

M. Narayana Rao vs G. Venkata Reddy & Others and Vice Versa on 3 September, 1976

Equivalent citations: 1977 AIR 208, 1977 SCR (1) 490, AIR 1977 SUPREME COURT 208, 1977 (1) SCC 771 1977 (1) SCR 490, 1977 (1) SCR 490, 1977 (1) SCR 490 1977 (1) SCC 771, 1977 (1) SCC 771

Author: N.L. Untwalia

Bench: N.L. Untwalia, Hans Raj Khanna, Jaswant Singh

PETITIONER:

M. NARAYANA RAO

Vs.

RESPONDENT:

G. VENKATA REDDY & OTHERS and vice versa

DATE OF JUDGMENT 03/09/1976

BENCH:

UNTWALIA, N.L.

BENCH:

UNTWALIA, N.L.

KHANNA, HANS RAJ

SINGH, JASWANT

CITATION:

1977 AIR 208 1977 SCR (1) 490

1977 SCC (1) 771

CITATOR INFO :

R 1978 SC 351 (7,8)

RF 1985 SC 236 (63)

C 1991 SC 2001 (5,24,25)

ACT:

Election--Representation of the people Act, 1951--sec. 123(2)--Sec. 100(1)(b)--Corrupt Practice--Undue influence--Conduct of Election Rules 1961--Rule 39(2)(b)--Ballot paper containing mark on the reverse of the symbol--Can be rejected as invalid--Charge of corrupt practice--If quasi criminal nature--degree of proof--Interference with appreciation of evidence by High Court--Whether election result can be lightly interfered with.

HEADNOTE:

For the election to the Andhra Pradesh Legislative Assembly out of 6 candidates 4 withdrew and Reddy and Rao were the only contestants. Rao was elected by a margin of a few hundred votes. Reddy challenged election of Rao by filing an election petition in the High Court on several grounds of corrupt practice, as well as on the ground that there were mistakes in counting of the votes. Reddy in his election petition besides asking for the setting aside of the election of Rao also claimed that he should be declared elected in his place. The High Court ordered a recount of votes. However, even after the recount, Rao had still majority of votes in his favour although the margin was reduced.

The Election Petitioner contended that he was the sitting member and was very popular and that he lost election on account of undue influence, force and violence on a large scale used by Rao. It was alleged that about 200 supporters of Rao with the active assistance of respondent No. 2, one of the candidates who had withdrawn, threatened, beat and threw stones at the voters and supporters of Reddy; that as a result of the violence the polling had to be stopped and the polling took place later on; that about 300 supporters of Rao armed with sticks, iron rods and other weapons surrounded the hotel where Reddy was staying and forced him to go out and severely assaulted him; that Reddy had to be removed to hospital. In the election petition allegations were made against Rao almost under every sub-section of Section 123 of the Act. But the only corrupt practice found by the High Court against Rao was the commission of corrupt practice of undue influence within the meaning of Section 123(2). The High Court, therefore, set aside the election of Rao. The High Court, however, did not grant the declaration in favour of Reddy since according to the High Court it was not found that but for the corrupt practice Reddy would have secured the majority votes. Both Rao and Reddy, therefore, filed appeals in this Court. Allowing the appeal of Rao and dismissing the appeal of Reddy.

HELD: (1) That the charge of commission of corrupt practice has to be proved and established beyond doubt like a criminal charge or a quasi-criminal charge but not exactly in the manner of establishment of the guilt in a criminal prosecution giving the liberty to the accused to keep mum. The charge has to be proved on appraisal of the evidence adduced by both sides especially by the election petitioner. [500 F-G]

(2) That the election held and results declared on the choice of the voters should not be lightly interfered with or set aside by a court of law. After all, in the holding of a fresh election are involved numerous botherations, tremendous expenses, loss of public time and money and the uncertainty of the public representation from a particular

constituency. [500 G-H]

(3) A charge of corrupt practice is easy to level but difficult to prove. If it is sought to be proved only or mainly by oral evidence without there being contemporaneous documents to support it, court should be very careful in scrutinizing the oral evidence and should not lightly accept it unless the evidence is credible, trustworthy, natural and showing beyond doubt the commission of corrupt practice, as alleged. [501 A-B]

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tinizing the oral evidence and should not lightly accept it unless the evidence is credible, trustworthy, natural and showing beyond doubt the commission of corrupt practice, as alleged. [501 A-B]

(4) That, this Court ordinarily and generally does not, as it ought not to, interfere with the findings of fact recorded by the High Court unless there are compelling reasons for the same, especially findings recorded on appreciation of oral evidence. [501 B]

(5) This Court, however, does not approve of the finding recorded by the High Court on a misreading or wrong appreciation of the oral evidence especially when it is unsupported or runs counter to the contemporaneous documentary evidence. [501 B-C]

(6) It must always be borne in mind that the consequences of setting aside of an election on the ground of corrupt practice are very serious for the candidate concerned as well as others involved in it. A court, therefore, should reach its conclusion with care and caution taking into consideration the broad probabilities, the natural conduct of the persons involved and the special situation in which a corrupt practice is alleged to have been committed. [501 C-E]

On appreciation of evidence the Court found that the High Court wrongly came to the conclusion that the corrupt practice was committed either by Rao or his agent; that the main story set up by Reddy does not find support from any of the contemporaneous documents including statement of Reddy himself. The genesis of the disturbance was the alleged assault on the two boys by the Reddy group. The disturbances before the election did take place but it was not a one sided affair. Both sides were responsible for entering into dashes. The High Court committed a grave error in placing reliance on such intrinsically and inherently weak pieces of oral evidence as against the contemporaneous documents. [501 H, 505F, 506A, G, 507 C]

No corrupt practice was established to have been committed by any person with the consent of respondent Rao or his election agent. The High Court, therefore, wrongly declared election of Rao to be void under Section 100(1) (b). [508 F]

The ballot papers on which the marks were put on the reverse side of the symbol and not on the obverse side were rightly rejected. Rule 39(2)(b) of the Conduct of Election Rules 1961 requires the elector to make a mark on the ballot paper on or near the symbol of the candidate for whom he intends to vote. On a plain reading of the said rule that

the voter is to make the mark on the ballot paper and not behind the ballot paper. [509 B-E]

Swarup Singh v. Election Tribunal AIR 1960 Allahabad 66 and Dhanpatilal v. Harisingh, AIR 1969 Rajasthan 92, overruled.

A. V. Palaniswami v. The Election Court (District Munsif), Tripura and others (1973) 2 Madras Law Journal 60 and Mr. Sykes v. Mr. Mc. Arthur, 4 D'Malley and Hardcastle 110. approved.

JUDGMENT:

CIVIL APPELLATE JURISDICTION: Civil Appeal Nos. 583 and 686 of 1974.

Appeal from the Judgment and Order dated 28-2-74 of the Andhra Pradesh High Court in Election Petition No. 1/72 and Civil Appeal No. 686 of 1974.

