Thampanoor Ravi vs Charupara Ravi & Ors on 15 September, 1999

Equivalent citations: AIR 1999 SUPREME COURT 3309, 1999 (8) SCC 74, 1999 AIR SCW 3299, (1999) 7 JT 231 (SC), 2001 (3) LRI 508, 1999 (6) KANT LD 742, 1999 (5) SCALE 511, 1999 (7) ADSC 871, (2000) 1 ALLMR 85 (SC), 1999 ADSC 7 871, 2000 (1) ALL MR 85, 2000 (1) UJ (SC) 51, 1999 (7) JT 231, (1999) 3 KER LT 487, (1999) 6 ANDHLD 46, (1999) 8 SUPREME 72, (1999) 4 RECCIVR 261, (1999) 5 SCALE 511

Bench: S.R.Babu, R.C.Lahoti

PETITIONER:
THAMPANOOR RAVI

Vs.

RESPONDENT:
CHARUPARA RAVI & ORS.

DATE OF JUDGMENT: 15/09/1999

BENCH:
S.R.Babu, R.C.Lahoti

JUDGMENT:

RAJENDRA BABU, J. :

Civil Appeal Nos. 7395-7396 of 1997 The appellant in these appeals was declared elected to the Kerala Legislative Assembly from No. 139, Neyyattinkara constituency in an election held on April 27, 1996. Two election petitions were filed - one by a voter in that constituency and another by a defeated candidate who had secured the next highest number of votes to the appellant and in his petition a claim was also made for the declaration that he was duly elected.

In the election petition filed by the voter the election of the appellant was challenged on the ground that he was disqualified for being chosen as a member of the Legislative Assembly as he was an undischarged insolvent within the meaning of Article 191(1)(c) of the Constitution of India, at the time of filing of his nomination, at the time of his election and even on the date of the filing of the election petition. In the petition filed by the defeated candidate, in addition to the aforesaid ground of

disqualification of the appellant, he also alleged that the appellant had indulged in corrupt practices within the meaning of Section 123 of the Representation of the People Act, 1951 [hereinafter referred to as the R.P.Act].

The High Court upheld the contention of the Election Petitioners that the appellant had incurred the disqualification under Article 191(1)(c) of the Constitution and declared his election to the Kerala Legislative Assembly as void. The High Court, however, decided against the Election Petitioner on the allegation of corrupt practices. Hence there are two sets of appeals - two by the returned candidate in regard to invalidation of his election to the Assembly and the other by Election Petitioner with regard to findings recorded as to corrupt practices.

The principal issue to be decided in this case is whether the appellant is disqualified for being chosen as a member of the Legislative Assembly on the ground that he is an undischarged insolvent and whether his election could be declared to be void under Section 100 of the R.P. Act. The pleadings raised in this regard are that the appellant is a partner of a registered firm by name Kavitha Printers along with P.A.Thomas, Smt. Krishnamma and Gopeendra Nath; that the said firm borrowed a sum of Rs.3,16,000/- from the Kerala Financial Corporation, Thiruvananthapuram; that the partners of the firm did not repay the loan in spite of the repeated demands; that the revenue recovery proceedings were initiated against the appellant in terms of certificate dated April 22, 1994 issued by the District Collector, Thiruvananthapuram and at that time the total liability of the partners of the firm was amounting to Rs.10,62,000/-; that the appellant failed to settle his liability with Kerala Financial Corporation till the filing of his nomination papers and he was unable to pay the debts in the ordinary course of business as and when they became due; that the demand notice issued by the Tehsildar for the purpose of revenue recovery also stood returned on account of the closure of the business of the firm; that the appellant absented himself from the office of the firm and deliberately avoided service of notice upon him; that the appellant was not in a position to repay anything more than Rs.3 lakhs on behalf of the firm and, therefore, he was disqualified from being chosen as a member of the State Legislature as he was an undischarged insolvent, that thereby his election has become void in terms of Article 191(1)(c) of the Constitution. In the written objections filed, the appellant admitted that he was a partner of the firm along with certain others who are mentioned in the petition, but claimed that he retired from the partnership as per the report filed on July 20, 1985 before the Registrar of Firms. It was contended that having severed relationship with the firm, he had no knowledge or information as to the plea that the partners of the firm did not repay the loan in spite of the repeated demands. He pleaded that he did not receive any notice under the Revenue Recovery Act and he was not aware of the fact that any revenue recovery proceedings were initiated against other partners of the firm. The allegation that he was due to pay any money to the Kerala Financial Corporation was not correct and he did not make any attempt to deliberately avoid service of any notice upon him nor he has departed from his usual place of business

