

Page No. 907



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ELECTION COMMISSION OF INDIA

Nirvachan Sadan,
Ashoka Road,
New Delhi—110001

Dated the : 29th September, 1994
7 Asvina 1976 (Saka)

NOTIFICATION

No. 82/MIZ-LAD/89 :— In pursuance of Section 106 of the Representation of the People Act, 1951 (43 of 1951) the Election Commission hereby publishes the judgement/order date, 15.7.1994 of the Guwahati High Court, in election Petitions No. 7 to 21 of 1989.

By order,
ARCHNA ARORA
Secretary

THE GAUHATI HIGH COURT

(HIGH COURT OF ASSAM, NAGALAND, MEGHALAYA, MANIPUR,
TRIPURA, MIZORAM AND ARUNACHAL PRADESH)

BEFORE

THE HON'BLE MR JUSTICE D.N.BARUAH

1. ELECTION PETITION NO. 7(G) OF 1989

Saingura
—versus—
F. Sapa and others

No. I(AB) OF 1991
Petitioner

Respondents

2. ELECTION PETITION No. 8(G) OF 1989

No. 2(AB) OF 1991

H. Lalruata .. Petitioner

—versus—
Vandalahaka and others .. Respondents

3. ELECTION PETITION NO. 9(G) OF 1989

No. 3(AB) OF 1991

Lalhlimpuu .. Petitioner

—versus—
Rosangliana and others .. Respondents

4. ELECTION PETITION No.10(G) OF 1989

No.4(AB) OF 1991

Lianhmingthanga .. Petitioner

—versus—
Lalthanhawla and others .. Respondents

5. ELECTION PETITION No. 11(G) OF 1989

No. 5(AB) OF 1991

Zonunthara .. Petitioner

—versus—
Vaivenga and others .. Respondents

6. ELECTION PETITION No. 12(G) OF 1989

No. 6(AB) OF 1991

T.Rozama .. Petitioner

—versus—
Zalawma and others .. Respondents

7. ELECTION PETITION No. 13(G) OF 1989

No. 7(AB) OF 1991

Ramnundanga .. Petitioner

—versus—
Andrew Lalherliana and others .. Respondents

8. ELECTION PETITION No.14(G) OF 1989

No. 8(AB) OF 1991

J.Kapthianga .. Petitioner

—versus—
C.L.Ruala and others .. Respondents

9. ELECTION PETITION No. 15(G) OF 1989

No. 9(AB) OF 1991

B.Lalthlengliana .. Petitioner

—versus—

Liansuama and others .. Respondents

10. ELECTION PETITION No. 16(G) OF 1989

No. 10(AB) OF 1991

Lalthankaia .. Petitioner

—versus—

Lalbiaka and others .. Respondents

11. ELECTION PETITION No. 17(G) OF 1989

No. 11(AB) OF 1991

Hrangthansanga .. Petitioner

—versus—

Saikapthianga and others .. Respondents

12. ELECTION PETITION No. 18(G) OF 1989

No. 12(AB) OF 1991

F.Aithanga .. Petitioner

—versus—

Lalthanhawla and others .. Respondents

13. ELECTION PETITION No. 19(G) OF 1989

No. 13(AB) OF 1991

S.Lianzuala .. Petitioner

—versus—

Zoramsangliana and others .. Respondents

14. ELECTION PETITION No. 20(G) OF 1989

No. 14(AB) OF 1991

L.Ngurchhina .. Petitioner

—versus—

Rokamlova .. Respondents

15. ELECTION PETITION No. 21(G) OF 1989

No. 15(AB) OF 1991

K.Lalromana .. Petitioner

—versus—

Lalhuthanga and others .. Respondents

For the petitioners : Mr A.K.Bhattacharyya,
Mr A.K.
Mr K. Agarwal.

For the respondents : Mr. A.M.Mazumdar,
Mr S.S.
Mr K.P.
Mr M. Nath

Dates of hearing : 4.10.93, 5.10.93, 6.10.93, 7.10.93, 8.10.93,
22.11.93, 23.11.93, 24.11.93, 25.11.93,
30.11.93, 14.12.

Date of judgment : the 15th July, 1994.

JUDGMENT AND ORDER

All these above 15 election petitions have been filed on common grounds, i.e. corrupt practice. The facts of all these election petitions are similar. Therefore, I propose to take up all these petitions and dispose them of by a common judgment. The grounds of attack in the petitions are that the returned candidate, namely, the 1st respondent in each petition had indulged in and were guilty of corrupt practice. The 15 election petitions had been filed in this Court on the same day, i.e. on March 9, 1989.

2. The facts of the case may be stated as follows :

Mizoram, a tiny hilly State, situated in the extreme corner of North Eastern Region of the Country. Mizoram attained statehood in the month of February 1987. Two years thereafter, the elections were held on 21st January, 1989. The 1st respondents of these election cases contested the State Assembly elections as candidates of Indian National Congress(I).

Mizo National Front (MNF) from different constituencies. Results of the election were declared on 23rd January, 1989. They lost to the candidates fielded by the Indian National Congress(I), i.e. the 1st respondents. The unsuccessful MNF candidates, who lost their elections challenged the elections of the 1st respondents on the ground that they had indulged in and were guilty of corrupt practice. All these 15 election petitions have been filed on one day that is on 9th March, 1989. the election petitions were filed, one Congress(I) candidate constituencies and one candidate belonged to Mizo National Front (Democratic Party).

3. On service of notice of filing of the election petitions, the returned candidates entered appearance and contested the election petitions. They raised preliminary objections regarding the maintainability of the petitions on the basis of two preliminary issues raised by them for consideration. They moved for striking out the pleadings. Thereupon the original petitioners applied for amendment of their election petitions which were strongly opposed by the returned candidates. The preliminary objections of petitions for striking out the pleadings and amendment of the petitions were heard together. Two Those were

whether the election petitions were in conformity with the requirements of Sections 81 and 83 of the Representation of the People Act, 1951 (for short, 'the Act'), and the rules framed thereunder. After hearing the objections against the proposed amendment and the maintainability of petition, the Court rejected the contentions holding that under the election law the High Court was empowered to permit amendment of the election petition with a view to amplifying the averments bearing on the question of corrupt practice for ensuring the fair and effective trial of the election dispute and in this view of the matter this court examined the averments of each paragraph in details and directed the deletion or modification of certain paragraphs and the averments which were vague in nature or bereft of necessary particulars.

4. The returned candidates being aggrieved, moved the Apex Court by filing SLPs. At the time of admission of those appeals, two questions were formulated for examination. Those were — (i) whether the election petitions were liable to be dismissed in limine under Section 83 of the Act, and (ii) whether copies of the election petitions served on the respondents were true copies of the election petitions. The Apex Court disposed of the said appeals with the following observations :

"The High Court has applied the correct test while permitting the amendments. The High Court has rightly pointed out that the power conferred by Section 86(5) cannot be exercised to allow any amendment which will have the effect a corrupt practice not previously alleged in the petitions. If it is found that the proposed amendments are not in the nature of supplying particulars but raise new grounds, the same must be rejected but if the amendments are sought for removing vagueness by confining the allegations to the returned candidate only such an amendment would fall within the parameters of Section 86(5) of the R.P. Act. It was on this correct understanding of the legal position that the High Court scrutinised the amendment application. It was not shown at the hearing of these appeals that any particular averments introduced by way of an amendment had the effect of introducing a totally new allegation of corrupt practice not previously pleaded in the election petitions. Yet, if the appellants can point out any inconsistency, the High Court will remove the same.

36. These were all the submissions made before us. We have dealt with them in extenso and have clarified the legal position. We have suggested certain modifications in the impugned orders and have indicated the course of action to be adopted by the High Court. We need not recapitulate the modifications and the future course of action. The impugned order of the High Court in each petition will stand modified to the extent it is inconsistent with the legal position explained hereinabove. The High Court will pass appropriate orders to remove the inconsistencies. will stand allowed only to the extent of the modifications/directions made by this or order with no order as to cost in each election petition."

3. The validity of the election of the 1st respondents in the aforesaid cases have been questioned on the ground of committing corrupt practice within the meaning of Section 123(3) and 123(3A) of the Act by appealing to the voters on the ground of religion. In fact, all the 14 election petitions had been copied from a master copy and some portions were kept vacant and filled in by hand. Election petitioners in all the cases exhibited several exhibits in all cases to show and prove that the returned candidates made religious appeals to the voters and such religious appeals are corrupt practice within the meaning of Section 123(3) and 123(3A) of the Act. The exhibits

have been printed and published by the Mizoram Pradesh Congress Committee (I) i.e. MPCC(I) on behalf of the 1st respondents in each petition with their consent, knowledge and active participation for furtherance of their prospect of election or for prejudicially affecting the election of the petitioners. Petitioners proved certain documents to prove that the respondents indulged in corrupt practice. The petitioners proved election manifestos printed in Lelte Press, Zoranithanga Press, Exodus Press, Pamphlet "Operation Joshua", Leaflet - "Engnge Kan Vote Chhuah Ang" and their English translation, letter 10.4.92 from Exodus Press to Deputy Registrar, High Court, certificate dated 4.3.89 by Exodus Press, letter dated 6.4.92 from J.R. Brothers to the Deputy Registrar, certificate dated 6.11.90 by J.R. Brothers, relevant pages of registers of J.R. Bros., letter dated 18.3.92 by Chief Election Officer to the Registrar, letter dated 15.12.88 by Oscar Fernandez to C.E.O., letter dated 22.12.88 by Lalthanhawla to Chief Election Officer in respect of various constituencies, constitution of All India Congress Party, letter dated 13.4.92 by Saingura to Deputy Registrar, High Court, letter dated 10.4.92 by P.B. Nikhuma to Deputy Registrar regarding constitution of MPCC(I) amended in 1986, MPCC(I) organisational set up in India Today, Statesman, Sentinel, Assam Tribune, MNF aims and objects, MNF's election manifestos, Zoram Chhantu newspapers of various dates, MNF official newspaper dated 6.1.89, certificate dated 4.2.90 of J.R. Bros., and various certificates issued by printing presses. All these papers and documents have been exhibited in almost all the cases and marked as exhibits by different markings in different cases. According to petitioners the six exhibits in all the cases are ex facie incriminating which contain religious appeals to the voters and such religious appeals are corrupt practice within the meaning of Sections 123(3) and 123(3A) of the Act. The petitioners further state that the exhibits have been printed and published in Mizoram Pradesh Congress Committee (I) on behalf of the respondents with their consent. As stated above, the elections of the returned candidates have been challenged on the ground of indulging in corrupt practice, namely, making religious appeals to the voters which is a corrupt practice within the meaning of the Act.

4. A charge of corrupt practice has two dimensional effect - its impact on the returned candidate has to be viewed from the point of view that a candidate's future political and public life and from the point of view of electorate to ensure the purity of the election. There can, therefore, be no doubt that such an allegation involving corrupt practice must be viewed very seriously and High Court should ensure compliance of the requirements of Section 83 of the Act before parties go to the trial. It is quite clear from the observations of the Apex Court in K.M. Money vs. P.J. Anthony. The charge of corrupt practice, if it is proved, the returned candidates's election shall be set aside. Not only that the returned candidate will be debarred from fighting election for next six years. Therefore, the Court should be very cautious in coming to the conclusion. The allegation of corrupt practice must be proved beyond reasonable doubt and if there is some doubt then the Court should always be hesitant in setting aside the election on the ground of corrupt practice. In the existing political climate adverted to unless the election law leads to such an inevitable conclusion exposing a hiatus in the legislative effort to achieve the avowed object of purity of election. All liberal construction of an election law relating to corrupt practice by appreciation of evidence in the existing political climate where mud-slinging is common place, does not commend as the proper approach envisaged by the election law. The purity of election is the essence of democracy and providing for invalidation of an election on the ground of commission of any corrupt practice is the object of enacting these provisions, it cannot be accepted that the election scene having degenerated over

the years, appreciation of evidence for determining the commission of a corrupt practice must be made liberally because of the lower value in the arena of election. If the Rule of Law has to be preserved as the essence of democracy of which purity of elections is a necessary concomitant, it is the duty of the Courts to appreciate the evidence and construe the law in a manner which would subserve this higher purpose and not even imperceptibly facilitated acceptance, much less affirmance of the falling electoral standard. For democracy to survive, the Rule of Law must prevail, and it is necessary that the best available men should be chosen as peoples' representatives for proper governance of the country. This can best be achieved through men of high moral and ethical value who win the elections on a positive vote obtained on their own merit not by negative vote of process of elimination based on comparative demerits of the candidates. It is also necessary that the impact of money power or religious appeal which has eliminated from the electoral contest many men of undoubted ability and credibility for want of requisite financial support should be able to re-enter the field to make the people's choice meaningful. This can be achieved only if the elections are contested on a positive vote and the comparison is between the merits and ability of the contestants without the influence of power and also the appeals made on religious basis. Their comparative demerits and their support of money power or on the basis of religious appeal apart from the other adverse consequences the growing influence of money power and religious appeals have also the effect of promoting criminalisation of the politics.