From the Judgment and Order dated 28-2-74 of the Andhra Pradesh High Court in Election Appeal No. 52/73. M.C. Bhandare, K. Krishna Rao, K. Rajindra Choudhary and Mrs. Veena Devi Khanna for the Appellant in CA 583/74.

A.K. Sen, I. Kotireddy and G.N. Rao, for Respondent No. 1 in C.A. 583/74 and also for the Appellant in C.A. 686/74. The Judgment of the Court was delivered by UNTWALIA, J. These are two appeals under section 116A of the Representation of People Act, 1951--hereinafter referred to as the Act, arising out of an election dispute concerning the election held on the 5th and 8th of March, 1972 to the Andhra Pradesh Legislative Assembly from Purchur Constituency. Six persons had filed nominations for standing as candidates at the election. Four of them, who were impleaded as respondents 2 to 5 in the election petition, withdrew in time and did not contest the election. The only two persons left in the field for a straight contest were the two appellants in the two appeals namely M. Narayana Rao, appellant in Civil Appeal No. 583 of 1974--hereinafter referred to as Rao or respondent no. 1 (for brevity, the respondent) according to his position in the election petition and G. Venkata Reddy, appellant in Civil Appeal 686 of 1974 hereinafter to be called Reddy or the election petitioner. Rao was declared elected on the 11th March, 1972 by a margin of a few hundred votes. Reddy challenged his election by filing an election petition under the Act on several grounds of corrupt practices said to have been committed by or on behalf of Rao as also on the ground that several malpractices and mistakes had taken place in the counting of the votes. Reddy in his election petition besides asking for the setting aside of the election of Rao, also claimed that he should be declared elected in his place. A learned single Judge of the Andhra Pradesh High Court in a very long, elaborate, exhaustive, which at times was exhausting, judgment has accepted the case of the election petitioner in regard to one type of corrupt practice having been committed on behalf of the respondent and set aside his election. Rao has preferred the appeal from the said order. A recount of the votes polled was ordered by the learned Judge and even after re-examination of the validity or invalidity of certain votes, he found on recount, that Rao had still majority of votes in his favour although the margin was further reduced. In that view of the matter, Reddy's prayer for being

declared elected was refused by the High Court. Hence Reddy's appeal. Both the appeals arising out of the same election petition have been heard together and are being disposed of by this common judgment.

We would like to state at the outset that even in regard to the limited questions which fell for our determination in these appeals, the judgment of the High Court is so lengthy and cumbersome, at times suffering from unnecessary repetitions and discussions, that while discussing the main issues in these appeals, we have not thought it necessary to meet and deal with all the reasonings of the High Court although in arriving at the decision we have taken them into consideration. If we do so, our judgment will also be unnecessarily very long. But we must record our appreciation for the tremendous labour put in the High Court by lawyers on either side and the very great pains which the learned Judge has taken in preparing a careful and exhaustive judgment both on facts and in law.

Reddy contested the election as a candidate of the Indian National Congress Party and Rao was an Independent candidate. Reddy's election symbol was "Cow and Calf" while that of Rao was a "Tractor". The polling in the Constituency was held on the 5th of March, 1972. Due to disturbances at the 8 polling booths at Chinna Ganjam with which we shall be concerned in Rao's appeal, polling had to be postponed to the 8th of March, 1972 on which date the polling was completed at Chinna Ganjam. At the counting of votes done on the 11th of March, 1972 the Sub Collector, Ongole, who was the Returning Officer of the constituency, found that Rao had polled 31,038 votes while the votes polled by Reddy were only 30,728. Approximately 1,398 votes were declared as invalid by the Returning Officer. It may just be stated here that the total number of electorates in Purchur Constituency was 77,932. Votes polled were quite a good number amounting to 63,164.

In short the election petitioner's case was that being a sitting member of the Assembly from the Purchur Constituency he was very popular and had great chances of success in the election in question. The respondent, his supporters and agents felt that the election petitioner could be defeated only by use of undue influence, force and violence on a large scale and not by a fair election. With that end in view it was averred by Reddy in his election petition that one Sri Mandava Sitaramayya, an influential worker of his was assaulted at Purchur on the 2nd of March, 1972 by Yarla-gadda Subbarao, brother-in-law of the respondent. Although the beating of Sitaramayya and the illegal activities of the respondent were brought to the notice of the Deputy Superintendent of Police and Sub Collector, Ongole at 7.00 P.M. on the 4th of March, 1972 when they were camping at Purchur and they were requested to take adequate precautions for a fair and free poll, the Deputy Superintendent of Police failed to do so. By the 4th of March, 1972, according to the case of Reddy, the atmosphere was thick with rumours that he and his men would be beaten and done to death, his supporters and voters would be prevented from exercising their franchise and that in these endeavours of Rao he and his agents had the full support and cooperation of the Police Department headed by Shri A. Gopal Reddy, Deputy Superintendent of Police. Chinna Ganjam and its surrounding villages, Reddy claimed, lay in his stronghold area. Rao and his agents under the umbrella of protection of the police started an orgy of violence particularly in Chinna Ganjam and its surrounding villages. On the 4th of March, 1972 the respondent collected his agents and supporters at his election office at Chinna Ganjam and instructed them to go ahead by using undue

influence, violence and force to prevent the voters from casting their votes and not to allow peaceful conduct of the poll at Chinna Ganjam.

The case of Reddy, the election petitioner, further was that on the morning of the 5th of March, 1972 Rao's supporters, about 200 in number, gathered from various villages with the active assistance of J.S. Krishnamurthy (respondent no. 2 in the election petition—one of the candidates who had withdrawn) and Muddana Rangarao of Alankar Theatre, Inkollu, started threatening, beating and stone pelting of the voters and supporters of Reddy in Chinna Ganjam near the polling station and elsewhere. This mob, amongst others, included the 18 persons mentioned in paragraph 8(f) of the election petition. As a result of the violent activities of the supporters of the respondent and the panic created thereby, the polling at Chinna Ganjam which had started at 7.30 A.M. on the 5th of March, 1972, was stopped between 9.00 A.M. and 11.30 A.M. When it was resumed again 11.30 A.M. the electors were all scared and there was poor response from them. Rao's agents again started an orgy of violence at about mid-day. Voters who were waiting at the polling booths were threatened and dispersed and when Reddy's supporters including Marri Subba Reddy of Munnamvaripalem were attempting to infuse confidence in the voters, the mob consisting of persons wearing badges with "Tractor" symbol, rushed upon the innocent voters and forced them to flee for their lives. This was all done with the active support of the police. During the afternoon disturbances, Reddy's case has been, the police most unjustly opened fire upon the dispersing and fleeing persons killing outright Marri Subba Reddy and seriously injuring, Komatla Ramachandra Reddy, a resident of Pedda Ganjam, an innocent passerby.