so as to defeat or delay repayment of debts due to the Kerala Financial Corporation. He claimed that he was in public life and was a member of the Kerala State Legislature for five years and thus his official as well as residential addresses were known to the Kerala Financial Corporation. It was also claimed that he has not incurred any disqualification in terms of Article 191(1)(c) of the Constitution and he has denied that he was an undischarged insolvent. In the connected petition, the allegations raised were identical and the pleadings in answer filed by the appellant were also similar.

On the aspect as to the disqualification of the returned candidate, the High Court framed Issue Nos. 2-11. The High Court held that the appellant is partner of the firm and although he may have retired at the time of filing the nomination inasmuch as no public notice has been issued, he was liable jointly with all other partners for all the acts done while he was a partner. Thus he was a partner at the time of filing his nomination for the election to the Legislative Assembly in question. It was further noticed that the appellant continued to be liable for the debts due to the Kerala Financial Corporation. It is held that the Kerala Financial Corporation has made efforts to realise the debts by getting initiated proceedings under the Revenue Recovery Act but it does not appear that those steps have been vigorously pursued with. The High Court also held that the appellant had avoided service of notice issued to him by the Tehsildar, Revenue Recovery and although he had not absconded himself but he was trying to get himself exonerated from liability without offering to repay anything to the Kerala Financial Corporation towards the large amounts due from him and the other partners of the firm. The High Court went on to examine as to whether any money had been paid by the firm of which the appellant was a partner and came to the conclusion that the appellant did not have the means to repay the debt due to the Kerala Financial Corporation and held as under :

On the evidence, it is thus clear that the first respondent was and is, a debtor, that he is a debtor who is unable and unwilling to pay his debts, that he is not shown to be possessed of assets sufficient to meet his obligations and consequently, he is an insolvent. But he has not been adjudicated an insolvent thus far under the Insolvency Act either on an application by the creditor or on an application by himself.

Thereafter the High Court, in the absence of the definition of the expression insolvent in the Provincial Insolvency Act, 1920 [hereinafter referred to as the Insolvency Act] considered the nature of proceedings arising under the Insolvency Act, went on to notice that under Section 2(8) of the Sale of Goods Act, an insolvent is defined as a person who had ceased to pay his debts in the ordinary course of business, or cannot pay his debts as they become due, whether he has committed an act of insolvency or not, and thereafter referred to various dictionaries and concluded as follows :

Suffice it to say that as far as I can gather, general meaning of the word insolvent is that he is a person who is unable to pay his debts as and when they become due or

whose assets are not sufficient to meet his obligations as and when they arise. Looked at from that point of view and going by the meaning of the expression insolvent as referred to above, it is clear that the first respondent was an insolvent on the date of the filing of the nomination by him, on the date of the election, on the date of filing of the election petition and even on the date of his examination in court.