5. The increasing electoral malpractice, of which some like booth capturing have led even to amendment of the election law, make availability of the evidence difficult and this cannot be ignored while applying the standard a proof of a quasi-criminal charge for proof of corrupt practice. The existing law does not measure upto the existing realities. The ceiling on expenditure is fixed only in respect of expenditure incurred and authorised by the candidate himself but the expenditure incurred by the party for any one else in his election campaign is safely outside the net of legal sanction. The spirit of the provision suffers violation through the escape route. The prescription of ceiling on expenditure by a candidate is a mere eye-wash and no practical check on election expenses for which it was enacted to attain a meaningful democracy. Similarly, in case of religious appeal also the candidate may not enter in indulging the corrupt practice by making religious appeals to the voters, but the candidates also escape as the law may not be able to bind the candidate. This lacuna in the law is, however, for the Parliament to fill lest the impression is reinforced. A candidate should not make any religious appeal to woo the voters. This will definitely mar the sanctity and purity of the elections. But then, the election petitions shall have to be decided in accordance with law. There may be lacunae in the provisions of law whereby a candidate indulging corrupt practice or using money power or making excessive expenditure in the election, they go scot free, but it is the Parliament to consider about all these to prevent the lacuna in the Representation of the People Act. (See *Gadakh Yashwantrao Kankarrao vs. E.V. alias Balasaheb Vikhe Patil and others* : (1994) 1 SCC 682).

6. In the present cases the ground is corrupt practice and in order to interfere with their elections in an election petition, Court has to be satisfied that the nature of trial in an election petition is quasi-criminal and not civil and the standard of proof is same as in a criminal trial that is onus of establishing the corrupt practice beyond reasonable doubt is heavily on the petitioner. Though the procedure is civil in form, in substance it is a criminal trial. There is no question of making out a prima facie case and

then casting burden on the opposite party i.e. the returned candidate to rebut the same. Therefore, the Court must keep in mind the fact that the choice of voters freely expressed should not be lightly interfered with. In case of a finding against the returned candidate, he runs the risk of being prosecuted as held in **Hem Rajv. Ramji-Lal, reported in AIR 1975 SC 382**. The charge of corrupt practice must be proved by clear and cogent evidence as a charge of criminal offence. It is not open to the Court to hold that the charge of corrupt practice is proved merely on the preponderance of probability, but it must be satisfied that there is evidence to prove the charge beyond all reasonable doubt. The electoral process in this country, as held by the Supreme Court in **N.C. Zeliang vs. Aju Newmai, reported in AIR 1981 SC 8**, is an extremely expensive one and by declaring an election of a candidate null and void the entire process so far as the candidate is concerned is set at naught resulting in re-election. Such a course should be adopted only when the allegation of corrupt practice is proved conclusively. Similarly, a decision where it was held that the allegation regarding the commission of corrupt practice at an election is a very serious matter not only for the candidate but for the public at large as it relates to the purity of the electoral process.

7. As held by the Apex Court in various decisions that the election process should not be upset by declaring an election null and void, as it will have a tremendous effect in the society. When an election is declared null and void and as there would be a re-election, besides the expenses, the full process will be made topsy turvy.

8. However, in the present cases such questions may not be relevant in as much as the period of election has already been over. The election was held in 1989 and the period expired after 5 years. The next General Election had also been held in Mizoram in 1993. Therefore, the question of re-election will not arise. But then, a decision of this Court declaring the elections of the 1st respondents null and void on the ground of indulging in corrupt practice will definitely entail a serious consequences, namely, the reputation of the returned candidate will be at stake and they would be debarred from contesting in the subsequent elections for a considerable period.

9. All these 15 election petitions were filed by one set of learned counsel. However, after some time a new set of learned counsel substituted those earlier counsel. The present set of counsels at first took up all the cases. However, during trial, the present counsel for the petitioners, namely, Mr. A.K. Bhattacharyya, Senior Advocate, Mr. A.K. Das and Mr. K. Agarwal, Advocates had withdrawn from election cases i.e. Election Case Nos. 10(G)/89, 19(G)/89 and 20(G)/89.

10. The documents, namely, the exhibits have been proved by common witnesses in the election petitions. However, the petitioners did not examine any witness in Election Case Nos. 10(G)/89, 19(G)/89 and 20(G)/89. Common witnesses, i.e. Lalnghakliana, J. Laltnanmawia, C. Dinthanga, Lalduhawma and Lalzawmljana were examined in all cases except those case Nos. 10(G)/89, 19(G)/89 and 20(G)/89. In all these cases the following issues have been framed :—

(1) Whether the respondent No. 1 published the campaign literatures, election manifestos (Annexure-I and II), pamphlets (Annexures III and IV), sticker (Annexure-V) and hand bills (Annexures-VI) and circulated and distributed the same during his election campaign, public meetings and door to door canvassing in different town and petition.

(2) Whether the respondent No. 1 himself addressed public meetings as alleged in the election petition and whether before addressing the said meetings and/or during the meetings the respondent distributed the aforesaid campaign literature.

(3) Whether the aforesaid acts of the respondent No. 1 amounted to corrupt practice within the meaning of sub-sections (1A)(b), (2), (3), (3A) and (4) of Section 123 of the Representation of Peoples Act.

(4) Whether the election of the respondent No. 1 is liable to be set aside.

(5) To what relief the parties are entitled to.

11. ISSUE NOS. 1, 2 AND 3.

These issues are taken up together for convenience. First let me consider whether the six exhibits, namely, Exhibits P-1 series to P-6 series contain religious appeals to the voters and whether such religious appeals are corrupt practice within the meaning of Section 123 and whether those exhibits had been printed and published in Mizoram by Mizoram Pradesh Congress Committee (I) i.e. MPCC(I) on behalf of 1st respondents with their consent, knowledge and active participation of the 1st respondents for furtherance of the prospect of their election of for prejudicially affecting the election of the petitioners. According to the petitioners the offending statements contained in those exhibits. All those exhibits were in Mizo and these had been translated with the aid of the interpreters.

12. Before I decide those question, it will be apposite to consider the provisions of Section 123(3) of the Act which relates to corrupt practice on the ground of religious appeals. I quote Section 123 (3) :-

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

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

Sub-sections (2), (3) and (3A) of Section 123 have been enacted so as to eliminate from the electoral process the appeal to those decisive factors rouse irrational passions that run counter to the basics tanets of the Constitution and indeed of any civilized political or social order. Due respect for religious belief and practice, race, creed and culture and language of the other citizens is one of the basic postulates of the democratic system. The line has to be drawn by the court between what is permissible and what is prohibited after taking into account all the facts and circumstances of each case with reference to the context in which the statements or the acts complained of are made. Corrupt practice need not be committed by a candidate

alone. Appeal to voters on the ground of sect or religion can be a corrupt practice even though the rival candidate belong to the same religion. Therefore, it is to be seen whether the documents Exts P-1 to P-6 and P-10 contain any religious appeal which may be said to be corrupt practice within the meaning of Section 123 (3). Petitioners' witnesses Mr. Lalduhawma, Mr. Lalinghakliana, Mr. L-H. Lianhming Thanga, Mr. Lalitlanmawia, Mr. C. Dinthanga and Mr. Lalzawmliana proved the said exhibits in all the cases. Ext P-1 is the election manifesto of Assembly election of Mizoram Pradesh Congress (I) Committee. In page 1 it says— "Bearing in mind the steps we have taken towards wrong direction, MPCC(I) . . . determine to form Christian Government (Govt. of Christians) to minister the people in accordance with the Gospel of the Christ which is our national foundation." Again in page 2 it was written "OUR WANTS : Even though we live in the remotest corner of the country, God has found us and destined us to preach and propagate the Gospel of Christ. To know the reason why we have to live in a country (India) where we cannot but feel a stranger, we must understand the programme of God. It is imperative that we must have freedom of religion to preach and propagate the Gospel. We have had an experience from the Janata Ministry which opposed freedom of the religion. Therefore, we, the Christians should take steps and pray to God for establishing Cong(I) Govt. which is committed to a policy of freedom of religion."

13. In page 3 it says—"To give due share to the poor is the rightest administration and this should be the system of Kristian Govt. When the poor get their due share more new Missionary fields." Then in the manifesto it is further stated at page 12, "To prescribe new text books based on Christian doctrines and corner stone of our national life". Similarly in Ext P-21(a) it is written— "Arrangement would be made for Mizos to visit Holy Land". In Ext. P-21(b) it is written— "To revise and prescribe educational text books based on Christian teachings and culture of Mizos. In Ext P-16 it is written— "Using this natural heritage as a corner stone, the Mizoram Congress (I) has prepared itself to form Christian Government. If God and the people agree to form the Congress(I) Govt. it will be a Government of the poor. Besides the

Congress (I) has launched OPERATION JOSHUA to uplift the needy and the poor. It is the Operation Joshua which will bring us the New Mizoram". In Ext. P-17 which is an English translation of the leaflet where it is written—"War against the Church and sacrifice of human blood." It is further written, "If we vote for Congress (I) . . . Christian Government (Govt. for Christian) . . . Facility to go to the Holy land (Jerusalem) for the Mizos."

14. I have quoted the relevant portions of Exhibits mentioned. Now it is to be seen whether those statements or appeals made to the voters amount to corrupt practice within the meaning of Section 123 (3) of the Act.

15. In Abdul Hussain Mir v. Shamsul Huda, AIR 1975 SC 1612,
the Apex Court observed thus :

" . . . there was an endemic sensitivity to election propaganda and method in certain regions which would be wasted strategy elsewhere because responses differ according to the socio-political conditioning of groups and communities. Here we are concerned with a tribal area of Assam, a border State with a heterogeneous composition of tribesmen, vaguely Hindu by per-

suasion, plainmen Hindus and a considerable number la or muslim minipriest may have sway over his orthodox flock here while elsewhere his voice may be ignored. A threat of East Pakistan type terror or pro-Pakistan branding is prone to frighten many here while in Central India or the South such a bogey may have less minatory impact. Religious appeal or communal appetite in a bigoted and backward population is stronger indifferent or other area with a long tradition of peaceful co-existence of variegated religious groups or cosmopolitan people. It all depends on the socio-political pathology or sensibility of each province or constituency."... "Even so, certain basic legal, guidelines cannot be lost sight of while adjudging an election dispute. The verdict at the polls wears a protective 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..."

16. Supreme Court again in Rahim Khan v. Khurshid Ahmed and others, reported in AIR 1975 SC 290, dealt with the corrupt practice on the basis of religious appeal. In the said case the Supreme Court observed thus :

ved food and other externals. How about appeal to anti-religion? That one is a Royist or rationalist and the rival a religious soul and too other-worldly? Rabid communalism is the real enemy. Let that be identified by law. A second look at this labyrinth of law is in keeping with changing times. The "voice in the wilderness" words of this Court in Ambika Saran Singh's case 41 Ele LR 183 (SC) at P.189 bear repetition :

"Indian leadership has long condemned electoral campaigns on the lines of caste and community as being destructive of the country's and the concept of secular democracy which is the basis of our Constitution. It is this condemnation which is reflected in Section 123 (3) of the Act. In spite of the repeated condemnation, experience has shown that where there is such a constituency it has been unfortunately too tempting for a candidate to resist appealing to sectional elements to cast their votes on caste

Every party silently says 'he who has not sinned, let him cast the first stone.' for the purpose of this case, suffice to say both sides agree that Ex. P.W. 4/3 appeals to religion."

17. In the present whether the leaflets, pamphlets, manifestos and stickers contain any religious appeal within the meaning of Section 123(3) of the R.P. Act. As I have already said that the Mizoram is a tiny State in the extreme corner of the North East. Almost 90% of the people are Christians. It is also known to every body that the people are religious minded. Therefore, any appeal made on the basis of religion, namely, the Christian religion, will definitely affect the election, may be both the petitioners and the returned candidates belong to the same religion. If a religious appeal is made, in that case the candidate having made a religious appeal like a "Christian Government", "a trip to Holy land" and "syllabus on the basis of

Christian religion” are likely to rouse the religious feeling and may influence the voters. Exhibits P-1 to P-6, namely, the stickers, leaflets, pamphlets and manifestos are all aimed to woo the voters on the ground of religion. There can be no hesitation in saying that when a candidate says that if he is returned to power he will make a Christian Government, it would definitely be a religious appeal. Similarly, if a candidate issues pamphlets saying that if his party is returned to power then every Mizo would be given a free trip to Holy land – “Jerusalem”. This is another instance of rousing the religious feeling and influencing the voters on the bases of religion. Similarly, the other statements made in Exhibits P-1 to P-6 are also definitely religious appeals and I have no hesitation in holding that these religious appeals had influenced the mind of the voters.

18. The first portion of Issue No. 1 that whether the leaflets, pamphlets, manifestos, stickers contain the offending statements within the meaning of Section 123 (3). Having gone through those documents Exhibits P-1 to P-6, I am of opinion that those are offending statements under Section 123.

19. The next question to be seen is who printed and published those Exhibits P-1 to P-6 documents, namely, leaflets, stickers, manifestos, etc.