Reddy's case further runs thus. He went to Chinna Ganjam at about 2.00 p.m. on the 5th of March, 1972 and when he was taking coffee in a hotel, the hooligans numbering in all about 300 engaged by Rao including the 18 persons named in paragraph 8(f) of the election petition armed with sticks, iron rods and other weapons surrounded the hotel, forced Reddy to come out and severely assaulted him. Reddy had to be removed first to Chirala Government Hospital and finally to Guntur Hospital where he remained under treatment for a few days. As a result of the violent disturbances created by Rao's agents and supporters at Chinna Ganjam the voting was postponed to March 8, 1972 and completed on that date. The election petitioner had also taken a stand in his election petition that the respondent and his supporters went round canvassing from 3.00 p.m. on the 5th of March, 1972 that Reddy was dead or was sure to die and there was no use casting votes in his favour. The panic created by the respondent and his men prevented several voters from exercising their franchise or coerced them to cast their votes in favour of the respondent. Certain other allegations were made in the election petition alleging that the respondent had utilised the services of a Government servant, and had indulged in other various types of malpractices. It is not necessary to refer to them in any detail as the Trial Judge has not accepted the election petitioner's case in regard to the said allegedly corrupt practices. The findings of the High Court were not challenged by Reddy before us. We may, however, state in passing that reckless allegations were made by Reddy against Rao alleging the commission of corrupt practices within the meaning of almost every sub-section of section 123 of the Act. But the only one found by the High Court against Rao is the commission of corrupt practice of undue influence within the meaning of sub-section (2) of section 123.

Reddy in his election petition alleged Commission of several malpractices, mistakes and irregularities in the counting of the votes.

Several of his valid votes were said to have been wrongly rejected, several of the invalid votes were wrongly counted for Rao and so on and so forth. He asserted that the Returning Officer had wrongly turned down his request for a re-count and if recount is ordered by the Court it would be found that he had polled the majority of votes. Upon such allegations, the details of some of which but not of all, were given in the election petition, Reddy claimed a declaration for himself of having been elected to the Legislative Assembly from Purnachur.

On the pleadings of the parties the High Court framed several issues and the relevant ones for the disposal of these appeals are the following:

"1 (a) Whether the allegations made in paragraph 8(a) to (k) of the petition constitute corrupt practice of and 'Undue Influence' envisaged under Sec. 123(2) of the Representation of the People Act, and the 1st respondent himself or his agent or any other person with his consent or that of his election agent committed the same ?

(b) If the allegations made in paragraph 8(a) to (k) of the petition be true, is the election of the 1st respondent liable to be set aside on the ground of commission of corrupt practice, namely exercise of 'Undue Influence' envisaged under S. 123(2) of the Representation of the People Act?

(c) Whether any such corrupt practice if proved to have been committed by an Agent of the 1st respondent, other than his Election Agent, has materially affected the result of the Election in so far as it concerns the 1st respondent?

6(a) Whether the allegation that the Returning Officer and his staff committed several mistakes and irregularities in the matter of counting, bundling, rejection and reception of votes as alleged in paragraph 9(a) to (k) of the petition is true ?

(b) Whether 472 votes said to have been cast in favour of the petitioner were rejected on the ground that the mark was put on the back on the ballot papers and whether such rejection is improper and void ?

(c) Whether the pleading in paragraph 9(b) of the petition is liable to be struck down for not furnishing the particulars such as serial numbers of ballot papers etc., ?

(d) Whether the allegations regarding the irregularities and violations in the rejection or reception or counting of votes made in paragraph 9(c) to (k) of the petition are vague and are liable to be struck down for want of material particulars ?

(e) Whether the improper reception of void votes or improper rejection of valid votes and mistakes if any in counting of votes has materially affected the result of the election ?

7 (a) Whether the order of the Returning Officer rejecting the request of the petitioner for recount of votes is erroneous and contrary to law ? If so what is its effect ?

(b) Whether in the circumstances mentioned in paragraphs 9(a) to (k) of the petition the petitioner is entitled to scrutiny of ballot papers and recount of votes by this Court ?

8. Whether the election of the 1st respondent is liable to be set aside on any of the grounds alleged in the petition ?

9. Whether the petitioner is entitled to be declared duly elected candidate to the Purchur Constituency ?"

The High Court states in its judgment:

"Issues 1(a), (b) and (c) relate to the allegations in paragraphs 8(a) to (k) of the election petition. They cover several allegations of corrupt practice of undue influence envisaged by section 123 (2) of the Act."

For the sake of convenience the learned Judge split up issue 1 (a) incidence-wise with reference to each of the alleged ones. It would be useful to quote the split up issues from the judgment of the High Court.

1 (a)(i) Whether the allegation made in paragraph 8(c) of the election petition viz., the attack on Mandava Seetaramayya, an influential worker and supporter of the petitioner on 2-3- 1972 by Yarlagadda Subbarao of Karamchadu is true ?

1 (a) (ii) Whether the allegations made in paragraph 8(f) of the election petition that on the night of 4-3-1972 the 1 st respondent collected his agents and supporters in Chinna Ganjam at his election office and instructed them to use undue influence, violence and force in preventing the voters from exercising their franchise and peaceful conduct of the poll is true ?

1(a)(iii) whether the 'allegation contained in paragraph 8(g) of the election petition that the 1st respondent's agents, workers and supporters including the 18 persons named in the said paragraph started threatening, beating and pelting stones on the voters and supporters of the petitioner at Chinna Ganjam Polling Stations and as a consequence thereof the polling was stopped and the voters were prevented from casting their votes between 9.00 A.M. and 11.30 A.M. 1 (a)(iv) Whether the polling was resumed at 11.30 A. M. and the 1st respondent's agents again started an. orgy of violence by the 1st respondent's agents, workers and supporters including those named in paragraph 8(f) of the election petition and several others wearing "Tractor Badges" and disturbed the polling and forced the voters to flee away without casting their votes and the police most unjustly opened fire upon the fleeing persons as alleged in paragraph 8(h) of the election petition ?

1 (a)(v) Whether the petitioner was attacked by the 300 persons as alleged in paragraph 8(i) of the election petition ?

1(a)(vi) Whether as alleged in paragraph 8(i) of the petition a little later some of the petitioner's voters were threatened and beaten by the 1st respondent's supporters including the persons mentioned in paragraph 8(f) of the petition ?

1(a) (vii) Whether the allegation in paragraph 8(j) that the 1st respondent and his agents workers and supporters went round canvassing from about 3.00 P.M. on 5-3-1972, that the petitioner was dead or was sure to die and as such there was no use of casting votes in his favour, is true ?

1(a)(viii) Whether as a result of the above incident several voters failed to cast their votes even at the repoll held on 8-3-1972 ?"