A contention was raised on behalf of the appellant before the High Court that he has not been adjudged insolvent by any court under the Insolvency Act as applicable in the State of Kerala. So long as he is not adjudged insolvent the question of his being undischarged insolvent would not arise and thereby he could not be disqualified in terms of Article 191(1)(c) of the Constitution. In substance the contention is that the High Court could not in deciding an election petition hold that the appellant to be an undischarged insolvent for the purposes of Article 191(1)(c) of the Constitution. In answer to this contention, the High Court examined the scheme of different clauses in Article 191 of the Constitution. A person who is elected to a legislature cannot carry on his duties fearlessly without being subjected to Governmental pressure if such a person enters into a contract with the Government or holds an office which brings him remuneration and the Government has a voice in continuance of his contract or office and there is every likelihood of such person succumbing to the wishes of Government and in order to eliminate such a contingency it would be appropriate to ensure that persons who have received favours or benefits from the executive are disqualified and in the same manner if the appellant is indebted to the Kerala Financial Corporation he would not be a free person to act as a legislator. The High Court considered that this underlying scheme of the Constitutional provisions and the R.P. Act must be borne in mind in interpreting the expression undischarged insolvent under the R.P.Act. The High Court proceeded to explain that the expression undischarged insolvent was not defined in the Insolvency Act and there is no justification for giving the expression a technical meaning as was propounded by the appellants counsel. The High Court proceeded to give the expression undischarged insolvent its natural meaning so that the disqualification applies to any person who is shown to be unable to pay his debts on the relevant date. The High Court referred to the Debates in the Constituent Assembly and to the suggestion of Sir Alladi Krishnaswamy Ayyar that the expression if he is an undischarged insolvent should be in terms of Section 73 of the Insolvency Act but was not accepted by the Constituent Assembly and held that the framers of the Constitution did not want to confine the operation of the disqualification only to cases where a person is adjudged insolvent under the Insolvency Act. The High Court ultimately held that it would be appropriate to understand the expression undischarged insolvent in its broad and general sense rather than in the technical sense of the insolvency legislation. The High Court then proceeded to hold that even if a returning officer may not be in a position to accept an objection in a case where the objection is not backed by an order of adjudication by the court, there is nothing standing in the way of the Court to examine such a question. The High Court, therefore, accepted the submission that the pre-adjudication by an insolvency court is not required and observed that a

candidate who is found to be an insolvent by the court trying the election petition and a candidate who had already been adjudicated insolvent by the Insolvency Court but who has not obtained an order for discharge are both covered by Article 191(1)(c) of the Constitution. As this question goes to the root of the matter, we shall examine this aspect first. Before us it is urged on behalf of the appellant that the High Court could not, in deciding an election petition under the R.P.Act, examine the question whether the appellant is an undischarged insolvent or not. The learned counsel for the respondents supported the view taken by the High Court by relying upon the decision in Bhagwati Prasad Dixit Ghorewala vs. Rajeev Gandhi, 1985 All Weekly Cases 682.

In State of Kerala, the Provincial Insolvency Act is applicable. Under Section 3 of the Insolvency Act, the District Court shall be the court having jurisdiction under the Act unless by a notification in the official gazette any court subordinate to the district court is invested with such jurisdiction and it shall have concurrent jurisdiction with the District court and a court of small causes shall be deemed to be subordinate to the district court for the purposes of this Section. Under Section 4 of the Insolvency Act, the court shall have full power to decide all questions whether of title or property or of any nature whatsoever, and whether involving matters of law or of fact, which may arise in any case of insolvency coming within the cognizance of the court, or which the court may deem it expedient or necessary to decide for the purpose of doing complete justice of making a complete distribution of property in any such case. Under Section 7 of the Insolvency Act, a petition for adjudication could be filed by a creditor or by a debtor and the court may on such petition adjudge him an insolvent. Under Section 27 of the Insolvency Act it is provided that if the court does not dismiss the petition, it shall make an order of adjudication that the debtor is an insolvent, and shall specify in such order the period within which the debtor shall apply for his discharge and the court has power to, if sufficient cause is shown, to extend the period within which the debtor shall apply for his discharge, in which case a notice of the order will have to be published. Under Section 28 of the Insolvency Act, various consequences as an effect of an order of adjudication are provided. Under Section 41 of the Insolvency Act, it is provided that a debtor may, at any time after the order of adjudication, within the period specified by the court, apply to the court for an order of discharge, and the court may, after considering the objections of any creditor and, where a receiver has been appointed, on the report of the receiver - [a] grant or refuse an absolute order of discharge; or [b] suspend the operation of the order for a specified time; or [c] grant an order of discharge subject to any conditions with respect to any earnings or income which may afterwards become due to the insolvent, or with respect to his after- acquired property. Effect of an order of discharge is dealt with under Section 44 of the Insolvency Act. Except as provided under sub-Section (1) of Section 44 of the Insolvency Act, an order of discharge shall release the insolvent from all debts provable under the Insolvency Act. For the purposes of Section 73 of the Insolvency Act an order of insolvency has been considered as a disqualification to hold certain elective offices. An order of discharge, however, restores the original status of an insolvent. So long as the debtor remains