20. In order to upset an election and declare the election void or declare that a person is guilty of corrupt practice under Section 123(3), the allegations must be proved beyond reasonable doubt. In order to hold a candidate guilty of corrupt practice, it must be proved that appeal by a candidate or his agent to vote or refrain from voting for any person have made. From bare reading of sub-section (3) of Section 123 it is clear that if an appeal is made by a candidate or by his agent directly, and it is proved beyond reasonable doubt, the election shall have to be upset. But if some other persons have done so then the proof that it have been done with the consent of the candidate or his election agent, is necessary for the purpose of upsetting the election of a returned candidate. It is to be seen whether these offending materials Exts. P-1 to P-6 have been published by the candidate or his agent or any other person with the consent of the candidate or his agent. To come to conclusion it will be necessary to go through the evidence of witnesses.

21. The first question that comes in the mind is whether these Exhibits P-1 to P-6 series have been printed/published by the candidate or his agent or by any other person with the consent of the returned candidate or his agents. For that purpose it is necessary for us to go through the evidence of the witnesses who proved those documents.

22. Mr. Bhattacharya, learned counsel for the election petitioners urged before this Court that all the six exhibits, namely, P-1 to P-6 series had been published by Mizoram Pradesh Congress Committee (1) on behalf of the respondents with the consent and active participation of the 1st respondents for furtherance of the prospects of their election or for prejudicially affecting the election of the petitioners. He further contended that the requirement of proving the allegation of corrupt practice beyond reasonable doubt, did not mean that the persons against whom allegations of corrupt practice had been made could remain mum without making any attempt to disprove the allegation before a Court of law. Therefore, it is necessary for the respondents also to take effective steps to assist the Court in finding out the truth or

falsity of the allegations made. According to the learned counsel, in the present cases, the petitioners had successfully proved the printing and publishing of the offending documents with the consent and knowledge of the 1st respondents beyond reasonable doubt.

23. Mr. Lalduhawma is a witness for the petitioners to prove some of the documents. In his evidence he stated, inter alia, that he was a member of Indian Police Service. He served as Deputy Commissioner of Police in Delhi Police. In 1984 Mrs. Indira Gandhi, the then Prime Minister of India and the President of the Indian National Congress asked him to resign and serve her party for the State of Mizoram. Accordingly, he resigned and thereafter in the month of May, 1984 he became the President of the Mizoram Pradesh Congress (I). During that time he also held the office of the Vice President, North Eastern Congress Co-ordination Committee (I). He also was the Member of All India Congress Committee (I). He stated that when he was in Congress Party, Oscar Fernandez was also in Congress Party. He proved Ext. P-19 and Ext. P-21. By Ext. P-21 Mr. Lalthanhawla intimated the names of the candidates of various constituencies. This witness only proved that Mr. Lalthanhawla was the President of MPCC (I) and Mr. Oscar Fernandez wrote letters authorising Mr. Lalthanhawla to act as President. After reading the nature of evidence, I do not find that this witness proved any offending documents, namely, Ext. P-1 to P-6 had been printed by the MPCC (I) or by the returned candidate. Besides, this witness had at one time been a member of the Congress Party. He left the party when he was a Member of the Lok Sabha. His membership in the Parliament was taken away under the Anti Defection Law. Thereafter, he joined MNF Party. This witness is definitely an interested witness who left the Congress party belonging to the returned candidate.

24. P.W. 8 Mr. J. Laltlanmawia stated in his evidence that he was a businessman by profession. He had a Printing Press, namely, J.R. Brothers' Offset Printers at Aizawl. He was the proprietor of the said press. He also stated that during election in 1989, Mizoram Pradesh Congress Committee (I) had given him a verbal order to print stickers for its party. MPCC (I) sent him a specimen of sticker from its office. Ext. P-6 was that specimen sticker which he had received from MPCC (I). Accordingly, he printed that sticker. Ext. P-6 contained some hand-written portion in Mizo language. While receiving Ext. P-6 from Congress office it contained hand-written portion. Ext. P-6 contained an instruction to print one lac number of stickers. The sticker contained a hand-written portion in Mizo which means "for Mizos and Christians let us vote for Congress." Ext. P-6(a) was one of the handwritten portions. Ext. P-6(b) was also one handwritten portion in Mizo. P-6(c) was the instruction on the number of stickers to be printed. As per the instructions contained in Ext. P-6, he printed one lac copies of stickers. Ext. P-6 contained a picture of hand which was the emblem of the Congress (I). Ext. P-6(d) was another copy of emblem of the Congress (I) which he produced before this Court as per the letter written by the Deputy Registrar of this Court.

25. After printing the stickers he took them to MPCC (I) office for delivering them. He delivered them to a gentleman (whose name he did not disclose) in the MPCC (I) office. Ext. P-6(c) also contained an instruction to print at least five thousand copies within a week and to deliver them. The gentleman in MPCC (I) office received the stickers, but he did not give any receipt. He also did not give the name of the person. Ext. P-8 was a certificate certifying number of stickers printed by him and

the price charged thereof. This certificate was given to MNF on their request. It contained two samples of the stickers (Ext. P-6). Ext. P-8(1) and P-8(2) were his signatures. Exts. P-8(3) and P-8(4) were two samples of the aforesaid stickers. Ext. P-8 was received on behalf of the MNF by Lalnghenga. Ext. P-8(5) was the endorsement with signature showing the receipt of Ext. P-8 by MNF. Ext. P-9 was the register of his office showing the number of materials published for different persons. This register was also produced by him in pursuance of the order of this Court. Ext. P-9 (a) was the endorsement regarding placing of orders by the MPCC (I), number of stickers to be printed, advance money paid, price of each sticker and receipt of the stickers at the MPCC (I) office. Ext. P-9 was written by him. Ext. P-9 contained his signature but, Ext. P-9(a) did not contain his signature. The price of stickers had been paid to him by the MPCC (I). The money was paid to him in cash. He had entered all the orders of printing materials given by different customers. In cross-examination this witness admitted that there was no official order for printing the stickers by MPCC (I).

26. Mr. C.Dinthanga also owned a press. The name of his press was Lelte Printing Press. He stated that he printed the election manifesto of MPCC (I) of the General Assembly Election held in 1989. Ext. P-1 was the said manifesto. He however, could not say who actually placed the order. But the order was placed verbally. He printed five thousand copies of the election manifesto. After printing he delivered them to a gentleman belonging to MPCC (I). (He did not give the name of the person). Treasurer of MPCC (I) paid the price for printing Ext. P-1. The payment was made in cash. He also stated that order for printing of election manifesto was placed by MPCC (I) party. However, he did not mention who gave the order. There was a verbal order. This witness admitted that there was no evidence to show that he received money towards printing charge from the MPCC (I). He also in a similar manner carried the printed materials and delivered to MPCC (I) party. He did not remember what was the amount he received. He also could not give the name of the person to whom the manifesto was delivered. This witness was shown a document marked Ext. R-4. He admitted the signature in Ext. R-4 marked as Ext. R-4(1) to be his signature. Ext. R-4 certificate was issued to Mr. Vanlalnghaka, MLA (Respondent 1 in E.P.No.8). The name of the said man was written in his own hand. He issued a similar certificate to other Congress (I) candidates, but he did not exactly remember.

27. Mr. Lalzawmliana is another witness. He owns a press known as Exodus Press at Aizawl. He also made similar statements. In his deposition he stated that in the last general election held in 1989 he printed election materials for Congress (I). He did not remember who actually placed the order. He did not yet receive the payment, etc. He submitted the bill to the Congress Bhawan office. However, nothing was shown to prove that he submitted his bills. Ext. P-3 was printed in his press and published by MPCC (I). Ext. P-10 was also printed by him in his press and this was published by MPCC (I). Ext. P-4 was a certificate given by him regarding publication of the election manifesto in 1989 election as ordered by MPCC (I). Ext. P-4(1) was his signature. Ext. P-4 was given to Danmawia, son of Laldenga on his request. Mr. Laldenga was the MNF President. He wrote Ext. P-29 to the Deputy Registrar (Judicial), Gauhati High Court at Guwahati.

28. Mr. Lalthanmawia was the owner of J. R. Brothers' Offset Printers, Mr. C. Dinthanga was the owner of another press known as Lelte Printing Press and

Mr. Lalzawmliana was the owner of Exodus press. All these three witnesses are common witnesses in all the election petitions where the petitioners contested.

29. All the three witnesses, namely, Laltlanmawia of J.R. Brothers, C. Dinthanga of Lelte Press and Lalzawmliana of Exodus Press gave their evidence regarding printing of materials i.e. Ext. P-1 to P-6 series.

30. Now, from the evidence it is to be seen whether the petitioners have been able to prove that the election materials Ext. P-1 to P-6 containing offending materials were printed by the 1st respondents or their agents or by any person with their consent and knowledge.

31. On going through the evidence of P.Ws Laltlanmawia of J.R. Brothers, C. Dinthanga of Lelte Press and Lalzawmliana of Exodus Press, it appears that these witnesses received verbal orders to print election materials for the Congress Party. MPCC (I), sent specimen stickers from its office. PW 8 Laltlanmawia printed the stickers where it was written "for Mizos and Christians let us vote for Congress". After printing the stickers this witness took them to MPCC (I) office for delivering them. He delivered them to a gentleman in MPCC (I) office though he did not know his name. The gentleman in the office of MPCC (I) received the stickers, but he did not give any receipt. This witness proved Ext. P-9 - a register of his office showing the number of materials published for different persons. This register was also produced by him in pursuance of the order of this Court. In the register there was endorsement regarding number of stickers printed, advance money paid, price of each sticker and receipt of stickers at the MPCC (I) office. Ext. P-9(a) - endorsement was written by him. It did not contain his signature. The money was paid in cash. He entered all the orders of printing materials given by different customers. In Ext. P-9 register the endorsement in item No. 4 showing the order placed by Mizoram Congress (I) for PVC stickers. The column showing the total amount, total expenditure, profit, number of working days and date of delivery were all left blank. Ext. serial No. 4 all other items, namely, 1, 2, 3, 6, 7 and 8, the columns were filled in. From the evidence of this witness it is not very clear actually who placed the order for printing those stickers. After printing he delivered the materials, namely, stickers to a gentleman in the office of the MPCC (I). However, he did not give the name of the person who received it. Besides, he did not obtain any receipt. He also did not explain why the amount of money he received in cash. In fact it is not authorised under the law to receive cash of such huge amount. He specifically stated in cross-examination that there was no official order for printing of stickers by MPCC(I) party, but there was verbal order. This witness did not give the particulars regarding placing of order by the person and the person to whom the materials were delivered and from whom the money was received. He also did not state whether the entire amount was received or not. If the entire amount was not received I find no evidence to show that he made any effort to get money by any correspondence. From this witness at least it is not established that the 1st respondent or his agent placed order for printing the stickers containing the offending writings. There is also no acceptable evidence that MPCC (I) placed order.

32. Similarly, witness C. Dinthanga also did not give any definite information regarding the person who placed the order. In his evidence he only stated that he printed the election manifesto of MPCC (I) of the Assembly Election held in 1989.

He printed the election manifesto Ext. P-1. However, he did not remember who placed the order. The order was, however, placed verbally. He further stated that he printed five thousand number of election manifesto on the request of MPCC (I) party. He could not say the name of the person to whom he gave delivery of 5000 copies. The Treasurer of MPCC (I) paid him the price for printing. Payment was made in cash. He stated that he did not maintain any register or account book about the delivery, receipt of the orders and receipt of money. He admitted that there was no evidence to show that he received money towards the printing charge. He himself carried the printing materials and delivered to MPCC (I) Party. However, he did not remember what was the amount he received. He also did not remember whether MPCC (I) set up any candidate for election or it was Indian National Congress. From the evidence of this witness also there is nothing to show that the MPCC (I) placed order for printing the materials. Except the oral statement that the order was placed verbally there is no other evidence to show that the MPCC (I) had placed order, received the printed materials and made payment. The evidence of Lalzawmliana also is not enough to prove that the MPCC (I) placed any order for printing the said election materials. In cross-examination, to a question whether he knew who placed the order for printing Ext. P-3 and Ext. P-10, he stated, "As all parties placed orders I do not remember who placed order and belongs to which party". He further stated that Respondent No.1 did not place any order for printing any election materials in his press. The party which set up the Respondent No. 1, namely, Indian National Congress (I) did not place any order for publication of the election materials. These are the three witnesses through whom the petitioners wanted to prove that the election materials were printed in their presses and the orders were placed by the MPCC (I) verbally and the materials were delivered by the respective press owners in the office of the MPCC (I) at Aizawl. However, these witnesses have not been able to prove who actually placed the orders and who received the printed materials. As has been held by the various decisions of the Apex Court, the charge of corrupt practice should be proved beyond reasonable doubt. As a set of witnesses were examined by the petitioners, the allegation of corrupt practice has to be viewed taking into consideration the circumstances of the case. There are no legal litmus tests to discover the honest conscience of a human being and the canons of truthfulness of oral evidence. The fact that the Court is not ready to act on the testimony of a person does not mean that he is a perjurer. It merely means that on such testimony it is not safe to conclude in a quasi-criminal proceeding that a corrupt practice had been proved beyond reasonable doubt. It must be remembered that the whole constituency is silently present before the Court. The Court must emphasise the danger of believing at its face value of oral evidence in an election case without the backing of sure circumstances or indubitable documents. It must be remembered that the corrupt practices may perhaps be proved by hiring witnesses apparently respectable and dis-interested, to speak in short and simple episodes such as that a small village meeting took place where make statement which may amount to corrupt practice. There is no X-ray whereby the dishonesty of the story can be established and if the Courts were gullible enough to gulp such oral versions and invalidate elections, a new menace to our electoral system would take place through the judicial apparatus. It is extremely unsafe, in the present climate of election competitions and partisan witnesses wearing robes of varacity to upturn a hard won electoral victory merely because lip service to a corrupt practice has been rendered by some sanctimonious witnesses. The Court must look for serious assurance, circumstances on unimpeachable documents to uphold grave charges of corrupt practices which might not merely cancel the election result, but extinguish many a man's public life.