Although the High Court has found that Yarlagadda Subbarao and four others beat Mandava Seetaramayya, it could not be established that they were the agents of Rao or had attacked him with his consent. Issue no. 1(a)(i) was decided against the election petitioner. The finding of the High Court on Issue no. 1 (a)(ii) is as follows:

"From the above discussion, it is established that the 1st respondent came to his election office at Chinna Ganjam on the night of 4-3-1972 accompanied by R.W. 13, Ravipudi Venkatadri, Respondent No. 2, and one Muddana Rangarao. It is also established that at his election office, Koyi Mohanarao, Karanam Balaram, Karanam Nayudamma, Karanam Ankamma, Muddana Madana Mohana Rao, Parvathareddy Narasimharao, Parvathareddy Satyanarayana, Parvathareddy Sriramayya, Ghanta Subbayya, Thummalapenta Venkateswandu, Thummalapenta Venkateswamy, Ghanta Venkateswarulu, Narahari Venkatasubbarao, Chunduri Radhakrishna Murty, B.P.R. Vittal were present along with some other persons whose names are not specially mentioned by any of the witnesses.

It is also proved as alleged in paragraph 8(f) of the election petition that in the presence of the abovementioned persons, the 1st respondent instructed and advised those persons and others present there "to go ahead by using undue influence, violence and force in preventing the voters from exercising their right of franchise and the peaceful conduct of the poll as otherwise he had little chance of success."

Issue no. 1 (a)(iii) was also decided against the respondent and it was held:

"Though the petitioner's deposition in this behalf is based only on the information furnished by the other witnesses whose evidence has already been discussed, the other evidence discussed above clearly establishes that Koyi Mohana Rao, Karanam Nayudamma, Karanam Balaram, Karanam Ankamm, R.W. 13, Ravipudi Venkatadri, B.P.R. Vittal, Chunduri Radhakrishna Murty, Muddana Madann Mohana Rao, Parvathareddy Narasimha Rao, Munsif of Sobhirla and his sons, Satyam, Sriramulu his grandson Ghanta Subbayya and Thummalapenta Venkateswamy, Narahari Venkata Subbarao and Thummala-penta Venkateswarlu and some other people of Chirla and other villages over 100 in number pelted stones and disturbed the voters

in the queues at the polling booths of Chinna Ganjam as a result of which polling was suspended from 9.30 A.M. to 11.30 A.M. While deciding this issue presence of a few persons names in paragraph 8 (f) of the election petition was not found as persons taking part in the disturbance.

On Issue no. 1 (a) (iv) the finding of the High Court is:

"From the evidence discussed above, I find that the polling which was resumed at about 11.30 A.M., continued peacefully till about 2.00 P.M., thereafter the polling was was disturbed by the persons who are found under Issue no. 1

(a)(iii) to have disturbed the polling in the morning by violence alongwith others which consti-

tuted a mob of nearly 300 persons armed with sticks and stones, they pelted stones at the queues of the voters standing near the polling booths causing injuries to one Kanna Nagayya and thus scared them away. The Police apprehending further danger opened fire resulting in the death of Marri Subba Reddy and injuries to Komatla Ramachandra Reddy (P.W. 33). The persons among others whose identity is clearly established by the evidence discussed above in the commission of the act of undue influence are (1) Koyi Mohana Rao, (2) Karanam Nayadamma, (3) Karanam Balaram, (4) Karanam Ankamma, (5) R.W. 13, Ravipudi Venkata-dri, (6) B.P.R. Vittai, (7) Chunduri Radhakrishna Murty, (8) Muddana Madhans Mohana Rao, (9) Parvathareddy Narasimha Rao, Munsif of Sobhirla and his sons, (10) Satyam, (11) Sriramulu, (22) his grandson Ghanta Subbayya, (13) Thummalapenta Venkwataswamy, (14) Narahari Venkata Subba Rao and (15) Thummalapenta Venkateswarlu."

Issue no. 1 (a)(v) was also decided against Rao the respondent and it was found:

"From the evidence discussed above, in my view, it is established beyond all reasonable doubt that the petitioner was attacked after he ran out of P.W. 12's hotel and covered a distance of about 10 to 12 yards towards the Railway level crossing; he was attacked by an armed mob of over 100 persons some of whom were wearing "Tractor badges" and among the assailants of the petitioner were (1) Koyi Mohana Rao of Nagendla, Mangali Krishna of Chirala, Karnam Balaram of Thimma Samudram, Parvathareddy Narasimha Rao, Village Munsif of Sobhirla, Thummalapenta Venkataswamy of Sobhirla, Parvathareddy Sriramayya and parvathareddy Satyanarayana the sons of Parvathareddy Narasimha Rao, the Village Munsif of Sobhirla."

Case against two of the alleged assailants namely Karnam Nayudamma and Pallapolu Venkateswarlu were not accepted. In regard to Issue no. 1 (a)(vi) the learned Judge held against the election petitioner stating "In this state of evidence, I am reluctant to act on the solitary statement of P.W. 41 and bold this allegation proved."

Issue no. 1 (a) (vii) was also decided against the election petitioner and the learned Judge stated:

"I, therefore, hold that the petitioner has failed to prove that the 1st respondent or his supporters spread the rumour of the attack on and the death of the petitioner and that thereby number of Congress voters left the queues at the polling booths without casting their votes."

Under Issue no. 1 (a)(viii) the findings recorded by the High Court against the election petitioner are:

In view of the above discussion, it cannot be held that several hundred voters failed to cast their votes even at the re-poll on 8-3-72 on account of the fear engendered by the violence perpetrated by the 1st respondent or his agents or supporters on 5-3-72."

Having thus recorded the findings under the various sub-issues under Issue no. 1 (a) the Court proceeded to advert to the discussions of (b) and (c) and came to the conclusion:

"In view of the above discussion, I hold that the acts of 'corrupt practice' were committed by the persons above named with the consent of the 1st respondent and therefore the election of the 1st respondent is liable to be declared void under s. 100 (1)(b) of the Act. His election is also liable to be declared void because his election agent, R.W. 13 is found guilty of corrupt practice of undue influence. The election of the 1st respondent is liable to be declared void without the further proof that the result of the election has been materially affected. Issue 1 (b) is answered accordingly."

In regard to Issue no. 1 (c) the High Court came to the conclusion that though some of the persons who committed the corrupt practice of undue influence on 5-3-1972 were agents of the respondent, if R.W. 13, Rao's election agent, would not have been among them and if Rao's consent to the acts of those others were not established, the election of the respondent could not have been set aside because there was no proof that the result of the election had been materially affected on account of the commission of those corrupt practices. But since the Court found that undue influence on the 5th March had been committed not only with the consent of the respondent but also by his election agent himself-he being present at Chinna Ganjam on that date, the election of Rao was fit to be declared void without any proof of the result having been materially affected. The High Court, if correct on facts, was undoubtedly right in law.