undischarged he suffers from several disabilities under the Insolvency Act. The Insolvency Act is a complete code and determination of all questions regarding insolvency including a question as to whether (1) a person is an insolvent or not, or (2) an insolvent be discharged or not and subject to what conditions, can be decided by the court constituted under that Act alone. It is only when exceptions are carved out as is done in the case of Section 2(8) of the Sale of Goods Act any other court or authority can decide such questions. Under Article 329(b) of the Constitution no election to a legislature shall be called in question except by an election petition presented to such authority and in such manner as may be provided by or made by the appropriate legislature. Under Section 80A of the R.P.Act, the forum for adjudication of an election petition is the High Court. The scope of this provision is considered by this Court in Upadhyaya Hargovind Devshanker v. Dhirendrasinh Virbhadrasinhji Solanki & Ors., AIR 1988 SC 915. In that decision, the question was whether an order made on interlocutory application in election petition could be the subject of a Letters Patent Appeal. It was observed in that decision that conferment of power under R.P.Act to try an election petition does not amount to enlargement of existing jurisdiction of the High Court. The jurisdiction exercisable under the R.P.Act is a special jurisdiction conferred on the High Court by virtue of Article 329(b) of the Constitution. Therefore, even though the High Court may otherwise exercise ordinary and extraordinary jurisdiction it would be difficult to envisage a situation that while trying an election petition in exercise of the jurisdiction conferred by the R.P.Act it can adjudicate upon vires of the R.P.Act or any rule or order made thereunder and the election petition has to be tried in accordance with the provisions of the R.P.Act and thus the court cannot entertain and pronounce upon matters which do not fall within the ambit of Section 100 of the R.P.Act. Even an ordinary civil court will not have jurisdiction to decide questions arising under insolvency enactments; much less a special Authority like the High Court when it is not invested with such power under the Insolvency Act. This Court in Bhagwati Prasad Dixit Ghorewala vs. Rajeev Gandhi, 1986 (2) SCR 823, reversed the view taken in 1985 All Weekly Cases 682 on which reliance was placed by respondent that the High Court can decide whether a person has acquired citizenship or lost citizenship. In that case a question arose as to whether in an election petition the High Court had jurisdiction to determine the citizenship of a person. The High Court had taken the view that notwithstanding the statutory bar contained in Section 9(2) of the Citizenship Act that wherever a question arises as to whether when and how a person has acquired the citizenship of another country it shall be determined by such authority in the manner prescribed by the rules of evidence as may be prescribed in that behalf; that since by virtue of Article 329(b) of the Constitution all questions arising in an election petition filed under the R.P.Act were exclusively triable in an election petition, it had jurisdiction to decide the question whether a candidate had ceased to be an Indian citizen. This Court took the view that when such a question arises it would be a matter to be decided by the authority constituted under the Citizenship Act and when no decision is given by the competent authority under the Citizenship Act, the question whether he ceased to be a citizen of India could not be adjudicated in an election petition. In