33. In **Abdul Hussain Mir vs. Shamsul Huda**, reported in AIR 1975 SC 1612, the Supreme Court observed thus —

“Even so, certain basic legal guidelines cannot be lost sight of while adjudging an election dispute. The verdict at the polls wears a protective 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, carrying other penalties than losing a seat, and strong testimony is needed to subvert a Returning Officer's declaration.”

34. In another decision in **Kanhaiyalal vs. Mannalal and others**, reported in AIR 1976 SC 1886, the Supreme Court observed —

“So far as, however, the distribution of the pamphlet on 2nd March, 1972, at Jawi and Thadoli, which alone survives for consideration, the petitioner relies entirely upon oral testimony and the court will have to be cautious and circumspect in accepting the same.”

The Supreme Court in the said decision, quoting a portion of the decision in **Rahim Khan v. Khurshid Ahmed**, reported in AIR 1975 SC 290, observed that ordinarily the Court would be slow to interfere with the findings of the High Court. Again at paragraph 46 the Supreme Court observed thus—

“46. Oral testimony, therefore, will have to be judged with the greatest care and an electoral victory cannot be allowed to be nullified by a mouthful of oral testimony without contemporaneous assurance of a reliable nature from an independent source. The matter would have been different if there had been an immediate written complaint to the Returning Officer against Kanhaiyalal as had been made in the case of his workers.”

An election dispute is not a private feud between one individual and another. The whole constituency is intimately involved in such a dispute. Shaky and wavering oral testimony of a handful of witnesses cannot still the dominant voice of the majority of an electorate.

35. In **S.Harcharan Singh v. S.Sajjan Singh and others**, reported in (1985) 1 SCC 370, the Supreme Court once again held thus :—

“In a matter of this nature, the evidence naturally is mostly oral. Therefore specially where the charge is grave one, namely, corrupt practice which if proved would disentitle the candidate to contest the election for some time to come, the courts must proceed with caution. An election once held ought not be treated in a light-hearted manner and defeated candidate should not get away with it by filing election petition.”

In the said decision it was held that if it was proved by positive evidence then mere denial was not enough. While insisting on the standard of strict proof, the Court should not extend or stretch this doctrine to such an extreme extent as to

make it well-nigh impossible to prove an allegation of corrupt practice. Such an approach would defeat and frustrate the very laudable and sacrosanct object of the Act in maintaining purity of the electoral process.

36. On the basis of the decisions cited above, now we have to see whether the printing materials were published by the returned candidate or his agent or by any person with the knowledge and consent of the returned candidates or their agents. From the evidence of three witnesses discussed above I do not find anything specific to show that the offending materials were ordered to be printed in their presses by the returned candidates or their agents or by their party with their consent. There is no evidence whatsoever to show that at any time the returned candidates or their agent placed orders. In fact the witnesses did not remember who placed the orders. However, the witnesses mentioned that orders for printing of the election materials were placed by the MPCC (I). The petitioners have totally failed to prove actually who placed the orders. All the three witnesses stated that the orders were placed verbally by some one whose name the witnesses did not remember. Besides, at the time of delivery also the same story was told by all the three witnesses by saying that those witnesses went to the office of the MPCC (I) and delivered the printed materials to some person whom they did not know. There is no documentary evidence before this Court to show that actually the printed materials were supplied to the MPCC(I). It is not expected of a businessman to deliver materials to any person without obtaining any receipt of acknowledgement. These witnesses also could not say the name of the person to whom the printed materials were delivered. Attempt was made to show a register by witness Mr. J. Lalitlanmawia. This register was also not acceptable in as much as the only portion was regarding the placing of order by the MPCC (I). At least 4/5 columns were kept blank. One witness stated that he received the amount. However, he did not remember what amount he received. He could only say that he received at the rate of Rs 1.50 for printing of each copy. The other witness even did not mention what amount he received. The third witness said that though the MPCC(I) placed order and he delivered the printed materials in the office of the MPCC (I), he did not receive any money. Though the printing work was done as far back in 1989 and though he did not receive money, there is no evidence to show that he made attempt to get the money. All these will only lead to one conclusion that the petitioners have not been able to prove that it was the MPCC (I) who placed orders for printing the election materials as claimed. The evidence of all these witnesses could not prove at least the charge of corrupt practice. As held by the Supreme Court that when there is an oral testimony, the Court has to be very cautious in accepting. Unless it is proved with clear evidence supported by some documents, it will be always unsafe to come to the conclusion that the returned candidate or his agent or his party actually placed order for printing of those materials. Considering all these I come to the conclusion that the petitioners have miserably failed to prove that the election materials were printed by those witnesses as per the orders placed.

37. I have already held that the petitioners have not been able to prove that the election materials were printed at the instance of the MPCC (I). Even though the petitioners failed to prove that the election materials containing offending statements were printed and published by the MPCC (I) or the returned candidates or their agents. It is now to be seen whether those election materials were used by the returned candidates or their agents or the MPCC (I). For this purpose I propose to deal the election cases separately.

ELECTION PETITION NO. 7(G) OF 1989

Saingura -vs.- F. Sapa and others.

38. In this case apart from the common witnesses Lalthanmawia, C. Dinthanga and Lalzawmliana seven more witnesses were examined. Out of the 7 witnesses, election petitioner and 3 more witnesses, namely, Lalzara, Thangrenga and Ralliana were examined.

39. Election petitioner in his evidence stated that he filed this election petition on being aggrieved by the corrupt practice committed by the respondent No. 1. According to him, the 1st respondent made appeal to the voters to vote for him on the ground of religion throughout his constituency. He came to know that the 1st respondent distributed pamphlets, leaflets, stickers and other campaign literatures which contained religious appeal to the voter. He had no personal knowledge of making religious appeal by the 1st respondent and also that he had distributed the aforesaid election materials to the public. He further stated that at the time of filing the election petition he annexed those materials, namely, pamphlets, leaflets, stickers along with the English translation. He was informed about the distribution of the aforesaid election materials by the 1st respondent while addressing public meeting by Shri Ralliana, Shri Lalzara, Thangrenga and Lianh ingthanga. According to him, the election materials were formally released by the then President, MPCC (I) Shri Lalthanhawla, presently Chief Minister of Mizoram at Vanapa Hall, Aizawl some time in the middle of December, 1988. He came to know that the 1st respondent was also present at the said meeting at the time of releasing the aforesaid election materials. He was informed by Lalhmachhuana, Editor, Dingdi Daily and Lalnghakliana, Editor, Hriatna Daily. He stated that election materials containing offending statements the 1st respondent made appeal to the voters on the ground of religion. Petitioner further stated that the 1st respondent addressed number of meetings in various places campaigning for his election between the period 31.12.88 and 19.1.89. Immediately before addressing the public meetings, 1st respondent used to distribute the election materials to the voters gathered in the said public meetings. During the aforesaid period, 1st respondent addressed public meetings and distributed the exhibits, etc. He specifically stated that on 15.1.89 the 1st respondent addressed a public meeting at about 3 P.M. at Chandmari, Lunglei before about 200 persons. Before addressing the meeting, 1st respondent himself distributed the election materials, namely, leaflets, pamphlets, election manifestos, stickers, etc. The 1st respondent again addressed a public meeting at Chandmari, Lunglei on 18.1.89 at about 10 A.M. before about 300 persons. Similarly, before addressing the public meeting the 1st respondent distributed leaflets, pamphlets, stickers, etc. On 16.1.89 also at about 11 A.M. the 1st respondent addressed a public meeting before about 100 persons at Chandmari, Lunglei. There also before addressing the public meeting, the 1st respondent distributed the leaflets, election manifestos, pamphlets, stickers, etc. to the voters. Petitioner is a qualified person. He is a holder of Master Degree in Arts and also a Bachelor of law from Gauhati University. He enrolled himself as an Advocate in 1977. Since his enrolment he has been practising as an Advocate in Mizoram. By profession he is a Politician-cum-Lawyer. He entered politics in the year 1980-81. In his evidence he further stated that he saw F. Sapa holding meeting from a distance. He did not hear what he said. He did not see F. Sapa distributing any materials. Exts. P-1 series was published by MPCC (I) which he came to know from information as well as from printed materials and certificates issued by the press. He candidly

admitted that Ext. P-6 did not indicate that it was printed and published by MPCC(I). Ext. P-9 was the account register. Ext. P-9 did not indicate whose book of account it was. Serial No. 4 showed in column 1 - Description Mizoram Congress(I) PVC stickers. Except this there is nothing to show that the order was placed by MPCC (I) or by the 1st respondent. In cross-examination he admitted that he did not mention specifically about the corrupt practice of bribery, undue influence, inducement and attempt to induce the electors to believe that they would be subject of displeasure on the ground of religion.

40. In the evidence of the petitioner only fact that emerges is that the petitioner did not see that the returned candidate - the 1st respondent or his agent or MPCC (I) distributing the Ext. P series containing the offending statements. His sole statement is that he once saw F. Sapa holding a meeting at Chandmari and he saw it on one day from a distance and at that time he did not hear what he (1st respondent) had stated. He admitted that he did not see Sapa distributing any material. From this it is clear that this witness did not say anything about the distribution of the election materials by 1st respondent and making religious appeal in the public meeting.

41. P.W. 2 Lalduhawma in his evidence did not make any statement that the returned candidate or his agent made any statement in public meeting making religious appeal.

42. P.W. 3 L.H. Lian Hming Thanga stated that the President of MPCC (I) Mr. Lalthanhawla released the pamphlets, stickers and banners officially at Aizawl on 16th December, 1988. He received those in the capacity of the General Secretary in bulk. On receipt of those he sent them to the seven candidates including him for distribution in their respective constituencies of Lunglei District. In his constituency he distributed those materials to the workers and that he also personally distributed them in his constituencies to the voters. Mr. Sapa contested election as Congress (I) candidate. There were seven constituencies in Lunglei District. Sapa himself distributed the election materials to the public in his presence. The petitioner was a candidate from 8th Lunglei South Constituency as MNF candidate wherefrom Mr. Sapa also contested election as a candidate from Congress (I). Mr. Sapa won the election. In his cross-examination he stated that he was a contractor and was in Congress (I). He left the Congress (I) Party on 6th of October, 1990 because of the conflict of ideals. He had difference of opinion with party leaders like Lalthanhawla. In cross-examination he also stated that he told Saingua, the election petitioner before and after election that he saw Sapa distributing the election materials himself. He specifically remembered the day, namely, on 15th January, 1989. It was around 3 P.M. Both F. Sapa distributed the election materials at the residence of Mr. Sapa. About 200 people were present there. He visited Sapa's office on 15.1.89 with Z.D. Sangliana, Ex-MLA; L.P. Thangzika, MLA and F. Lalthawna, Ex-MLA. However, he did not remember other dates. During last election MNF also distributed and published pamphlets and other election materials. The symbol of MNF was tiger. This witness, however, said that Sapa distributed election materials in the public. But he was at that time a member of the MPCC (I) and left the Congress in 1990. One thing to be noted here is that this witness informed about the distribution of the offending election materials like Ext. P series to the election petitioner before and after election. However, the election petitioner did not take any step regarding the distribution of those material. The matter was not brought to the notice of the Election Commission either by this witness or by the election petitioner. He only remembered that he visited F. Sapa's office on 15.1.89 with

some persons. During the said election MNF also distributed and published pamphlets and materials, however, he did not remember. From the evidence of this witness, it appears to me that he is an interested party and he left the Congress Party and, therefore, in all probability, he may have a grudge on the Congress Party as well as the returned candidate. The oral testimony of this witness cannot be accepted on this ground alone. Besides, from his evidence it appears that he reported the matter to the election petitioner before the election and also after the election. If that was so, it was the duty of the election petitioner or this witness to inform the authority about the distribution of the election materials containing the offending statements.