The High Court had decided issue No. 7 in favour of the election petitioner and ordered recount. After a detailed discussion of the various allegations made in connection with the malpractices and mistakes committed in the counting of the votes under the various subissues of issue no. 6, the final conclusion of the High Court was that out of 31,038 votes counted for Rao by the Returning Officer, two had to be deducted as on recount the number was found less and on various grounds mentioned

in the judgment, 129 more were directed to be deducted from Rao's count thus leaving the net result of 30,907 valid votes in favour of Rao as per the decision of the High Court. For the reasons given in its judgment the High Court held that 27 votes ought to have been counted for Reddy which were wrongly not counted. Thus adding those 27 to his original figure of 30,728 the total valid votes, according to the High Court polled by Reddy were 30,755---still short by 100 and odd from those of Rao. We first take up Civil Appeal 583 of 1974 filed by Rao. The principles of law governing election disputes and especially in regard to the charge of a commission of corrupt practice are well established by several decisions of this Court--many of which have been noticed in the judgment of the High Court also. We do not propose to refer to any. We shall, however, keep the following principles in view in relation to this appeal:

(1) That the charge of commission of corrupt practice has to be proved and established beyond doubt like a criminal charge or a quasi-criminal charge but not exactly in the manner of establishment of the guilt in a criminal prosecution giving the liberty to the accused to keep mum. The charge has to be proved on appraisal of the evidence adduced by both sides especially by the election petitioner.

(2) That the election held and results declared on the choice of the voters should not be lightly interfered with or set aside by a court of law.

After all, in the holding of a fresh election are involved numerous botherations, tremendous expenses, loss of public time and money and the uncertainty of the public representation from a particular Constituency.

(3) A charge of corrupt practice is easy to level but difficult to prove. If it is sought to be proved only or mainly by oral evidence without there being contemporaneous documents to support it, court should be very careful in scrutinizing the oral evidence and should not lightly accept it unless the evidence is credible, trustworthy, natural and showing beyond doubt the commission of corrupt practice, as alleged.

(4) That, this Court ordinarily and generally does not, as it ought not to, interfere with the findings of fact recorded by the High Court unless there are compelling reasons for the same, especially findings recorded on appreciation of oral evidence.

(5) This Court, however, does not approve of the finding recorded by the High Court on a misreading or wrong appreciation of the oral evidence especially when it is unsupported or runs counter to the contemporaneous documentary evidence. (6) It must always be borne in mind that the consequences of setting aside of an election on the ground of corrupt practice are very serious for the candidate concerned as well as others involved in it. A court, therefore, should reach its conclusion with care and caution taking into consideration the broad probabilities, the natural conduct of the persons involved and the special situation in which a corrupt practice is alleged to have been committed.

In the background of the above principles we proceed to examine whether the finding of the High Court against appellant Rao on some parts of issue no. 1 resulting in the declaration of his election as void is sustainable. Broadly speaking, the findings against him are (1) that he had created a tense situation to bring about the defeat of Reddy before the holding of the poll on the 5th March, 1972; (2) that he had come to Chinna Ganjam in the night of the 4th March at about 9.00 p.m. in the company of his election agent Venkatadri and had instructed his workers to create violence, use force and not allow a free poll at Chinna Ganjam; (3) that Rao's election agent Venkatadri was present in Chinna Ganjam on the 5th March and had taken active part in the disturbances created on the date of the poll; (4) that Rao's election agents, workers and supporters including more than 100 from outside Chinna Ganjam were responsible for creating violent disturbances both in the morning as also in the afternoon on the date of poll i.e. 5th March, 1972; (5) that as a result of the police firing one person on the side of Reddy was killed and another was seriously injured. But it may pointedly be stated here that there is no finding recorded by the learned Judge that the police was in league with Rao and had deliberately fired on the fleeing party of Reddy; (6) Reddy was assaulted by the workers and supporters of Rao at about 2.00 p.m. near the Railway crossing in the hotel of P.W. 12 Satyanarayana; (7) the respondent had not been able to establish that he had not come Chinna Ganjam in the night of 4th of March and had gone somewhere else or that his case of the genesis of the occurrence which led to the disturbances on the 5th March was true.

Apart from some witnesses being different, here or there, most of the witnesses to prove the case of Reddy apropos the findings above, are common and they are P.Ws 12, 29, 30, 31, 32, 42 besides P.W. 27 Reddy himself. Shorn of details we shall examine the main ingredients of the case to see how far they have been proved to bring home the charge of commission of corrupt practice on the part of Rao. As usual there must have been some tension in the Constituency because it was a straight contest and neck to neck fight, as the results show, between Reddy and Rao. Chinna Ganjam was not the only place where Reddy hoped to get an absolute majority of votes. The results indicate, although there is no separate counting of the votes polled at each booth these days, that in some parts of the Constituency Reddy must have polled majority of the votes and in some parts Rao must have done so. How is it then that Rao took into his head to create disturbances at Chinna Ganjam only? Sitaramayya, as the finding of the High Court is, was assaulted by some person on the 2nd of March, That must have put Reddy on his guard to meet any eventuality of force. After all he was a sitting member belonging to the ruling party who, we are told, was in power in the State of Andhra Pradesh at the time of the election in question. It is difficult to accept or imagine that any police officer especially a person of the rank of a Deputy Superintendent of Police or the police in general would have gone against Reddy and favoured and sided with Rao. On the face of it, it was almost an absurd story and the High Court could not persuade itself to accept it. On 2-3-1972 Reddy had asked for police bundobust at several places (vide Ext. A-97, letter dated 2-3-1972) but had not included Chinna Ganjam in the list of those places. In the evening of the 4th March, 1972, as the evidence adduced on behalf of Reddy shows, he was present in the travellers bungalow at Purchur wherein were also staying the Returning Officer, the Deputy Superintendent of Police and others. There is no evidence to show, that on receipt of the information from P.W. 31 as to what had happened in the election office of Rao in the night of the 4th March, Reddy contacted the Returning Officer or the Deputy Superintendent of Police and informed them about the alleged design of Rao and the instructions issued by him in that regard. It is no doubt true that there were some persons

working for Rao at Chinna Ganjam who did not belong to that village but were outsiders. That by itself does not justify the inference that Rao had collected a mob of outsiders to create violence. Rao was ill-advised to deny in his written statement that the 18 persons named in paragraph 8(f) of the election petition were his workers or supporters. But they were so working from before at Chinna Ganjam as admitted by P.Ws 12, 29, 31 and 32.

One thing is clear from the evidence in this case that inhabitants Sobhirals, a hamlet of Channa Ganjam, which is mostly inhabited by Telgas, had enmity with Reddy. Chinna Ganjam lay within the Panchayat Samithi of Jetapalom of which Ronda Ramaswami Reddy was the President. He was an influential man on the side of Reddy. He had created several enemies including Balaram. Sobhirala people were inimically disposed towards him as he had not allowed them to have a separate Gram Panchayat. In this background, we proceed to examine the documentary evidence first to find out whether the allegations made by Reddy against Rao as to the alleged happenings on the 4th and 5th of March, '72 are correct or not. If correct, they were very important events and they must have found place in one document or the other. But conspicuously they are absent.

