2/3 months of the elections Mr. Zairemthanga met her at her house and on his enquiry whether she distributed the papers in which the photograph of Mr. Zairemthanga was printed she said "I distributed. He showed me one white coloured paper resembling a ballot paper. This was attached to some other paper. The paper was thicker than Ext. P. 4. That was the only paper shown to me". She was a voter in the afore-said elections. Again she says "I was not a worker of the P.C. Party candidate during the last election in 1979. I distributed papers for Mr. Zairemthanga in the last election. I did not distribute papers with Lalbeiseii, Zodinpuui and Lalkrosthangi. I took my small sister with me to distribute the papers. I gave them to my neighbours as my father asked." Next says she in the cross-examination "He (Zairemthanga) asked me of the papers I distributed. I distributed about 2/3 copies of pamphlets bearing the photograph of Mr. Zairemthanga. Mr. Zairemthanga told me showing a paper which is little thicker and bigger than the ballot paper from his file white in colour and told me Mr. R. Thangliana had filed a case in the High Court accusing him of distributing the same. Mr. Zairemthanga asked me whether I, Lalbeiseii, Zodinpuui and Lalkrosthangi distributed those papers. I only told him that I did not distribute and I did not tell about other girls. I do not know if they have distributed. I cannot say if they distributed dummy ballot papers I used to meet Mr. Zadawla on my way to church. He used to play with me." It is also in her evidence "My father told me that summons from the High Court has come and that I should go to stand as witness to depose regarding distribution of dummy ballot papers". She further says "Mr. Zairemthanga showed me a paper which may be similar to Ext. P.4 which is white colour. I do not remember if that paper contained the seven names and seven symbols as there in Ext P.4 That paper did not contain the photograph of Mr. Zairemthanga. I do not remember if it contained his name, Zairemthanga as in Ext. P.4 (2) in the papers shown by Mr. Zairemthanga I am not sure if there was a hand in horizontal position as in Ext. P.4 (1). But there may be

hand in upright position. I do not know if he showed me a paper like Ext. P.4 bearing the name of Mr. T. Sailo. He did not show me any paper with similar writing as in Ext. P.6 It might be that he left the house after asking me about the paper like Ext. P.(4)."

51. R.W.6 is Zodinpuui. She is aged 24 years and belongs to Khatla. It transpires from the evidence that she did not campaign nor did she work for any political party in the elections of 1979. She denies having seen any paper like Ext. P.4 before her coming to the witness box. Mr. Zairemthanga met her and enquired from her as to whether she distributed papers in the elections. She said that she did not distribute any paper either alone or in the company of other ladies. She denies having passed over any paper to Mr. Zadawla of Khatla. She discloses that she did not know in which case she was summoned by the Court but the driver of the car in which she had to appear in Court. This took place in Mizoram House at Gauhati. She does not know if that in Mizoram house the other lady witnesses talked to her about the case. Says "Mr. Zairemthanga did not ask me if I had distributed any dummy ballot paper, but he only asked me whether I had distributed any paper. I did not ask why he was asking me this question. He did not tell me that Mr. Thangliana had filed a case in the High Court alleging that I and Lalbeisei and others had distributed dummy ballot papers." She denies having seen any paper like Ext. P.4 or P.6 nor did any body show her any such paper before. P.W.7 is Mr. C. Ramliana of Tuikual who is an employee of a motor workshop in Tuikual. He took part in the election campaign in 1979 for the People's Conference Party. His activity was confined to Tuikual area. He along with others distributed papers house to house and the papers contained an appeal of Mr. Zairemthanga. He denies having distributed any paper like Ext. P.4 and says that the papers they distributed contained a photograph of Mr. Zairemthanga and the symbol of the People's Conference Party. 2/3 months after the elections Mr. Zairemthanga met him and showed him a paper like Ext. P.4 and informed him that Mr. Thangliana had filed a case alleging distribution of papers like this. He informed Mr. Zairemthanga that he did not distribute any such paper. Mr. Zairemthanga went to the polling station of Tuikual at about 10/11 A.M. during his presence there. He says that he distributed two kinds of papers - one containing the photograph and symbol of Mr. Zairemthanga and the other containing an appeal issued by the People's Conference Party to voters for voting in favour of the Party. He also deposes that Mr. Thangthuama also distributed papers on behalf of the People's Conference Party. The witness deposes further "I had seen posters, pamphlets and appeals hung on the walls and fences in the Tuikual area. I saw many posters and pamphlets including those of Congress I on public notice boards within Tuikual area. I did not see any Congress pamphlets with photograph, but I saw pamphlets with symbols. I did not see any other appeal except those with the photograph and symbols" R.W. 8 is Thangthuama who is a member of the People's Conference Party since its inception in 1975. In the election of 1979 he worked for the People's Conference Party in Tuikual area. He denies having distributed any dummy ballot paper like Ext. P.4 or P.6. About three months after the elections Mr. Zairemthanga went to his residence and showed him a paper like Ext. P.4. Mr. Zairemthanga enquired of him as to whether he distributed papers similar to those during the elections. He replied in the negative. He did not meet Mr. Thanchuama on the day of poll. But he met him after about two weeks of the election. He says that he worked together with Mr. Liankaia for the party. Apart from other workers including the witness, there