43. Lalzara is another witness. In his evidence he stated that F. Sapa did election campaign in his constituency by organising meetings. He (Sapa) opened a campaign office at his residence and used to give out lectures, etc. He came to know that Sapa was going to address a public meeting and accordingly he attended the meeting. Sapa organised a public meeting on 18th January, 1989. About 150 to 200 people attended the said meeting. In the meeting Sapa distributed the party manifestos, stickers and pamphlets. Sapa himself addressed the public meeting and distributed election materials. He identified Exts. P-1, P-2 and P-3 were like the election materials distributed by F. Sapa. Exts. P-5 and 1-10 were the pamphlets and Ext. P-6 was the sticker. In the public meeting Sapa explained the contents of the documents and also stated that if Congress Party was voted to power, they would form a Christian Government. He had also received the aforesaid election materials. Three days after the public meeting he reported about that matter to the election petitioner. In his cross-examination he stated that he did not belong to any political party at the time of election. He attended Congress Party meeting only on 18.1.89. He did not attend any meeting organised by the election petitioner Saingura or any other political party. He did not remember the date of counting or date of election. He did not read the entire election manifesto, but he had gone through some portions of it and in that portion of the manifesto he saw the promise of Christian Government, journey to Holy Land, giving Rs. 10,000/- and G.C.I. sheet roofings to the poor. He did not report the matter to P.C.P. candidate B. Lalthungnunga. He also did not report to the 3rd candidate. The election petitioner asked him to give evidence as he reported about the meeting. He also had not come across election manifesto of any other party. It is apparent from the evidence of this witness that he attended the meeting of F. Sapa only on one day. Except the election petitioner he did not report the matter to any other party or authority. What was the reason for his informing to the election petitioner is also not known. He has not explained why he chose to inform only the election petitioner. Even if the election petitioner was informed, he did not take any step. This is also another piece of oral testimony which is inconsistent and not acceptable in view of the fact that he only chose the election petitioner even though he did not belong to MNF Party. For all these above, the testimony of this witness cannot be accepted.

44. P.W. 5 Th ngrenga stated that on 16.1.89 he attended a meeting of F. Sapa. About 100 people were present in the meeting. F. Sapa distributed the election manifesto, stickers, pamphlets containing offending materials like "Operation Josua." He identified the Exts. P-1, P-2 and P-3 were the election manifesto distributed by F. Sapa. Ext. P-5 and Ext. P-10 were the pamphlets distributed by Sapa, Ext. P-6 was the sticker distributed by Sapa. He also stated that after distribution of the said election materials, Mr. Sapa delivered lecture in the meeting. In his address Sapa said that if they were elected to power, they would form a Christian Government. 2/3 days

After the aforesaid meeting he met the petitioner and showed the election materials. However, he did not mention where he met and what was the occasion of his meeting. This witness in his cross-examination stated that he did not remember exactly about who were the other three candidates. He also did not remember the date. In his cross-examination he specifically stated that he did not read the entire manifesto. He could only read the portion which contained the offending portion. It is not at all believable that a person receiving a manifesto would find out only the offending portion and leave other portions. The natural course would have been to go through the entire paper and thereafter he would come to know about the offending materials.

45. P.W. 6 Ralliana also in his evidence stated that he was a shop keeper and her knew the election petitioner and the 1st respondent. From the evidence of this witness also it is not proved beyond doubt that the Respondent No. 1 the returned candidate or his agent or his party i.e. MPCC (I) ever distributed the election materials containing the offending statements. From his evidence, it cannot be accepted that Respondent No. 1 – the returned candidate made public meeting appealing voters on the ground of religion as alleged.

46. Witness Lalnghakliana (PW 7) deposed that he was a journalist. He was the editor of a weekly newspaper known as 'HRIATNA'. He stated that on 16th of January, 1989 the Congress party organized a public meeting at Vanapa Hall at Aizawl. In the said meeting Congress President Lalthanhawla had released the election manifesto and other two numbers of election materials out of which he clearly remembered "the election manifesto" and one pamphlet titled "OPERATION JOSUA" This witness attended that meeting and the MPCC (I) President handed over to him (this witness) the booklets released by him. When he opened those books he read the contents like – if Congress (I) party was elected to power it would form a Christian Government and the school text books would also be made to suit the Christian teachings and "a visit to holy land by as many as possible." He further stated that he would be able to identify those booklets. He identified Exts. P-1 and P-5 as those materials out of the election materials out of the election materials released by Lalthanhawla. He informed Mr. Saingura about this and he showed him and asked him to read. He remembered it was 2/3 days afterwards. This witness stated as a Journalist he covered MP election in 1991, General election in 1989 and another MP election in 1989. Before 1989 he did not cover any election. He knew as a Journalist it was his duty to cover all the election meetings of different political parties. He attended the first meeting held by the political parties before the election. He did not remember the date and time of the meeting held by the Mizo National Union Party. He also stated that he could remember only the date and time of the Congress party meeting and he did not remember the date and time of the meetings of other political parties in which he took part. This witness further stated that he did not attend the meeting held on 16.1.89 organised by the Congress but he attended the meeting of the Congress (I) on 16.12.88. There were other journalists who also attended the meeting. They were-T. Lalhmachhuana, Dingdi Editor and R. Ral Tawna, Zonieng Editor. From his evidence also it appears that he remembered the date and time of election meeting of the Congress (I) party and the release of election materials by MPCC (I) President. He did not remember anything about the other political party. In another question put by the learned counsel for the 1st respondent, he stated that he did not remember where he was on 18th/19th December, 1988. He also did not go the Lunglei South during that period. This witness also stated that he showed the election materials given by Mr. Lalthanhawla to many persons, but he did not remember their names.

He remembered only the election petitioner. He further stated that it was their practice to give to those people whom they knew. He also asked other people to read the materials given to him by Lalthanhawla. By asking the people to read the materials given to him by some one, he did not consider that he was working for him. He remembered the name of one Chalchhunga to whom he had given the papers given to him by the MNF. He received the election manifesto of the Peoples Conference Party. He did not remember to whom he gave those materials. Election petitioner Saingura told him in the month of March and April, 1989 that he had filed a case in the High Court. The election petitioner requested him to give evidence. He came to know that 12 cases were filed in the Court. He further stated that he could remember the date on which the MPCC (I) President Lalthanhawla distributed the election materials on 16 December, 1988, but he did not remember about the other election meeting which he attended. This witness, however, did not remember anything regarding election campaign of other parties. He did not remember where he was immediately after the meeting that was said to be held in Vanapa Hall.

The oral testimony of this witness is also very doubtful in as much as this witness did not remember anything about the other meeting which he attended. Besides, according to this witness he spoke to many people and asked them to read. But he did not remember who were those. He also stated that the election materials i.e. Ext. P-1 and Ext. P-5 which were received from one of the workers of the Congress Party was handed over to the election petitioner Saingura. It is really strange that, though the election petitioner received those materials containing offending articles making religious appeals, the election petitioner did not take any step in this regard. From all these it is difficult to accept the statement of this witness also.

47. 1st respondent examined two witnesses, namely, himself and one Smson Zo-ram Thanga. In his evidence the 1st respondent stated that neither he nor his worker distributed election materials like Ext. P series. He, however, admitted that he distributed election materials other than those like Ext. P series. He denied release of any election materials at Vanapa Hall by Lalthanhawla in the middle of December, 1988 and his presence in that meeting,. In his cross-examination he stated that though he did not distribute any election materials, namely, pamphlets, stickers, etc. published by his party, his workers distributed them on 4.1.89. His party leader in Aizawl had sent the election materials to his constituency for distribution. He did not know how the aforesaid election materials reached his constituency because he did not have time. He saw those election materials. He did not give any instruction to his workers to distribute the election materials in the village by going house to house. In fact he did not give any instruction to his workers to distribute the election materials during the election. His other witness was Samson Zoram Thanga

48. Samson Zoram Thanga (RW 2) stated in his evidence that he joined politics in 1974. He joined Congress (I) Party in the same year and ;remained till then. The last General election was held on 21st of January, 1989. He belonged to Lunglei South Constituency. During the last election he was one of the Secretaries of Lunglei District Congress (I) Committee. At the time of deposition he was the General Secretary of the said District F. Sapa was a candidate from Congress (I) party in the last General election. This witness further stated that he told the workers to work for the victory of the Congress (I) Party, to go to the people and to ask them to

vote for the Congress (I). He was entrusted to look after the campaign. During the campaign he along with the workers went around the constituency, put up banners, posters, fastoons, etc. and also distributed to the public manifestos, badges, cap (head gear), stickers, etc. Some times he used to accompany the 1st respondent Mr. Sapa during his trip to the constituency. Ext. P series were not those election materials which were distributed. Those documents (Ext. P series) he had seen for the first time on the date of recording the evidence. He did not remember if he was with Sapa on 15th and 16th of January, 1989, but he definitely remembered that he was with Sapa on 18th January, 1989 and on that day both the 1st respondent and he went to a village, namely, Hauruang. For the whole day of 18.1.89 from morning 6.30/7 A.M. till the evening he was with 1st respondent. The 1st respondent and he remained there for the whole day and returned thereafter. This witness denied that 1st respondent addressed a public meeting on 18.1.89 at 10 A.M. before an audience at Chandmari, Lunglei. He further stated that the 1st respondent did not hold any public meeting during the entire period of campaign. According to this witness the distance between Chandmari and Hauruang village would be about 17/18 K.Ms. This witness stated that the 1st respondent (Sapa) conducted his election campaign from the Lunglei District Congress H.Q. office situated at Venglai. In cross-examination this witness also stated that the meetings held during the campaign did not last for more than an hour. In such meetings they discussed about the prospect of election of Sapa. In those meetings they used to tell to the voters that if Congress (I) was voted to power then various developmental activities would be taken up. After the meetings they usually handed over the election materials to the Unit leaders for distribution. Those election materials included election manifestos, stickers, pamphlets, banners, posters, badges, caps and flags. He further stated that he along with other workers distributed the aforesaid election materials in those places where Sapa did not accompany them. Mr. Sapa and he saw the aforesaid election materials together. Sometimes they carried those materials with them and distributed them. He also carried the aforesaid election materials to those places where Mr. Sapa did not accompany.

49. From reading of the evidence of these witnesses it appears that both the 1st respondent as well as the other witness Sri Samson Zoram Thanga totally denied the distribution of Ext. P series. According to them they definitely attended their election meetings. In those meetings they told to the voters about the various developmental works that they would undertake. They denied that Ext. P series was ever distributed. In fact the 1st respondent did not distribute any election materials. It was the workers who used to distribute the election materials those were published by their party. These witnesses totally denied the allegations made about the distribution of the election materials like Ext. P series.

50. In an election petition where the ground is corrupt practice by appealing the voters it is the burden of the petitioner to prove the case beyond reasonable doubt. From the evidence of the witnesses for the petitioner it is not clear that election materials, namely, Ext. P series were distributed by the 1st respondent or his agent or other workers. It has not been properly proved. Besides most of the witnesses examined on behalf of the petitioner earlier belonged to the Congress Party and they left the Congress Party and joined MNF. For these reasons it is difficult to accept their versions and on the basis of oral testimony the verdict of the people cannot be set aside.

51. In view of the above, I am constrained to hold that the petitioner has not been able to prove that the election materials had been distributed by Respondent No. 1, or his agent or his party. It is also not proved that Respondent No. 1 held public meeting where he made religious appeal.

52. Mr. Bhattacharyya, learned counsel for the petitioners submitted that when some evidence are adduced by the petitioner alleging corrupt practice by appealing the voters on the basis of religion then mere denial by the returned candidate was not enough. There should be some more positive evidence. In my opinion, as held in various decisions of the Apex Court the election cannot be upset without there being some acceptable evidence. Burden remains with the petitioner to prove just like criminal case beyond reasonable doubt and if that is not done then in that case it would be difficult to upset the election. In view of that I am of opinion that the election petitioner has totally failed to prove the case of corrupt practice committed by the returned candidate - 1st respondent by appealing to the voters on the basis of religion. As I have already held that the Ext. P series no doubt contain religious appeal, but the fact that it has been printed by the returned candidate or by his agent or by person with his instruction but there is no proof that these were printed and distributed by the Respondent No. 1, his agents or workers. Therefore, the election materials containing offending articles were printed at the instance of returned candidate or his agent or any person with the knowledge and consent of the returned candidate and the distribution of those materials have not been proved beyond doubt. Therefore, the election cannot be set aside.

ELECTION PETITION NO. 8(G)/89.

H. Lalruata vs. Vanlalnghaka & others.

53. In this petition the petitioner examined 9 witnesses in total. The petitioner adduced about 29 documentary evidence containing offending writings in Ext. P Series.

54. P.W. 1 L.H. Lian Hming Thanga tried to prove the distribution of the election materials. He stated that on 16th December, 1989 the President of MPCC (I) Mr. Lalthanhawla released the pamphlets, stickers, banners officially at Aizawl. He received those in the capacity of General Secretary in bulk. On receipt of those he sent them to the seven candidates including him for distribution to their constituencies. In his constituency he distributed those materials to the party workers and he personally distributed them in his constituency. Mr. Vanlalnghaka contested as Congress (I) candidate from 12th Hnahthial Constituency. There were seven constituencies in Lunglei District. Ext. P-1, Ext. P-2 and Ext. P-3 were the election manifestos issued by the Congress (I). Ext. P-4 is a pamphlet "Operation Josua" issued by MPCC (I). Ext. P-6 was also the election pamphlet issued by the MPCC (I). The aforesaid documents he received from the MPCC (I) for the purpose of distribution. In cross-examination he stated that he was a 3rd Class contractor. He left Congress (I) party on 6th October, 1990. He left the Congress Party because of conflict of ideals. He also stated that he was the General Secretary when he joined MNF. During the last election he worked for the victory of himself and his party i.e. the Congress (I). He wanted to secure development of Mizoram by running the election. Normally all the Mizos are Christians. So to win over their sentiments they promi-

sed establishment of a Christian Government. By Christian Government they meant that the Congress Government would be run according to the ethics, principles and morals of Bible. By morals, principles and ethics of Bible he meant that the Government would be working for the welfare and betterment of the people. There are about 8 to 10 thousand voters in his constituency. In his constituency for 20/30 days. He visited all the 7 constituencies. This witness also could not say when actually the meeting took place. He also could not say anything about the other meetings.