In this connection we would first refer to Ext. A-271

--the Returning Officer's Report dated 5-3-1972. In the report it is mentioned that Chinna Ganjam village is a troublesome village and not that Rao had made it troublesome just before the day of poll. Additional police bundobust was asked for in this village. It further mentions that at about 10.00 A.M. there were clashes outside the polling station when agents of both the candidates were present and on account of the disturbances, voters were not turning up. After the voting was resumed, for sometime, it went on peacefully, but at 3.45 P.M. the Returning Officer received a phone message from the Election Deputy Tehsildar, Chirala from Chinna Ganjam that polling was adjourned by all the Presiding Officers at 2.45 P.M. "consequent on the opening of fire by the police on an unruly mob gathered at the Polling Stations which has resulted in injuries to two persons of whom one was reported to have been seriously injured". This report further mentions that the election to Purchur Assembly was a straight contest between Reddy and Rao and on a complaint made by two boys of Rao's group at about 10.00 A.M. that Sri Ramaswami Reddy, President, Panchayat Samithi, Vetapalem and a few of his followers had assaulted them, "both sides gathered in large numbers and prepared for a clash." Relating to the afternoon incident the report states: "The people belonging to both the parties are said to have begun to reassemble near the Polling Stations with sticks and stones. They exchanged blows with sticks and hurled stones at each other." Then the report proceeds--"Apprehending danger to the Polling Material and polling personnel the Presiding Officers are reported to have closed the doors of the polling Stations". The report further states "Apprehending danger to his life as also to the Polling parties, and danger to the polling material, the Inspector opened fire on the mob".

It is to be emphasised that if the story set up by Reddy as to the happening in the election office of Rao in the night of the 4th March had any semblance of truth, the Returning Officer must have learnt it from Reddy either the same night at travellers' bungalow at Purchur or on the 5th March before he sent his report to the Election Commission. It was neither alleged nor found that the Returning Officer had any animus against Reddy or was favourably disposed towards Rao. The

version given in the report speaks a volume.

We would now refer to Ext. A-106--the First Information Report drawn on the statement of the Inspector of Police, Chirala, camping at Chinna Ganjam, in connection with the firing case. This was drawn 16 --1104SC1/76 up at 5.15 P.M. on the 5th of March, 1972. Before we advert to some portions of this First Information Report, an admitted position of the topography may be stated which emerged from the evidence. There were 8 polling booths in Chinna Ganjam situated in two school buildings. On the Western side of the building is a road and the Railway line. On the Northern side of the Railway line is a railway crossing west of which is village Sobhirla and near the Railway crossing is the hotel of P.W. 12. Workers and supporters of Reddy admittedly were on the eastern side at or near about the time of disturbances and those of Rao were on the western side--mostly on the road. In this background, let us see what the Inspector states in Ext. A-106. He says that on receipt of the information about the disturbances at Chinna Ganjam D.S.P. Ongole and he started from Purchur and picked up a striking force on the way. When they reached China Ganjam they "found a large gathering on the road and also on the eastern side of the High Court beyond the High School premises." One Balaram of Thimmasamudram was leading the gathering, which was on the west of the High School compound. On being enquired by the Inspector he said that men of Reddy had assaulted their people. This was in connection with the assault on Maddana Madana Mohan Rao and Maddana Ramasinga Rao--the two boys on the side of Rao: Statement of Ramasinga Rao recorded by the Inspector is Ext. B-27. entry on the basis of this statement in the police papers is B-28. The F.I.R. then states: "At about 2.45 p.m. the mob began gathering in large numbers on both the sides and hurling stones at each other. Ramaswamy Reddy was in the mob, which was hurling stones The mob belonging to both the candidates viz, Sri Gade Venkata Reddy and Maddukun Narayana was determined in their violent attitude and advanced towards the polling station to break open the same to enter into it to commit all unruly acts." This report states that in all three rounds were fired. In the first Information Report as drawn originally 4 persons are named as accused, 3 belonging to the party of Rao and Ramaswamy Reddy--a staunch and influential helper of Reddy. The case diary Ext. A-107 of the same date shows the total number of accused as 42, including the four mentioned earlier. Mr. M.C. Bhandare, counsel for Rao and Mr. A.K. Sen, counsel for Reddy drew our attention to this list of 42 persons which almost evenly included as members of the mob persons of both sides.

It is remarkable that though Ronda Ramaswami President of the Panchayat Samithi, Vetapalem is shown as one of the leading member in the firing case, no where is to be found in any paper the name of Venkatadri the election agent of Rao. No paper mentions even his presence at Chinna Ganjam on the 5th of March. Now comes the most important document__statement of Reddy himself recorded at 5.55 p.m. on 5.3.1972 by a Second Class Judicial Magistrate which could be treated as a dying declaration, if unfortunately, Reddy would not have survived, but the injuries inflicted on him were not so severe as to result in his death. On the basis of this statement, later, a formal First Information Report was drawn up. This is Ext. A-100. In answer to the Magistrate's question as to how did Reddy receive injuries he narrated the story that when he came to Chinna Ganjam and Ongole road junction he heard that some 200 persons were brought for hire from Chirala, Thimmasamudram and other villages to disturb polling as he commanded 85% of electorate there. The persons who are said to have Collected the mob are Mohan Rao, Mangali

Krishna Balaram, Krishna Murthy Babu of Chirala, Raghavaiah, Radha Krishnamurthy of Thimmasamudram, Rangarao, Cinema hall proprietor of Inkollu and Nayudamma, President of Chintagumpalli village. Neither Rao is mentioned nor Venkataadri's name is mentioned as the persons who had collected the mob there. If there was any semblance of truth in the Reddy's version of what happened on the night of the 4th in the election office of Rao, Reddy could not have missed to refer to that incident. If Venkataadri was present at Chinna Ganjam on the 4th or the 5th March, his name would have found first in the statement of Reddy. We deplore and deprecate the assault on Reddy--a fact which has been found to be true by the High Court. We were informed and copies of the judgments were tried to be filed before us showing that all the cases have ended in acquittal and no person has been convicted of the alleged offences. But that apart, we reiterate, even at the risk of repetition, that the main story set up by Reddy as to what happened on the 4th night as also on the morning of the 5th and afternoon does not find support from any of the contemporaneous documents-not even from the statement of Reddy himself. The statement of Ramasinga Rao was entered in the Station House General Diary, Vetapalem and it is Ext. A-128. The entry is Ext. B-27. The Entry of report is Ext. B-28.