the present case, as we have explained earlier the scheme of the provisions of the Insolvency Act, the exclusive jurisdiction to deal with any question relating to insolvency could be adjudicated upon only by the court constituted under that Act. In such a situation, it would not be possible to hold that the High Court had, while dealing with an election petition, jurisdiction to decide a question as to whether a person is an undischarged insolvent or not. Admittedly, in this case, there is no such adjudication. Hence the High Court could not declare the appellant to be an undischarged insolvent. The contention put forward before the High Court is that disqualification contained in Article 191(1)(c) could be attracted only in a case where a person is adjudged as insolvent as per the Insolvency Act and in the absence of such adjudication it is not open to the High Court while trying an election petition to find that the returned candidate is an insolvent and he could be held to be disqualified. The learned Judge in the High Court got over this initial hurdle of the jurisdiction of the High Court to decide whether the appellant is an undischarged insolvent by giving that expression a meaning in ordinary parlance. To achieve this result, the learned Judge adopted strained and strange logic or reasoning to which we have referred to in the earlier part of this judgment. We shall now consider each of those reasons. The learned Judge referred to the scheme of different clauses of Article 191(1) of the Constitution and that such scheme would indicate that if a member has any pecuniary interest in any governmental or quasi-governmental body such member may not be in a position to perform his duties impartially with free mind inasmuch as he can be under pressure of the financial institution which has extended finances to him. Therefore, he was of the view that the policy of law should be borne in mind in interpreting the meaning of the expression undischarged insolvent. Under what circumstances and subject to what limitations a person could be declared to have incurred disqualification is a matter of policy of law and the courts have cautioned themselves by stating that right to vote, right to elect or contest an election is a creature of statute and circumscribed by the limitations contained therein. Therefore, as long as the Constitution or the R.P.Act indicates in clear terms as to what its policy is, it would not be open to a court to interpret such a provision by trying to find out what the intent could be by ignoring the actual expressions used. Therefore, the supposed scheme of the provisions would not afford sufficient guidance to take the view that the expression undischarged insolvent should be understood as meaning an insolvent who is a person who is in impecunious circumstances as is unable to repay the debt. The learned Judge noticed that under Article 191(1)(b) while providing for disqualification on the ground of unsound mind it is made clear that a person is of unsound mind if so declared by a competent court and such declaration is not required in the case of an insolvent. The extended logic applied by the learned Judge in the case of interpreting the expression undischarged insolvent is that even when such declaration has not been formally made by a court of competent jurisdiction still the Election Court can decide such a question. Even though Article 191(1) of the Constitution does not include declaration by an insolvency court, but by reason of expression used that he is an undischarged insolvent it clearly indicates that he could become discharged only in terms of the

provisions of the insolvency Acts and not otherwise. It is implicit in the expression undischarged insolvent that a person does not become so unless he has been adjudged insolvent and is not discharged by the court under the insolvency Acts. The expression undischarged insolvent has acquired a particular legal connotation and such expression cannot be used otherwise than in terms of the insolvency enactments. The learned Judge, in this context, referred to the statement made by Sir Alladi Krishnaswamy Ayyar in the course of the debates in the Constituent Assembly wherein he tried to impress upon the Assembly that similar words as contained in Section 73 of the Insolvency Act should be used and disqualification should be removed and cease to be effective if adjudication is annulled or if an insolvent obtains a discharge with certificate that it was caused by misfortune and not by mis-conduct. Reliance upon this part of the debate by the learned Judge, in our opinion, is misplaced. The reference made by Sir Alladi Krishnaswamy Ayyar is to reduce the rigour of the disqualification in the event the adjudication is annulled or if an insolvent obtains a discharge with the certificate that it was caused by misfortune and not by mis-conduct. Merely because the suggestion made by Sir Alladi KrishnasSwamy Ayyar is not accepted by the Constituent Assembly it does not mean that the expression used in Article 191(1)(c) as to undischarged insolvent will be different from what is contained under the insolvency enactments. The reference to Section 73 made by Sir Alladi Krishnaswamy Ayyar is in the background stated above and, therefore, has no effect on the interpretation of the meaning of the expression undischarged insolvent. The learned Judge noticed that if a person is not to be held an insolvent as in ordinary parlance it would result in non-application of disqualification even if the court is satisfied that the returned candidate is not in a position to repay debts and could be adjudged to be insolvent. Article 191(1)(c) does not contemplate mere impecuniousity or incapacity of a person to repay ones debts but he should not only be adjudged insolvent but also remain undischarged. Such a contingency could only arise under insolvency law. Article 191(1)(c) refers to disqualifications of a person from getting elected to State Legislature. The conditions for disqualification cannot be enlarged by importing to it any meaning other than permissible on strict interpretation of expressions used therein for what we are dealing with is a case of disqualification. Whenever any disqualification is imposed naturally the right of a citizen is cut down and in that event a narrow interpretation is required. Therefore, the liberal view taken by the learned Judge to the contrary does not appear to be correct. Under the Sale of Goods Act, a special definition of the expression insolvent had to be given to the effect that a person is said to be insolvent who has ceased to pay his debts in the ordinary course of business, or cannot pay his debts as they become due, whether he has committed an act of insolvency or not, and the definition is declaratory in character. Question of insolvency of a buyer is of considerable importance in the context of the sellers lien. It is in special context a meaning is given to the expression insolvent even though a person had not been adjudged an insolvent in the Insolvency Act to be insolvent for the purposes of the Act. That definition cannot be imported into the R.P.Act. The learned Judge goes on to observe that an insolvent is a person who is unable to repay his debts and as long