55. P.W. 8 Pazaa stated that he was a cultivator by profession. On 12.1.89 the 1st respondent addressed a public meeting at Thingsai at about 7 PM before an audience of about 150 persons in his own residence. The 1st respondent before addressing the public meeting distributed the election materials like manifestos, pamphlets, stickers, etc. by himself. He also received the aforesaid materials. After finishing his supper he went to attend the meeting addressed by 1st respondent. After distribution of the aforesaid election materials, the 1st respondent explained about the contents of the election materials. The 1st respondent appealed the audience that if they voted for Congress (I) they would form a Christian Government. 1st respondent spoke many things regarding development. But he did not remember those statements. Election materials were in Mizo language. Ext. P-1 to p-6 were the election materials similar to those distributed in the said meeting. After few days of the election result was declared he went to Hnahthial for his personal work and the petitioner was residing at Hnahthial in rented house. While he was passing through the road, the petitioner called him from his house. He went to the house of the petitioner. The petitioner enquired of that in spite of so many MNF sumpathisers in Thingsai village why the petitioner lost the election. He told the petitioner that because respondent No. 1 made an appeal to the people that if they were voted to power they should form Christian Government and that might be the reason. Because of this the petitioner lost the election on enquiry the said witness handed over the election materials which he received. That was after few days on his next visit to Hnahthial. He handed over the election materials to the petitioner. In his cross-examination he stated that results were declared on 23rd of January, 1989. He did not belong to any political party. He did not know the total number of voters in his village. He cast his vote in the last election. He did not know whether MNF secured more votes than the Congress. He believed that there were MNF office at his village. This witness also did not say that he attended any other meeting. He also stated that the did not remember whether there was any other public meeting by the candidate of MNU or PC. He did not remember the date on which the MNF meeting was held. This witness only stated that on receipt of the election materials he read the contents, He further stated that he could not remember what was written in the manifesto as it was long back except about the Christian Government. The witness was shown Ext. P-1 to P-6 and he stated that he could not clearly read them because of his poor eye sight. He was living with his wife and children. He told the members of his family what was written in the election materials. They appreciated the promise about the Christian Government. However, he did not discuss about the election manifesto with any person of his village as all the villagers had received them. He did not remember the date on which he met the petitioner after the election. He also could not remember the date on which he handed over the election

materials to the petitioner. This is another witness who stated that he only attended the meeting held on 12.1.89. He met the election petitioner after the results were out only by chance and then he told about the distribution of the election materials and appeal made by the 1st respondent on the basis of religion. On the request of the petitioner he handed over the election manifesto and pamphlets, etc. which were distributed by the 1st respondent or his agent on 12.1. 89. This witness did not remember whether he attended any other meeting. He further stated that he did not remember when he met the petitioner and how many days after he handed over. This shows that this witness could remember only one day - the day on which the materials were distributed by the 1st respondent or his agent. But regarding the other meetings he was absolutely ignorant. He could not state the place where the election meetings were held by MNF and other parties. He further stated that he could not give the date on which he handed over the election materials. This witness also could not read Ext. P-1 to P-6 when these were shown as he had poor eye sight. The evidence of this witness is shrouded with doubt in as much as he could only say the exact date on which the meeting was held by the 1st respondent.

56. P.W. 9 Chalthuama is another witness for the election petitioner. In his evidence he stated that he was a businessman by profession. The 1st respondent addressed a meeting on 14.1.89 at about 6.30 P.M. at Cherhlun before an audience of about 200 persons. This witness also similarly stated that the 1st respondent and his party distributed election materials like Ext. P-1 to P-6. Prior to the election he met the petitioner as he was the Pastor of United Pentecostal Church. After the election results were declared he met the petitioner. He met petitioner after the declaration of election. He put up in a house temporarily which was close to the rented house of the petitioner. In cross-examination he stated that he did not belong to any political party, he did not remember the date on which he met the election petitioner after the election, he did not remember the date on which he went to Hnahthial after the result of the election was declared. He did not remember the date on which he met the petitioner before the election, the petitioner did not visit his place during the election campaign. Four candidates belonging to MNF, Congress (I), PCB and MNU contested the election. MNF and Congress (I) only called public meetings. PC party did not hold any election meeting. He could not tell the date and time when MNF held its meeting but it was at night time. He only attended the meeting of the Congress (I) and no other meeting. He did not know if MNF, PC and other candidates distributed any election materials. There were MNF workers in his village. He knew them. Since it was long time he did not remember if MNF workers attended the meeting at that time. He is also another witness who could remember only the date when the 1st respondent held the meeting and distributed the election materials like Ext. P-1 to P-6. This witness stated that the MNF also held the meetings but he did not attend. He also stated that other political parties also held meetings but he did not attend there. He did not remember to have attended the meetings of the MNF party. He also had no knowledge whether MNF party distributed election materials like Exts P-1 to P-6. This witness is also a chance witness. He met the election petitioner only after the election was over. He met the election petitioner and told him that the 1st respondent had distributed the election materials. Though he knew that there were many MNF party workers in his village he did not care to inform them about the distribution of the election materials by the Congress (I). This witness further stated that though he met the election petitioner before the election he did not mention about the distribution of pamphlets. He only

informed him after the election was over. From the reading of the evidence it appears that he is also similar type of witness who simply could remember the election meeting held by the MPCC(I). He also could recognise Exts. P-1 to P-6. In my opinion, evidence of this witness is not acceptable.

57. 1st respondent also examined himself. He totally denied about the distribution of the election materials like Ext. P series. He said neither he nor his party published all those documents. His case was totally denial. Even he stated that he never attended any election meeting during his campaign. He only attended a public meeting in 1987 which was not connected with the present election.

58. In this case also the evidence recorded by the petitioner regarding distribution of the articles, in my opinion, has not been proved beyond reasonable doubt as is required. The respondent having denied so, it was the duty of the petitioner to prove the distribution of election materials containing the offending statements beyond reasonable doubt. As the petitioner has totally failed to prove that the respondent No.1 distributed those election materials and made public speech to woo the voters on the ground of religion.

58. ELECTION PETITION No.9(G)/89

(Lalhlimpuia - vs-Rosangliana and Others)

In this case the petitioner examined as many as 9 witnesses including election petitioner. PW 7- J. Lalhlanmawia, PW 8-C Dinthanga, PW 9- Lalzawmliana and also PW 4 - Lainghakliana are the four witnesses common in all the cases. Petitioner examined PW 2 Lalbana, PW-5 Dosanga and PW 6- Vanlallawma to prove the distribution of the election materials by the petitioner or his agent in the meeting held on different dates and gave public speech making religious appeal. PW-1 is the election petitioner. He tried to prove his case regarding the indulging of corrupt practice by the 1st respondent. The 1st respondent examined three witnesses, namely, R.W.1 Rosangliana - Respondent himself, RW 2, C. Lalrinpuia and RW-3 Thangthuama regarding canvassing.

59. Now from the evidence of the witnesses, it is to be seen whether the election petitioner has been able to prove that those election materials Ext. P-1 to P-6 series containing the offending materials were distributed either by the returned candidate R-1 or by his agent or by his party or any one duly authorised by the petitioner. According to the petitioner he was informed by his witnesses that the returned candidate i.e. the 1st respondent in the public meeting said that they would form a Christian Government and provide opportunity to visit the Holy Land ("Jerusalem"), every year they would give Rs. 10,000/-, they would change the syllabus of the school according to the belief of the Christian doctrine. Each one of them would also get corrugated sheets. Those were the main points of the witnesses. All the witnesses told him the same thing. In his examination-in-chief the petitioner stated that the 1st respondent made wide distribution of election literatures Ext P-1 to P-6 series. He read out those in public meeting and visited each house and read those and explained them. Those were distributed in huge number to the people to read. He wanted to say that MPCC (I) was a State Unit of the All India Congress (I) and hence MPCC (I) was connected with the AICC (I). Therefore, the statement of the 1st respondent that

he was not a candidate of MPCC (i) was not correct. Regarding the distribution of the offending materials next P-1 to P-6 this witness did not see who was personally present in meeting. He also did not give the source of his information. However, in cross-examination he stated that he knew about the holding of meeting by the 1st respondent through line witnesses. He did not know personally in the beginning, but his witnesses who were from those areas where the public meetings were held informed about it. He filed the election petition himself. He received the information from his witnesses. Since his house was far away from the constituency, he got the materials from the witnesses. None of those witnesses named was related to him. He belonged to Mizo National Front Party. From the evidence of this witness it will appear that he was not present at any time when the 1st respondent, i.e. the returned candidate held the meetings. He was only informed by his witnesses. For that purpose it is to be seen how far the other witnesses had been able to prove those facts.

60. PW-2, Lalbana stated in his evidence that he belonged to Sihphir 'S' village. He knew about the election campaign of 1st respondent. He knew that on 12th January, 1989 a meeting was held at Sihphir 'S'. He, however, did not know who called the meeting and there were lot of people. There was Congress (I) election office by the side of the road where meeting was held plus other party offices also. He listened what was said in the public meeting. Many persons said many things. However, he did not know the persons. The 1st respondent was there in the meeting. He said what was written in the election manifesto. Apart from the election manifesto he saw election sticker. He saw also election manifesto but could not say exactly which one amongst those shown to him as seen by him as he did not have a copy of the same. He told the election petitioner that a public meeting was held and there were many people who spoke about the election manifesto. The 1st respondent told in the meeting that if he was elected as Congress (I) candidate, it will be good for Mizoram. He saw the election materials but did not have a copy. He saw many copy distributed, but he did not recognise those papers. This witness did not say anything against the returned candidate the 1st respondent because he said only one statement that the 1st respondent stated that if he was voted to power it would good for Mizoram. He did not say anything about the offending materials. I find he was very specific that he did not remember what was the election materials distributed in the said meeting.

61. PW-5, R. Dosanga was another witness for election petitioner. The election petitioner attempted to prove the distribution of the election materials Ext. P-1 to Ext. P-6 containing offending statements. In his evidence he also stated that he knew the nature of the campaign of Congress (I). Mr. Rosangliana opened his election campaign office on 11.1.89 in the building of Mr. Thankunga. He further stated that on the date when the public meeting was held there were about 150 to 200 people present. Mr. Rosangliana delivered a speech and read out the election materials and pamphlets, etc. At first the pamphlets, manifestos were released by Mr. Rosangliana. Thereafter, the same were distributed by his party workers to the people. They also distributed sticker. Exts P-1, P-2 and P-3 were distributed in the said meeting. In addition to that Ext. P-4 was also distributed. Ext. P-16 and Ext. P-17 were also distributed. He had seen the sticker/pamphlets Ext. P-5 and Ext. P-6 were being distributed in the said meeting. After the election petition was filed he handed over the aforesaid exhibits to Smt. Lahlimpuii thereafter, he said that he handed over those materials to respondent No. 1 after a week of the aforesaid campaign. Ext.

P-1 contains the symbol of Congress (I). In cross-examination this witness stated that he was underground for some time and was also arrested in connection with the ambush of the Lt. Governor. He came overground and joined Mizoram Congress in the year 1972. He was elected as a village council member of Congress (I). In 1976 there was peace accord in Mizoram. After the accord was reached Mr. Laldenga became the Chief Minister. He did not remember the year but he was elected as a member of the village council on MNF ticket. He was not a member of the MNF party but as he was elected as a member of the village council on MNF ticket people were under the impression that he belonged to MNF. He further stated that he did not meet Mr. Rosangliana after the said meeting. Smti. Thansiami was the P.C. Party candidate. Eventhough the Mizo National Union was not so popular his name was Lalhlengliana. He did not meet Mr. Lalhlengliana before or after the meeting. Except the petitioner Lalhlimpuii he did not hand over the election materials of Congress (I) to any other candidate. About one week after the meeting Mrs. Lalhlimpuii, the MNF candidate came to his village and he told her about the Congress meeting and also about the distribution of the documents. She asked to hand over those documents. Mr. Rosangliana and Smti. A. Thansiami. He handed over the documents to Mrs. Lalhlimpuii did not ask him anything. He told her that he had gone through the document and some of them were good. This witness also stated that there were good things in the said documents. Those good things were that a family who did not have a government servant in the family would be paid Rs.10,000/-. It was mentioned that a Christian Government would be formed if voted to power. He also stated that he received the election manifesto of MNF. However, he could not recollect any of them. A copy written as manifesto (X) shown to PW. The witness stated that he did not receive any document like (X). He did not receive the manifesto of PC Party. Except what was written in Congress (I) Manifesto he did not remember what was written in the manifesto of other political party. This witness again stated that he was a member of the Congress party. He left Congress and then joined MNF and returned as a MNF candidate in the village Panchayat. He also appears to be an interested witness because he could only remember the manifesto and other election materials as proved by the petitioner but it is strange that though he was given the manifesto and other election materials of other parties he could not recognise. He did not even remember who gave what materials. From this it will not be safe to accept the evidence of this witness regarding the distribution of the election materials as adduced by the petitioner.