were also lady workers for his Party. Those lady workers also distributed papers during the election campaign. He further says that there were quite a number of lady workers for the P.C. Party. The witness says "We also distributed our papers to voters who were thought to be Congress supporters. The Congress workers also gave their papers to our workers. I did not give the papers to Mr. Thanchuama because he did not belong to my area." He further says that there was no distribution of papers at Tuikual when the public meeting was held at Tuikual in which Mr. Zairemthanga was present. Says he "Around Tuikual area on hill sides, fences, walls and public notice boards and all around there were huge number of posters, appeal and pamphlets hung all around. It was not possible for me to read or see individually all the appeals and posters". Also he says "As Mr. Zairemthanga was one of the leaders of the Party, whatever paper was distributed was distributed with his knowledge and consent". R.W. 9 is Shri K. Biakchungnunga, the President of the People's Conference Party. He bagged one seat of the Mizoram Assembly in the elections of 1979 on behalf of his party. He discloses that the appeals for voting issued by individual candidates of his party had to be approved by the General Headquarters and that apart from the Headquarters no other unit or branch of the party was permitted to publish any appeal or any other document. He says that Mr. Zairemthanga published an appeal requesting to vote for him containing his photograph and another appeal containing his bio-data and that these documents did not bear the symbol of any other party. He denies that any ballot paper like Ext. P. 4 or Ext. P.6 was published and distributed under the authority or knowledge of the party headquarters or any subordinate unit of the party. It is disclosed from his evidence that some of the candidates might have got their personal appeals printed in other Presses than the Maranatha Press. The witness did not inquire in the A.R.O's Office as to whether Mr. Liankaia has written any letter of apology to the A.R.O. (Mr. Gupta) when he came to know of this allegation from the election petition. R.W. 10 is Mr. Lalhmingthanga who belongs to People's Conference Party and who was a resident of Khatla. Mr. Zairemthanga met him in June/79 after the elections as he was Secretary of the party unit and as Mr. Liankaia was out of Aizawl and apprised him of the election case. On enquiry made by Mr. Zairemthanga in that behalf about publication of dummy ballot papers and about the letter of apology written by Mr. D.P. Liankaia to A.R.O. in connection with distribution of dummy ballot papers, the witness told Mr. Zairemthanga "That the Unit President had no authority to print such papers and further that the unit itself did not have any authority to make any printing or publication of papers without the instruction of General Headquarters." The witness further says that he knew that Mr. Liankaia did not print any paper like Ext. P. 4 and did not distribute any such paper or did not send any letter of apology to the A.R.O. The witness discloses that Mr. Zairemthanga did not discuss with him about the issue of dummy ballot papers by Mr. D.P. Liankaia.