> as he remains in that position he is an undischarged insolvent, that is, as long as he has not discharged his debts he is an undischarged insolvent. Redundancy and tautology cannot be attributed to the Legislature. When the Legislature has used the expression undischarged insolvent that expression must be given its full meaning. A person on being adjudged insolvent remains so unless discharged in terms of the provisions of Section 41 of the Insolvency Act, either absolutely or conditionally, or in the absence of annulment as contained in Section 35 of the Insolvency Act. In ascertaining the meaning of an expression used in a statute, certain norms are adopted. If the legislature has used an expression which has acquired a technical meaning and such expression is used ordinarily in the context of a particular branch of law, it must be assumed that because of its constant use the legislature must be deemed to have used such expression in a particular sense as is understood when used in the similar context. If an expression has acquired a special connotation in law, dictionary or general meaning ceases to be helpful in interpreting such a word. Such an expression must be given its legal sense and no other. In this context, we may refer to the weighty observation in the decision of this Court in the State of Madras vs. Gannon Dunkerley & Co. (Madras) Ltd., 1959 SCR 379, that a term of well recognised import in the general law should be accepted as confining the meaning in interpreting the Constitution.

If the expression undischarged insolvent has acquired a special meaning under the law of insolvency, we must understand that that is the meaning that is sought to be attributed to the expression used in Article 191(1)(c) of the Constitution. We are, therefore, of the view that the High Court was not justified in holding that the expression undischarged insolvent should be understood de hors the Insolvency Act in a general sense.

In this appeal preferred by the unsuccessful candidate who contested the election contention is that there are various corrupt practices alleged against the returned candidate and they have been established by producing proper evidence which should have been accepted by the High Court and in rejecting the same, it is submitted, it has erred.

The allegation is that the appellant using his position and status secured 450 bottles of rum from Military Canteen, Pangode, Thiruvananthapuram and supplied in certain Harijan colonies of the constituency on 24, 25 and 26 April, 1996. K.S. Subramaniya Pillai saw K. Krishnankutty who is an employee of military camp, taking a number of cases of rum to an ambassador car bearing Reg. No. KL-01-F1098 and on enquiries K. Krishnankutty told K.S. Subramaniya Pillai that this rum were purchased by workers of the first respondent. The Harijan colonies where rum was supplied are Vengode and Manathottam and rum was supplied through R. Gopalakrishnan Nair, Vice President, Vellarada Panchayat and V. Sudhakaran, Member Vellarada Panchayat by the first respondent for bribing the voters to secure votes. The evidence adduced before the court was only that of K.S. Subramaniya Pillai and G. Suresh. So far as K.S. Subramaniya Pillai is concerned, he does not seem to have personal knowledge of the bottles being carried and he came to know from K. Krishnankutty. K. Krishnankutty has not been examined in the case. K.S. Subramaniya Pillai (P.W.