62. PW-6, Vanlallawma is another witness for the petitioner who attempted to prove the distribution of the offending election materials Exts P-1 to P-6. In his evidence he stated that Mr. Rosangliana was a Congress (I) candidate and Smt. Lalhlimpuii was a candidate from MNF. There was Congress (I) meeting in his village during election. During the campaign Mr. Rosangliana addressed the public. He was present in that meeting. He stated that returned candidate Mr. Rosangliana distributed election materials, namely, Exts P-1 to P-6. Similar documents like P-1 to P-6 were distributed during the meeting. He had not seen Ext. P-4. During door to door campaign he did not receive any document. He received the copies of the afore-said documents in the meeting. He knew Congress (I) symbol was 'Hand'. Ext P-1 contains the said symbol. In his cross examination he stated that the public meeting of Congress (I) was held at Zemabawk. The meeting was held on 13.1.89. He did not know if MNF held any meeting. He could not say whether PC Party organised any meeting. He did not know whether PC Party had any office in his village. He

also did not receive any document of manifesto from the MNF party. He received only from Congress (I). He knew that petitioner Smt. Lalhlipuii. He did not receive any paper from the election petitioner Smt. Lalhlipuii. He also did not remember when PC Party candidate went for door to door campaign. He also did not remember when MNF Party candidate went for door to door campaign. This witness also cannot be relied upon and the evidence adduced by this witness cannot prove beyond doubt that it was the first respondent or his agent or his party distributed those election materials.

63. RW-1, Rosangliana is the 1st respondent- returned candidate. In his evidence he stated that he went to the constituency and met the eminent people, relations, workers of the party and other people requesting them to help him in the election and vote for him and also to help him to contact their friends. He stated that in his constituency there was a Block Congress Committee. The Block Congress Committee directed its units to work for him and also directed the workers. The workers distributed election materials like pamphlets, stickers, banners, posters, caps which were published by AICC and MPCC. He did not hold any public meeting in any of the villages during his election campaign. During entire election campaign he did not hold any meeting. He also denied that MPCC (I) published materials as shown in Ext. P series. It was not a fact that he and his party made any appeal to the electorate on the ground of religion. The evidence of respondent No. 1 is a total denial.

64. RW-2, Mr. C. Lalrinpuia also stated that the respondent No. 1 distributed pamphlets, election materials stickers, banners, caps which were received by MPCC (I) to the voters. These election materials were in Mizo language which he read and understood. During his election campaign he mostly worked in Zemabawk. He saw Mr. Rosangliana, their candidate during election campaign. Mr. Rosangliana met prominent persons, sport lovers, etc. This witness was shown Ext. P series. He said that they never distributed the election materials like Ext. P Series. From evidence of the witnesses for the petitioner and of the 1st respondent, it appears that the petitioner's witnesses have not been able to prove the distribution of the offending materials like Ext. P-1 to P-6 series, beyond reasonable doubt. On the other hand the respondents have denied the distribution of those materials. Therefore, in my opinion, it will not be safe for this Court to hold that the 1st respondent, his agents or his party ever distributed the offending election materials like Ext. P-1 to P-6 series beyond reasonable doubt. On the other hand, the respondents have denied the distribution of those materials. Therefore, in my opinion, it will not be safe for this Court to hold that the 1st respondent, his agents or his party ever distributed the offending election materials like Ext. P-1 to P-6. After considering the evidence of the witnesses for the petitioner as well as for the 1st respondent, in my opinion, the petitioner failed to prove beyond doubt that the 1st respondent i.e. the returned candidate by himself or by his agent or by his party distributed those materials and made religious appeal in public meetings.

65. Election petition Nos. 11(G), 12(G), 13(G), 17(G), and 21(G) of 1989 I will take it at later stage. Also I will take up election petition No. 10(G), 19(G) and 20 (G) of 1989.

66. ELECTION PETITION NO. 14(G) OF 1989

(J.Kapthianga vs. C.L.Ruala and others)

In this election petition the election petitioner examined 9 witnesses including petitioner himself. PW-5, J.Kapthianga is the election petitioner. Petitioner during his election campaign between 31.12.88 to 19.1.89 distributed election materials pamphlets, leaflets, stickers containing religious appeals through the constituency. He distributed the aforesaid election materials in public meeting. He was not present in those meetings. He was informed about the distribution of the aforesaid election materials containing the religious appeals by the three voters, namely, (1) Mankima from Lungdar East, (2) Chhawnliana from Khawlaillung and (3) Mr. Laloinpuia from N.Vanlaiphai. The election materials were given to him by the aforesaid voters. He had also annexed the aforesaid materials along with English translation thereof with his election petition. On going through the election materials he found that those materials contained religious appeals to the voters. Regarding holding of election meeting by the 1st respondent and distribution of the election materials like P-1 to P-5 series he stated that 1st respondent made election campaign from 31.12.88 to 19.1.89 addressing various public meetings in the following constituencies : (1) Kinawlaillung, (2) N.Vanlaiphai, (3) E.Lungdar, (4) Sailulak, (5) Leng, (6) Piler, (7) Lungkawlh, (8) Sialsir, (9) Mualcheng (10) Chekawn, (11) Bawktlang and (12) Lungchhuan. He stated that the 1st respondent addressed public meetings, street corner meetings and canvassed door to door in the aforesaid places. On 11.1.89 the 1st respondent held a meeting at Khawlaillung village, Bangla Veng, Mizoram. On that he was not present and a voter namely, Chhawnliana informed him. On 6.1.89 also the 1st respondent held meeting at 10:30 a.m. before an audience of about 50 persons at Lungdar 'E'. Election petitioner was not present in the said meeting. He was informed by a voter, namely, Mankima. Respondent No. 1 also addressed a meeting on 6.1.89 at about 7 p.m. in the M.E. School of North Vanlaiphai village before an audience of about 40 persons. Before addressing the meeting the 1st respondent himself distributed the audience the above mentioned materials. He was also not present. He got the copies of the aforesaid election materials from the aforesaid voters. Having gone through the election materials he found that those contained offending statements. In cross-examination he further stated that all those voters named by him reported to him only after the election was over. Petitioner had no personal knowledge. He came to know from his witnesses. They reported to him after the election at Aizawl Bazar and Treasury Square in Aizawl town. He did not remember the dates. All of them reported separately. Probably, they reported to him after a week. Mankima came after a week and reported to him. They reported the same thing at different dates that the 1st respondent addressed public meeting making religious appeal and also distributed election materials like Ext. P series. Witnesses Lalnachhuana and Lalngbakliana reported about the formal release of the election materials by Mr. Lalthanhawla at Vanapa Hall, Aizawl. They reported to him at Aizawl. He did not remember the date, place where and why they reported. They came separately. None of the party member reported to him. He had seen some local newspapers about the release of election materials by Mr. Lalthanhawla. He did not know the names of those papers. This witness, i.e. the election petitioner it is clear that the election petitioner did not see or any election meeting held by the 1st respondent. He also did not witness the distribution of the election materials at Vanapa Hall by the Party Pre-

sident Lalthanhawla. He was reported by the witnesses named by him at various times. The date and place also he did not remember. He only remembered the date of holding the election by the Congress but he did not remember the date and place when he was reported. He was also not there when these witnesses. This witness stated that the witnesses met him in various places. However, he could not give the name of the places. He further stated that the materials were given to him after the results of the election was over. From the evidence of this witness, it appears that he had no personal knowledge about the distribution of the offending articles and also the religious appeal made in the public meeting.

67. PW-7, Mankima attempted to prove that the 1st respondent had addressed public meeting and made religious appeal and also distributed the pamphlets like Ext. P-1 to P-6 containing offending statements. In his evidence he stated that he was a cultivator. He knew the petitioner as well as the 1st respondent. The 1st respondent held election meeting at village Rundar East at about 10.30 a.m. on 6.1.89 in presence of about 50 persons. He stated that before addressing the public meeting the 1st respondent distributed some booklets in the said meeting. He was also given the aforesaid election materials by the 1st respondent. Exts. P-1, P-2, P-4, P-18, P-19 and P-24 were similar to those election materials which were distributed. He did not remember all what he said but he remembered that he said about the formation of a Christian State and payment of Rs 10,000/- to each household and trip to Holy Land and also distribution of text book in the school in conformity with Christian doctrine. He received the aforesaid election materials distributed by the 1st respondent in the aforesaid meeting. He handed over the aforesaid election materials to the petitioner one week after the declaration of election result. This witness further stated that in the meeting the 1st respondent himself gave him the election materials. He could not say who were the other people of Congress in the said meeting held by him. He also could not say if there were other Congress workers from his village along with the 1st respondent in the said meeting. He further stated that he could not say whether the Congress (I) workers of his village went to his house for door to door campaign. This is the evidence of this witness. Now going through the evidence of this witness, in my opinion, it will be difficult to accept that the 1st respondent distributed the election materials like Ext P-1 to P-6 series and also made religious appeals because from the evidence it is not proved beyond doubt that the 1st respondent was addressing a meeting in as much as this witness only could remember the date and the name of the 1st respondent who distributed the materials but he did not remember any other things. He is also a witness similar to the other case. Therefore, it will not be safe to come to the conclusion that the 1st respondent or his agent or his party was guilty of making religious appeal in the meetings and distribution of the materials like Ext. P series.

68. PW-8, Chhawnliana is another witness by which the petitioner wanted to prove that the 1st respondent distributed the offending materials, like P-1 to P-6 and also made a public speech. He stated that the 1st respondent himself addressed a public meeting of his election campaign at Khawllung village on 11.1.89 at about 7 p.m. before an audience of 48 persons. Before addressing the public meeting the 1st respondent distributed election materials like election manifesto, pamphlets, stickers, Ext P-1 P-2, P-4, P-18, P-19 and P-24 were similar to those election materials distributed in the said election meeting by the 1st respondent. The Respondent

No. 1 while addressing the public meeting explained about the election materials and appealed to the audience to vote for him to form a Christian Govt. and arrange for pilgrimage to Holy Land, payment of Rs 10,000/- cash to each family members. He received the aforesaid election materials distributed by the 1st respondent in the said meeting. He informed the petitioner about the distribution of the aforesaid election materials and addressing the public meeting by the 1st respondent about one week after the election result was declared. The election was held on 21st of January, 1989 and the results were declared on 23rd January, 1989. The election materials which he received in the aforesaid meeting were kept with him. After a week of the election result was declared he went to Aizawl Bazar alongwith those election materials in his pocket. At Aizawl Bazar he met the petitioner and then he asked him why he lost the election when he told him that because of the appeal made by those election materials the petitioner had lost election. On being asked by him he handed over the copies of the election materials. In his cross examination he stated that the meeting took place at a place which was a distance of about 1 K.M. from his house. He did not belong to any political party. He did not contest any village council election. He also could not say whether at the said meeting there were any person of his village. Mr Lalkunga came to his house at about 8 p.m. one week before the election. He told Mr Lalkunga that the Respondent No. 1 had distributed the election materials in the public meetings held by him and also made appeal on the ground of religion. Mr Lalkunga said nothing. MNF meeting took place at 8 P.M. but he did not remember the date. He did not report to anybody else about the distribution of the election materials except the petitioner and Lalkunga, but he read out those materials to the visitors of his house. This is a witness he said that he was present on the date of public meeting held by the 1st respondent. He received those materials but he kept it with him. He met the petitioner about a week after the results were declared and he handed over those materials which he carried alongwith him. Now from the evidence it appears that he by chance met the petitioner in Aizawl Bazar. At least the evidence does not indicate that there was a prior communication to the petitioner that this witness would meet him. There was no reason for him to carry the election materials like P-1 to P-6 containing offending articles. Besides, he did not belong to the place. His village is about a K.M. away. This witness did not give any reason why he visited the said place on that day. Therefore, he appeared to be a chance witness. Besides, it is rather strange that he would carry the election materials like P-1 to P-6 and on that day carry to Aizawl Bazar where he met the election petitioner and handed over. From his evidence it will be difficult to accept that the 1st respondent held the meeting as stated.

69. P.W. 9 Laldinpuia also spoke about the distribution of the election materials. He said that he was a President of the Village Council of North Vanlaiphai village during the time of election. The 1st respondent came to his village on 6.1.89 and held an election meeting. He further stated that before holding the meeting the 1st respondent distributed certain election materials like Ext. P-1, P-2, P-4, P-18, P-19 and P-24. He further stated in his cross-examination that he did not remember on what day the meeting was called. The former Chief Minister Brig. T. Sailo was the PCP candidate. He did not know if there was any meeting called by PC party before the election. There were door to door campaign by the workers of the political parties. He did not tell Mr Kapthianga, election petitioner about the distribution of the election materials by respondent No. 1 when he called the meeting, but he did not remember whether meeting was called before or after the meeting called by Respon-

dent No. 1. He also did not tell the MNF workers who came to his house during door to door campaign about the distribution of the election materials. He gave to the petitioner the election materials issued by the Congress (I) on the request of the petitioner though he possessed it. The evidence of this witness also, in my opinion, is not sufficient to prove that the 1st respondent held the election meeting on the date mentioned by him and he was present because in his evidence he stated that he did not remember any other meeting he ever attended.