52. From the evidence of P. W. 4 Thangchuama and the evidence of P. W. 5 R. Zadawla it transpires that the offending dummy ballot papers were distributed in 29 Aizawl West Constituency by the workers of the People's Conference Party. As said before P.W. 4 saw such distribution on 27th April while he was proceeding from Tuikual to Luangmual he saw workers of People's Conference Party doing house to house campaigning and distributing pamphlets and leaflets. He also says that they distributed papers showing wrong symbol of Congress (I). Such papers were displayed and hung all around such as on notice boards, fences and hill

sides. He also says that at the polling booth they (Congress-I workers) had not altercation with the workers of the People's Conference Party about those papers and on the question of displaying wrong symbol of Congress (I). He deposes that papers similar to Ext. P.4 dummy ballot paper were distributed in Tuikual area by the workers of the People's Conference Party. P.W. 5 Mr. Zadawla as said before deposes to the fact of distribution of wrong dummy ballot papers at Khatla and Bungkawn on 25th April, 1979 morning by Tlangengi, Zodinpuui, Lalkrosthang and Lalbeiseii. This took place while the witness and other workers of Congress (I) were distributing the symbol of Mr. Thangliana. He also says that those girls workers handed over to them jokingly some offending dummy ballot papers asking them to vote for People's Conference Party and that the witness and others of his party also passed over to those girls leaflets containing the symbol of Mr. Thangliana in turn asking them jokingly to vote for them (the Congress-I party). The evidence of these two witnesses has not been shaken by cross-examination in this respect. The girl workers who have been examined by respondent No. 1 of-course denied such distribution. R.W.5 Tlangengi however admits that she distributed Papers for Mr. Zairemthanga in that election though she denies having done so together with other three girls examined in this case. She says that she took her small sister to accompany her in the work of distribution of papers. But at the beginning of her deposition she gives out that she never worked for any candidate in the elections of 1979. She also says that she distributed those papers as told by her father Mr. D.P. Liankaia. Of-course she narrates that she distributed 2/3 copies of pamphlets bearing the photograph of Mr. Zairemthanga. As regards Mr. Zadawla she admits that she had playing terms with him in her examination she further states that before coming to the Court her father told her that she should stand as witness to depose regarding distribution of dummy ballot papers. A thorough scanning of the evidence of the girl witnesses for respondent No. 1 together with the political affiliation of their fathers point to an inference though not conclusive that they took part in distributing the offending dummy ballot papers. It is to be noted that no pamphlet or dummy ballot papers has been produced in Court on behalf of respondent No. 1 alleged to have been distributed by the workers of the People's Conference Party. The evidence of the eye-witnesses for the petitioner viz. Mr. Thangchuama and Mr. Zadawla is rather corroborated by the shaky evidence of the girl witnesses for respondent No. 1 along with other materials on record.

53. The evidence of complaint filed by the General Secretary Mr. Lalsangzualla also remains unshaken and it is corroborated by the written statement of respondent No. 7. It does not appear from the record that respondent No. 7 has any hostile interest against respondent No. 1 or that the aforesaid written statement was not filed by/or on behalf of respondent No. 7. Next as regards the letter of regret written by Mr. D.P. Liankaia, President of Khatla Unit it has to be said that this is corroborated by the evidence of P.W. 1, Mr. T Gupta. He was the Assistant Returning Officer and he says "Mr. D.P. Liankaia submitted a petition to me stating that he published some dummy ballot papers. He submitted some documents with the petition I do not remember having received any dummy ballot paper along with the petition. I have come across dummy ballot papers like one as document 'X'. The document marked 'X' is the document marked Ext. P.4 on being instructed by the Returning Officer, I forwarded the application with all, enclosures to the

Superintendent of Police for necessary action." There is no suggestion on behalf of respondent No.1 that the petition referred to by Mr. Gupta as having been submitted by Mr. Liankaia was something else than the alleged letter of regret. This is a strong corroboration of the evidence of such a petition adduced on behalf of the election petitioner

54. The offending dummy ballot paper has been found to have been printed at the Hnamte Press and it has been seen that the owner of the Hnamte Press was affiliated to the People's Conference Party. R.W. Lalbeiseii is the daughter of Mr. G.L. Hnamte, owner of the Press. As it has been found that the questioned dummy ballot paper was printed at the Hnamte Press, a presumption goes in favour of the election petitioner that the dummy ballot paper was also published and distributed.

55. As regards the documentary evidence this has been discussed before. The existence of Ext. P. 4 itself points to the fact that though to a very limited extent that such dummy ballot papers got circulated in the area of 29 Aizawl West Constituency.