12) stated that he did not see any bottles and came to know that there were liquor bottles kept in the card board boxes from K. Krishnankutty. The bottles were squarely closed and the distance from him where he stood to the place where the loading took place was 50 yards. He asked K. Krishnankutty as to what was happening and that it was he who told him that it was liquor for distribution in the Neyyattinkara constituency. So far as G. Suresh (P.W. 15) is concerned, his evidence is to the effect that liquor was taken to various areas for distribution. He saw bottles being loaded in a car and he approached the panshopwala and asked him and two or three persons present there as to where these bottles were being taken to and they told him that they were being taken to Neyyathinkara and those people standing there also told him that the liquor was being taken for distribution in Neyyattinkara constituency to further the prospects of the appellant. He noted the number of the car. In the absence of examination of K. Krishnankutty the evidence adduced is vague and not clear and definite much less reliable and, therefore, the High Court rightly held that there is no acceptable evidence which can bring the case against the appellant within the expression of bribery under Section 123 of the R.P. Act. The other acts of undue influence or that the returned candidate has made an appeal in the name of religion or that he has made any statement with a false reference to the personal character and conduct of the candidate were not established. The trial Judge has given cogent reasons in this regard and the learned counsel for the appellant in this case is not able to dislodge this conclusion by any material placed on record. The contention that the returned candidate indulged in corrupt practice by incurring expenditure in excess of the amount permitted in contravention of Section 77 of the Act was also rejected by the learned Judge. The evidence adduced before the court was only in the shape of something conjectural and imaginary through P.W. 16 who stated that substantial expenditure had been incurred by the returned candidate. It is not made clear as to who might have incurred this expenditure and the evidence was not adduced to show that the contractors used for the erection of the stage or platform were examined to indicate the payments having been made by the returned candidate. Therefore, the view taken by the learned Judge in this regard appears to us to be correct. The issue relating to whether the returned candidate had obtained or procured assistance for the furtherance of the prospects of his election from any person in service of the government and whether he had misused his official position also to such effect, it is stated that there was no clear evidence in this regard. The allegation that he utilised the services of the Sub-Inspector Vincent and the acts attributed to him were done at all, much less at the instance of the returned candidate. Again the allegation made is in respect of taking assistance from Antony, Block Development Officer (B.D.O.), that the returned candidate used his official jeep for distributing propaganda material. Though this aspect was deposed to by P.W. 16, the learned Judge felt that he could not act upon the evidence of P.W. 16 alone. He noticed that there was hardly any evidence to show that the B.D.O. acted at the instance of the returned candidate or he was requested by him. His evidence is that on that day Shri Karunakaran was to address a meeting. The B.D.O. told the Congress workers that such thin attendance would not do when a prominent leader who was a Minister in the Central Government was going to address the meeting. On hearing this the Congress workers got into the vehicle fitted with mike and went around exhorting people to come to the meeting. The learned Judge held that the allegation made by the witness that the jeep meant for government officer was used by the Congress workers is not established as having been done at the behest of the returned candidate. Therefore, this view of the learned Judge has got to be upheld. He also noticed that there was no clear or direct evidence to prove that the first respondent has misused his official position as a

sitting member of the Legislative Assembly. We agree. In the result, we allow the appeals [C.A.Nos. 7395-7396/97] filed by the returned candidate and set aside the order passed by the learned Judge declaring his election to be void on the ground that he has incurred necessary disqualification as provided under Article 191(1)(c) for being chosen to the Assembly as Member thereof on account of the fact that he was an undischarged insolvent. So far as the appeal [C.A.No. 8361/97] filed by the unsuccessful contesting candidate is concerned, the same has to be and is dismissed. However, there shall be no order as to costs.