70. 1st respondent examined three witnesses, namely, himself, Lalhranga and Vanlaltana.

Under the circumstances in this case also it is not possible to hold the 1st respondent - returned candidate was guilty of corrupt practice.

ELECTION PETITION NO. 15(G) OF 1989

B. Lalthlengliana vs. Liansuama and others.

71. In this case also the petitioner examined P.W. 6 Zaiawithanga, P.W. 7 Samuela and P.W. 8 S.F. Aichhunga gave evidence regarding holding of meeting and distribution of election materials, namely, Ext. P-1 to P-6 and the 1st respondent - returned candidate's statement addressing public meeting making religious appeal. Now it is to be seen whether the petitioner has been able to prove the allegation of holding meeting, addressing the said meeting by the returned candidate respondent No. 1, making religious appeal and also distributing election materials like P-1 to P-6.

72. PW. 6 Zaiawithanga was a businessman. He knew both the petitioner as well the 1st respondent. He stated that the 1st respondent addressed public meeting and distributed election manifesto, pamphlets, leaflets, stickers, etc. himself at village West Pharleng on 18.1.89 at 12 Noon in presence of 100 persons. He had also received election manifesto, pamphlets, leaflets from the 1st respondent in the said meeting. He had read the aforesaid election materials in which it was written that "Christian Government would be formed" and the text books of the schools would be based on Christian doctrine. After distribution of the election materials in the said meeting the respondent addressed the public by explaining the policies of Congress (I) party and also about the formation of Christian Government and publishing of text books based on Christian doctrine. He also stated that Ext P-1, P-2, P-4, P-18, P-19 and P-24 were materials like that of the materials distributed before the meeting. He could identify those materials in the Court. He received those materials and read those. Immediately after the election was over the petitioner visited the constituency at that time he handed over those to him. In his cross-examination he stated that he was a Headmaster of Pharleng High School for some time but he resigned because he found the business was more profitable. He was holding a degree of Bachelor of Arts and Education. Earlier he was not in any political party, but for last six months he had been taking keen interest in MNF party, but still he was not a member of MNF party. He was not only interested in MNF party but also now interested in politics. He was interested in politics and willing to join any party which is interested in the development of Mizoram and free from corruption. There was no political party in Mizoram which was interested for the development of Mizoram and free from corruption. However, he could not say whether any other political party held any

meeting. He knew only about one meeting held by the 1st respondent which he attended. He distributed the election materials and showing the sticker he said that they would form Christian Government. He did not remember the date on which the election petitioner visited his village after the declaration of the result. The election petitioner visited his house after the election. However, he did not remember the date. Ext. X-1 to X-6 were the election materials which he received from the Respondent No. 1 and handed over to the petitioner. The respondent while distributing the election materials stated that if Congress (I) Government is formed then it will be formed in the Christian principles. He did not remember the 1st respondent ever said that he would work for the poor people in Mizoram if voted to power. The election petitioner visited his house earlier because he knew him personally and he came to his house without knowing that there were election materials in his house. This witness also stated that he attended only one meeting. Though there were meetings held by other parties he could not say anything about the other meetings. He himself stated that he was not interested in politics at the time when the election was held. If that was so, what was his reason of his attending election meeting only of Congress (I) and not other parties. From this it appears that this is another witness who tried to support the election petitioner regarding the distribution of the election materials and the religious appeal made by the 1st respondent. He also stated that the petitioner came to his house after the election was over and by the way he asked why he lost his election and then he produced the election materials. This part of evidence is also not so strong to bring home the charge of distribution of election materials like Ext. P-1 to P-6 and making religious appeal. If he was an independent person having interest in any party and not affiliated to any political party it will be difficult to accept his version that he only attended the meeting of the petitioner that too he remember the date. But in respect of others he did not remember anything. On the basis of this witness also it is not possible to come to the conclusion about the distribution of materials and making religious appeals by the 1st respondent i.e. the returned candidate.

ELECTION PETITION NO. 16(G) OF 1989

Lalthankaia vs. P. Lalbiaka and others

73. In this case regarding the distribution of the election materials like Exts. P-1 to P-6 containing offending statements making religious appeal the petitioner did not give a positive evidence. His evidence is that he was reported that the 1st respondent held meeting where he distributed the election materials like Ext. P-1 series and also made some religious appeal. This witness was not personally present in those two meetings mentioned above. He was told by Lalmuanawma about the meeting held on 20.1.89. Therefore, his evidence is only what was reported by the witnesses. Regarding holding of meeting by the 1st respondent, distribution of election materials and making religious appeal petitioner examined only one witness i.e. P.W. 8 Lalmuanawma. In his evidence P.W. 8 stated that he knew about the election campaign of Congress (I) in his village. In the afternoon of 20th January, 1989 a meeting was held by the Congress (I) candidate in the house of Thangzuala. There were about 100-150 persons in the said meeting. The announcement was made in the said meeting through public announcement system for the purpose by loud speaker. He did not know who made the announcement. He was present in the meeting. He also stated the same thing as other witnesses in other election petitions had stated.

The evidence of this witness also, in my opinion, is not enough to hold that the election petitioner actually distributed election materials because in general election of 1989 several parties were in the fray. All the parties campaigned and held public meetings, gave speeches, distributed pamphlets and other election materials. He emphatically said that he did not remember any of such meetings of distribution. This witness also cannot be relied upon because he was speaking as if he was picked up by the election petitioner just to give evidence. Therefore, in my view, this witness also cannot be relied on to come to a definite conclusions regarding the corrupt practice of distributing election materials like P series containing offending materials and also making speech before the public with religious appeal. In view of the above, this witness also cannot be accepted.

ELECTION PETITION NO. 18(G) OF 1989

F. Aithanga vs. Lalthanhawla and others.

74. In this case also the petitioner examined eight witnesses including himself.

75. P.W.6 Thangsanga spoke about the meeting held by the 1st respondent and regarding the distribution of the election materials, namely, Ext. P-1 to P-6 and other materials in the said meetings and making religious appeal to the voters. Similarly, P.W.7. C. Ropianga spoke about the meetings and distribution of the election materials. He stated that on 10.1.89 the respondent No.1 addressed a public meeting at noon in village Lokicherra before the audience of 150 persons. Before addressing the public meeting he himself distributed election materials to the audience and explained the contents of those election materials to them. He stated that he would be able to identify those election materials. Thereafter he stated that Ext. P-1, P-2, P-4, P-7, P- 8, P-10 were materials like those materials which were distributed by the 1st respondent. Though he did not remember at all what the respondent said to the public in the meeting. However, he did remember that he said that if he was voted to power he would arrange pilgrimage for the Mizos to the Holy Land. He also said that the school text book would be reformed and revised on the basis of Christian teachings. He met the petitioner at his house after about two weeks of the election. Petitioner came to his house to know the reason as to why he lost the election. He told him that he lost the election because of the election materials like Ext. P-1, P-2, P-4, P-7, P-8 and P-10. He gave copies of the aforesaid election materials to the petitioner. The petitioner further asked him who were the other persons who would be having copies of those election materials. He said that the persons who attended the meeting would be having copies of those.

In his cross-examination he stated that he did not belong to any political party. The other political parties like MNF and PCP also held election meetings in his village. MNF held election meeting on 15.1.89. He attended the meeting of MNF as it near to his house. PCP also held the meeting near his house on 13.1.89. Mr. Aithanga spoke about the corruption and development in the said meeting. He did not distribute any election materials. He could not say the number of population and voters in his village. He also stated that he knew the MNF workers of his village. He did not tell the MNF workers in his village that they had lost election because of the election materials distributed by Respondent No. 1. He only knew Mr. Rohmingthanga had got election materials. He could not say about the others.

He also could not give the number of people of his village attending also the meeting. He also could not give the approximate number. The meeting was held at a distance of about 30 cubits from his house. Mr. F. Rokima the owner of the house where the meeting was held was also present. It is not a fact that there was no meeting etc.

76. P.W. 7 Rohming Thanga in his evidence stated that the 1st respondent addressed a public meeting in the election office situated at Lokicherra before an audience of 150. He did not remember exactly what the respondent No. 1 said in the said meeting, but he distributed election manifesto, Operation Josua and other leaflets. After distributing the aforesaid materials he addressed the public meeting. The 1st respondent while addressing a public meeting requested to vote Congress for forming a Christian Government and for a visit to Holy land. Ext. P-1, P-2, P-4, P-7, P-8 and P-10 were similar to those election materials distributed by the 1st respondent in the said meeting. He read out the aforesaid election materials to his friends. About a week after the election the petitioner visited his house. In cross-examination he stated that he did not belong to any political party. He was not interested in politics. He belonged to Lokicherra Sub-Town. The meeting of the Congress (I) took place at Lokicherra South Town. He did not remember exactly the date when he read out the election materials of the 1st respondent to his friends. This witness further stated that he did not attend any meeting of the other parties like PCP. He did not remember the date on which the candidate held the meeting. He also did not go to the meetings either. He did not know whether the MNF or PCP distributed election materials as he did not attend. Before the election he attended only one meeting i.e. the meeting of the Congress (I). All the political party workers, namely, Congress (I), MNF and PCP came to his house for canvassing. During door to door campaign Congress (I) workers did not give any materials to his house. There were Congress, MNF and PCP workers in his village. He also could not say whether there was MNF workers in the audience in the meeting held by the respondent No. 1. Some of his villagers attended the meeting but he did not know who they were. These two witnesses only spoke about one meeting held by the 1st respondent. Though there were several meetings held by other different political parties, namely, PCP and MNF. It would be difficult to accept the evidence of these two witnesses also. From their evidence, in my opinion, it is not proved that the respondent No. 1 by himself or through his agent or by his party distributed those election materials. Regarding the evidence of the election petitioner himself he only stated that he was reported by witnesses that the 1st respondent held those meetings. Considering all the evidence in regard to the distribution of the election materials, in my opinion, that the petitioner has not been able to prove the case beyond doubt that the respondent No. 1 is guilty of distributing election materials before the public making religious appeal.

ELECTION PETITION NO. 12 (G) OF 1989

T. Rozama vs. Zalayma and others

ELECTION PETITION NO. 11 (G) OF 1989

Zonunthara vs. Yaivenga and others

ELECTION PETITION NO. 13 (G) OF 1989

Ramundanga vs. Andrew Latherliana and others

ELECTION PETITION NO. 17 (G) OF 1989**Hrangthansanga vs. Saikapthianga and others****ELECTION PETITION NO. 21 (G) OF 1989****K. Lalromana vs. Lalhuthanga and others**

77. In all these five cases only five common witnesses have been examined. The common witnesses I have already discussed at the beginning of my judgment regarding printing of the election materials etc. Regarding distribution of those materials and making religious appeal there are no evidence whatsoever. Therefore, I hold that in those cases also petitioners failed to prove that respondents No. 1 or their agents or their party distributed the election materials and made religious appeal to the voters.

ELECTION PETITION NO. 10 (G) OF 1989**Lianhmingthanga vs. Lalthanhawla and others.****ELECTION PETITION NO. 19 (G) OF 1989****S. Lianzuala vs. Zoramsangliana and others****ELECTION PETITION NO. 20 (G) OF 1989****L. Nurchhina vs. Rokamlova and others**

78. The counsel Mr. Bhattacharyya and his juniors who originally appeared had withdrawn from the cases with due notice to the election petitioners. Thereafter the petitioners did not take any fresh step in these election petitions. No evidence (except of common witnesses) has been adduced. Therefore, in these petitions also the petitioners failed to prove that the respondents - returned candidates made public speech appealing to the voters on the religious ground and also distributed election materials like Ext. P series to the voters. They having totally failed, the ground of distribution of election materials like P series making appeal to the voters has totally failed.

79. Issue Nos. 1 and 2 : In view of the above discussions I hold that in respect of Issue Nos. 1 and 2 petitioners have failed to prove that the respondent No. 1 published the election materials, namely, Ext. P series and circulated and distributed the same in their campaign, public meetings, door to door canvassing. Petitioners have also failed to prove that the 1st respondents themselves addressed public meetings as alleged and distributed the election campaign literatures, namely, Ext. P series. These two issues are answered in the negative and in favour of respondent No. 1.

80. Issue No. 3 : In view of the foregoing discussions I hold that the election materials, namely, Ext. P series contain state nents appealing to the voters to vote on the ground of religion amounting to corrupt practice within the meaning of section 123 (3). However, no ground had been proved under sub-sections (1A) (b), (2), (3A) and (4) of Section 123 of the Act. This issue is accordingly answered.

81. Issue No.4 : In view of the decision of Issue Nos. 1 and 2 I hold that the elections of the 1st respondents in each election petition are not liable to be set aside.

82. Issue No. 5 : In view of the decision in Issue Nos. 1, 2 and 4 the election petitioners are not entitled to get any relief.

Accordingly, all the election petitions are dismissed. No costs.

83. The election petitioners have filed recrimination petitions. However, at the time of argument the learned counsel for the petitioners did not press those. Besides, in view of the decisions in Issue Nos. 1, 2 and 5 no order need be passed in those petitions.

D.N. Baruah,
Judge.