56. It has not been the case of the respondent that the election petitioner or somebody else on his behalf or any other person or party printed and distributed this dummy ballot paper in order to put the respondent in difficulty and to give a handle to the election petitioner for coming to Court with an election petition in case he got defeated.

57. It having been found that the offending dummy ballot paper was distributed by some workers of People's Conference Party, it remains to be seen as to whether respondent No.1 or his election agent or any other person with his consent or with consent of the election agent published and distributed this dummy ballot paper.

58. In S.N. Balakrishna (Supra) it has been laid down that there must be some reasonable evidence from which an inference can be made of the meeting of the minds as to the publication or at least a tacit approval of the general conduct of the agent. Balakrishna also laid down the standard by which the returned candidate may be held liable for corrupt practice perpetrated during the elections. It is an established principle of the law that mere knowledge of corrupt practice is not enough to rope in the returned candidate on the ground that such knowledge implied consent as it has been ruled in several cases that knowledge is not consent.

59. It has been argued on behalf of the election petitioner that though there be no direct evidence to prove consent of respondent No. 1 to the publication of the offending dummy ballot paper, it must be found to have been proved by the circumstantial evidence on record. Practically there is no direct evidence to prove that the dummy ballot paper concerned was in fact printed, published or caused to be published or printed by any agency of the returned candidate. The election petitioner's case is that it was done with the consent of the returned candidate. Learned Counsel Mr. Majumder referred to B. Rajagopala Rao v. N. G. Ranga AIR 1971 SC 267 and argued that by the circumstances on record it has been established that respondent No. 1 had his consent to the printing and publication of the dummy ballot paper. In B. Rajagopala (Supra) it has been held that proof of express consent is not necessary and that inference of such consent may be raised from the circumstances. It was also held therein that prior knowledge of the con-

tents and the knowledge that it is likely to be published may raise an inference of consent, if the candidate deliberately keeps quiet does not stop the publication if it be within his power and that where the offending matter has already been published and thereafter it comes to the knowledge of the candidate at the election and he does not take steps to repudiate it, the consent may not necessarily be inferred unless the candidate or his election agent permits or aids in publication. In the instant case no prior knowledge or knowledge at the time of the election on the part of the returned candidate has been proved. It is in evidence that before the poll day there was a meeting for the People's Conference Party which was attended by respondent No. 1, but there is no evidence that the offending dummy ballot paper was distributed either in the meeting or during the time of the meeting in the surroundings of the venue of the meeting so as to ascribe knowledge thereof to the returned candidate. From the evidence of P.W. 4 Thanchuama it is found that when there was an altercation between the workers of the People's Conference Party and the workers of Congress (I) at the polling booth, Mr. Zairemthanga appeared there. But it is not on record as to whether Mr. Zairemthanga came to know of the subject matter of the altercation or of the matter of circulation of wrong dummy ballot papers. Apart from this, there is no evidence to show that respondent No. 1 visited the area during his election campaign or that he had any possible source of information about the dummy ballot paper or knowledge about the printing and publication thereof. Mr. Majumder argued that because the dummy ballot paper was printed in the Hnamte Press and because the dummy ballot paper was circulated by the workers of the People's Conference Party and also because Mr. D.P. Liankaia wrote a letter of regret about the dummy ballot paper to the A.R.O. it must be held that the returned candidate had knowledge of and consent to the publication of the dummy ballot paper. But there is no allegation that the letter of regret was submitted by Mr. D.P. Liankaia with knowledge/consent of the general headquarters or of the returned candidate. Mr. Majumder also argued that Mr. D.P. Liankaia was a responsible person of the party being President of the Khatla Unit and that his letter of regret could not have seen the light of the day without the consent of the returned candidate or without prior consultation with the returned candidate. But there is no compelling reason to make this inference. It is the case of the returned candidate that even if the dummy ballot papers were circulated and even if Mr. D.P. Liankaia submitted a letter of regret to the A.R.O. both the things were done without knowledge and consent of the returned candidate.