Although it is unfortunate that on behalf of Rao neither of the two boys said to have been assaulted nor any body else was examined to prove the incident of assault on them which led to the further disturbances on the 5th of March, 1972 at Chinna Ganjam, the contemporaneous documents do indicate that the genesis of the disturbance was the alleged assault on the two boys. It does not appear to be a case where a false story of assault on two boys was made a pre- tence to start assault at Reddy's workers and voters. Hardly any voter was injured or examined to state that a planned attempt was made on behalf of Rao to prevent the voters from casting their votes in favour of Reddy. Let us now see what kind of oral evidence is there to prove the incident. As to what happened in the Rao's elec- tion office at Chinna Ganjam in the night of 4th March, P.W. 32 Raju Bali Reddy is the primary witness of the alleged episode. He had a bunk near the election offices of the two candidates. We regret to find that Rao had in the beginning denied that he had any election office at Chinna Ganjam but he was constrained to admit that such an office had been opened by his supporters. We also do not appreciate the attempt on the part of Rao in challenging the claim of P.W. 32 of his running a beedi bunk at Chinna Ganjam near the houses where the election offices of the two candidates had been set up. Nevertheless the story told by P.W. 32 is too imaginative and unreal to inspire any confidence.. The High Court, in our opin- ion, was wholly wrong in accepting his evidence to be true. He (P.W. 32) says that he saw the respondent coming in a car on the 4th of March, 1972 to Chinna Ganjam between 8.30 and 9.00 p.m. to his election office. He was asked to bring sodas to his election office. He took two dozens of soda bottles to Rao's office and there he heard him saying "If Congress votes are polled I am sure to lose and requested them to see that votes are not polled if necessary even by violence". He names certain persons present there. There- after he was asked to take some soda bottles to the Congress election office of Reddy. There P.W. 31 asked him "You had been to the election office of the first respondent, what is going on there ?". The said sodawala replied "that the first respondent was telling that if all the votes in Chinna Ganjam are polled he was sure to be defeated and even by resorting to violence they should see that votes are not polled". Is it a natural story ? Is it at all believable ? Was this conspiracy for creating violence at Chinna Ganjam suddenly and so openly hatched up in the Rao's election office at Chinna Ganjam and in the presence of so many persons ? Was it so done uttering every relevant word of the

conspiracy in the presence of the sodawala and making it audible to him ? Is it possible to believe that the sodawala passed on the words of the conspiracy to create violence at Chinna Ganjam in a cavalier and casual manner on the query of P.W. 31 ? All these questions posed above are suggestive of one and one answer only. The whole story smacks of nothing but untruth. It could never have happened in the manner stated by P.W. 32. P.Ws. 29,30, 31 and 42 who claimed to have heard this story from the sodawala are all out to support Reddy on any version and they cannot fare any better if the most unnatural story told by sodawala is too big to swallow and too incredible to accept .In disagreement with the findings of the High Court, we hold that Reddy has failed to prove that Rao and Venkatadri came to Chinna Ganjam in the evening of the 4th March, 1972 or that they instructed their agents and workers to deliberately create violence on the date of poll. We also hold that Venkatadri was not present at Chinna Ganjam on the 5th of March and had no part to play in the disturbances which took place on that date.

It is no doubt true that disturbances did take place at Chinna Ganjam on the 5th of March. It was not a one side affair. Both sides were responsible for entering into clashes. The High Court has lightly brushed aside one very significant fact in this connection and which is a very telling one. How is it that in the police fire two persons were injured--one of whom died, and both of them were men of Reddy ? In the circumstances, is it possible to accept that the police fired only on the fleeing party of about 2,000 persons ? The evidence on the side of Reddy shows that they did not aim any firing on the aggressors and attackers--the men of Rao who all were on the western side. Unless one could go to the absurd extent of saying that members of the police force had also joined hands with the mob of Rao one has got to conclude that, mainly, aggressors and attackers were the persons on the side of Reddy. They were the source of danger and terror to the polling staff and the materials of the polling booths and the police had to open fire aiming at them for the protection of the polling staff and the materials. It is because of that reason that by the police firing two persons on the side of Reddy only were injured and none on the side of Rao. We are inclined to think strongly and justifiably that because of the disturbances which took place on the 5th of March, 1972 both in the morning and in the afternoon at Chinna Ganjam, Reddy felt it advisable to make a mountain out of it, and apart from many other unsustainable allegations of corrupt practices, which are made against Rao, he made use of the incident of disturbances on the date of poll at Chinna Ganjam to connect Rao and his election agent with them. Without alleging their active participation or consent he had no material to succeed merely on the ground of disturbances. And that led him to invent two tissues of untrue stories--one the alleged talk by Rao in his election office in the night of the 4th March and the other the presence of Venkatadri at Chinna Ganjam on the 5th. In our opinion none of the two stories has any semblance of truth. The High Court committed a gross error in placing reliance upon such intrinsically and inherently weak pieces of oral evidence as against the contemporaneous documents. The reports Exts. A-374 to A-381 of the Presiding Officers of the Polling Station at Chinna Ganjam do not throw any further light except that due to rioting polling had to be adjourned. The total number of electors in Chinna Ganjam was about 6000 and odd and as we have said above even assuming that a large majority of this was to cast their votes in favour of Reddy, by creating disturbances at Chinna Ganjam and preventing the voters from casting their votes in favour of Reddy or forcing them to cast them in favour of Rao, Rao could not have imagined to succeed in the election. There is no evidence to indicate what was the estimated strength of Rao and Reddy in the remaining 67,000 votes which were to be cast at several booths other than those at Chinna

Ganjam. The date of poll being the 5th of March in the entire Purchur Constituency it was not possible even to estimate as to what actually had happened in other booths to induce Rao to plan the creation of disturbances at Chinna Ganjam.

We do not agree with the finding of the High Court on issue No. 1(a)(iii) that the polling had to be suspended because Rao's people over 100 in number pelted stones and disturbed the voters in the queues at the polling booths of Chinna Ganjam. We are of the opinion that it was a spontaneous trial of strength on both sides in which were involved persons on the side of Reddy led by Ronda Ramaswami Reddy and several others who were helpers and workers of Rao. The under-current of their participation in the disturbances was their previous enmity as already alluded to. Similarly we do not agree with the finding of the High Court as recorded under issue no. 1(a)(iv). If 300 persons armed with sticks and stones pelted stones on the queues of the voters then some of them must have been injured by the police firing. But none was injured. No responsible government servant has been examined to say anything in support of Reddy's story of the disturbances. We were informed by Mr. Bhandare that a magisterial enquiry into the incident had been made. An Inspector General of Police, Andhra Pradesh had also held an enquiry in respect of the disturbances which took place at Chinna Ganjam on the 5th of March. By filing an affidavit in the High Court Rao wanted the reports of the Magistrate and the Inspector General of Police to be produced. But they were not made available as according to him the reports must have stated matters going in favour of Rao and against Reddy. Coming to the finding of the High Court apropos issue no. 1(a)(v) we want to merely observe that Reddy must have been attacked by the mob in which must have been Rao's men. But it was not as a result of any conspiracy, instructions or consent of Rao or his election agent. At or about the time when the clashes on the two sides were at their peak at about 2.00 p.m.--the mob on the side of Reddy was on the eastern side and that of Rao was on the western side. Apprehending police firing or on its start the mob fled helter skelter. The mob on the western side must have lied towards village Sobhirla for their safety. In the way, they came across Reddy and assaulted him. While condemning in the strongest language the assault on Reddy, whoever were responsible for this, we do not find good reasons to connect the assault with Rao or Venkatadri.