It has not been proved or there is no material where from it can be inferred that Mr. Liankaia besides being unit President of Khatla unit of the P.C.P., was also an election agent/agent of the returned candidate. It is also not there in the evidence that the dummy ballot paper was published and circulated with consent of any election agent of the returned candidate. It is the case of the election petitioner that because there is an appeal in the name of Mr. Zairemthanga in the offending dummy ballot paper, it has to be presumed that it was published with his consent. It was also argued that the returned candidate did not produce in Court the pamphlet or leaflet that was circulated in his favour during the election for which it has to be taken that the offending dummy ballot paper was the only document which was published and circulated in favour of respondent No. 1. But I think that this is not enough to establish a nexus between consent of the returned candidate and any of these circumstances beyond reasona-

ble doubt. As referred to above, the principle is that the charge of corrupt practice has to be established beyond reasonable doubt although in *M. Narayana Rao* (supra) it was held that the respondent has also some duty in meeting the evidence of the election petitioner and that he should not be allowed to keep mum. But in that decision and in the other decisions referred to above, it was held that the onus of proof mainly lies on the election petitioner regarding corrupt practice. The principle of criminal jurisprudence that the onus of the defence is less stringent than that of the prosecution is also applicable in an election dispute. In the instant case as said above, there is no cogent evidence to show beyond reasonable doubt that the returned candidate had any consent with regard to the dummy ballot paper. Mr. Majumdar's another contention was that in view of the evidence of the R.Ws. who deposed that all papers were circulated with the approval of the Head Quarters of P.C.P. or respondent No. 1, it must be taken that the offensive dummy ballot paper received approval from that Head Quarters and the respondent. But the logic does not appear to be sound as if one way be taken there, the reverse way may not be there. The circumstances alluded to by Mr. Majumdar no doubt raise some suspicion of complicity of respondent No. 1 in the matter of publication of the offensive dummy ballot paper; but suspicion is no substitute for proof.

60. Now it has to be seen whether the case falls under the mischief of section 100 (1) (d); that is whether the result of the election in so far as it concerns the returned candidate has been materially affected by any corrupt practice committed in the interest of the returned candidate by an agent other than his election agent. Firstly, it has to be said that there is no proof that those who published/distributed the dummy ballot papers were agents of the returned candidate or whether any of them was an agent of the returned candidate. To work for a particular political party does not imply agency for the candidate of the party. Some enthusiastic workers of the People's Conference Party or supporters of the returned candidate might have published the offending dummy ballot paper, but this does not imply that they had any agency of the returned candidate. Secondly, out of an electorate of 10,013 voters in that constituency, the returned candidate received 2,448 votes in his favour while the election petitioner received 1,352 votes. So there was a difference of 1,096 votes by which the returned candidate won the election. It does not appear unless there are special circumstances leading to such an inference, which in my view are lacking in this case that the returned candidate won the election by such a wide margin against the election petitioner due to the publication of the dummy ballot paper. The extent of the circulation of the dummy ballot paper has not been shown by the election petitioner. There is evidence that the party worker of the election petitioner held intensive and extensive election campaign publishing and circulating the correct symbol of the election petitioner in the constituency. His case is that about 20% of the voters are cultivators engaged in Jhum cultivation and most of the people are either illiterate or semi literate. It is also his case that some Nepali Gorkha people who are mostly engaged in rearing cows for milk are mostly illiterate. But it has not been proved by the election petitioner by evidence as to what was the percentage of Gorkha voters

in the constituency and their percentage of illiteracy. On the other hand it is found from the evidence of the returned candidate that there was quite a good number of educated persons among the Nepalis and that many of them were serving in schools and other establishments. After all it has not been proved by the election petitioner that the result of the election in so far as it concerned the returned candidate has been materially affected by the corrupt practice committed in his interest. It is therefore found that the matter of publication of the dummy ballot paper does not fall within the mischief of section 100 (1) (d) of the Act.

61. The issues are therefore answered as aforesaid.

62. In view of the aforesaid discussion and the conclusions it is found that the election petition has to be dismissed and it is hereby dismissed. In view of the circumstances of the case. The election petitioner will pay to Respondent No. 1 cost of Rs. 500.00 (five hundred) only.

S.M. Ali,
Judge.