The High Court has presumed consent of the respondent in what happened on the 5th of March at Chinna Ganjam because of the respondent's application Ext. A-273 in connection with the release of an Ambassador car MSM 2383 engaged in his election campaign which had been seized by the police while parked at the railway gate of Chinna Ganjam. It was just a coincidence that at the time the assault was made on Reddy, the car happened to be there. The presence of Badugu Subbarao either in the car or near it again may be an isolated act of Badugu Subbarao but the gap to connect the incident directly or indirectly with Rao to say that it was done with his consent is too big to be filled in by reference to the seizure of the car and the prayer of release of the Ambassador car.

For the reasons stated above, we hold that the High Court has not decided issue no. 1 (b) correctly. No corrupt practice was established to have been committed by any person with the consent of the respondent or by his election agent and the election of Rao, therefore, was wrongly declared to be void under section 100(1)(b) of the Act. Even so, we had to consider whether Civil Appeal 686 of 1974 filed by Reddy is fit to be allowed. Rao may not be guilty of having committed any corrupt practice yet, if on recount it could be found that Reddy had polled majority of votes, he could

succeed in both the appeals. Mr. Sen, learned counsel for appellant Reddy made his submissions in regard to two types of ballot papers only and urged that if we were to hold in his favour in that regard the result of the counting would definitely tilt in favour of Reddy as he will have polled more votes than those polled by Rao. For the reasons to be hereinafter stated, we do not accept the argument of Mr. Sen to be well founded and correct and hold that the result of the number of votes polled by each candidate arrived at by the High Court is correct and does not call for any interference by this Court.

The first objection raised on behalf of Reddy relates to rejection of 338 votes apparently appearing to have been cast in his favour but were rejected on the ground that the marks given on them were on the reverse side of the symbol and not on the obverse side. Several such votes apparently cast in favour of Rao were also rejected. Mr. Sen submitted that 338 votes ought to have been treated as validly polled by Reddy. We do not accept this contention to be sound. In our opinion the High Court has rightly maintained their rejection. Rule 39(2)(b) of the Conduct of Election Rules, 1961--hereinafter referred to as the Rules, requires:

(2) The elector on receiving the ballot paper shall forthwith;

(a) proceed to one of the voting compartments;

(b) there make a mark on the ballot paper with the instrument supplied for the purpose on or near the symbol of the candidate for whom he intends to vote;"

On a plain reading of the said rule it is clear that the voter has to make the mark on the ballot paper and not behind the ballot paper. The symbols are given on the obverse or the front side of the ballot paper and the requirement of the rule to mark on the ballot paper on or near the symbol of the candidate for whom the elector intends to vote necessarily means marking on the obverse side either on the symbol itself or so near it as to clearly indicate the intention of the voter. Putting a mark on the reverse side even though because of the thinness of the paper the symbol may be visible is far from complying with the requirement of the rule. Such a mark will make the ballot paper in substance and in effect bearing no mark at all within the meaning of clause (b) of sub-rule (2) of rule 56 of the Rules or bearing a mark indicating the vote thereon placed in such a manner as to make it doubtful to which candidate the vote has been given justifying its rejection under clause (d). Mr. Sen called our attention to the recent amendment of the Rules made in 1974 wherein it has been clearly specified that the mark must be put on the face of the ballot paper and also that the ballot paper must be rejected if it does not bear a mark on the face, and submitted that on the language of the rules as they stood at the relevant time in this case ballot papers bearing mark on the reverse side against the symbol of a particular candidate indicating the choice of the voter could not be rejected as invalid. We think that the amendment of the rule merely clarifies what was intended earlier and does not make any change or departure from the previous position. Since some High Courts had taken a contrary view while considering the rules or similar rules, for the

sake of clarification and precision, it appears to us, that amendment of the rule became necessary. A single Judge of the Andhra Pradesh High Court dealing with similar Gram Panchayat Rules had taken a contrary view in W.P. 2851/70, decided on 10-12-1970. The learned Judge followed the decision of the Allahabad High Court in Swarup Singh v. Election Tribunal⁽¹⁾ and a decision of the Rajasthan High Court in Dhanpatlal v. Harisingh⁽²⁾. We hold that the view expressed in those cases is not correct. On the contrary the decision of the Madras High Court in A. V. Palaniawami v. The Election Court (District Munsif), Tiruppur and others⁽³⁾ in this regard expresses the correct opinion. The point in that case, has been well discussed with reference to various authorities both in India and other countries. We would like to refer to the dictum of Baron Pollock in Mr. Sykee v. Mr. Mc Arl- hur⁽⁴⁾ wherein it has been said that the mark must be on the face of the ballot paper and that the vote bearing cross on the back being not in compliance with the Act was rightly rejected. On the basis of the decision aforesaid as also on some others a passage is to be found at page 140 in Hals- bury's Laws of England, Third Edition, Vol. 14 to the fol- lowing effect:

"A ballot paper marked on the back only should not be counted, even though the mark shows through the paper on to the front".

The High Court has noticed in its judgment paragraph 17(k) of Chapter VIII of the Hand Book issued and published by the Election Commission in 1972 for the guidance of the Return- ing Officers. While indicating the procedure for counting, the Returning Officers have been instructed to reject a ballot paper when there is no mark at all on the front or when the mark is in blank area, that is to say at the back or entirely in the shaded area. It is no doubt true that the binding directions either generally or specially could be issued by the Election Commission under sub-rule (1) of Rule 56.. Sub-rule (2) does not speak about the issu- ance of any such directions. Even so in our opinion the administrative instructions issued by the Election Commis- sion give a clue to the interpretation of rule 39(2) and rule 56(2) of the Rules. The instructions so issued are in onsonance with the interpretation of the rules aforesaid as put by us.

The second objection relates to the acceptance in favour of Rao two groups of ballot papers-one group consisting of 186 votes and the other 262 votes. The High Court has separately dealt with them in its judgment. Out of 186 votes Ext. X-26 contains 135 votes, X.27-11 votes, X.28-38 votes. X.29-one vote and X.30-one vote. Out of the other group Ext. X.31 contains 241 votes, X.32 one vote and X.33-20 votes. The High Court has mentioned the different types of defects which remained on the two groups of ballot papers aforesaid. Broadly speaking the defects were an infraction of rule 38(1) of the Rules making them liable to be rejected under clause (h) of sub-rule (2) of rule 56. But then under the first proviso to sub-rule (2) it has been stated ;

"Provided that where the returning officer is satisfied that any such defect as is mentioned in clause (g) or clause (h) has been caused by any mistake or failure on the part (1) A.I.R. 1960 All. 66.

(2) A.I.R. 1969 Rajasthan, 92.

(3) (1973) 2 Madras Law Journal, 60 (4) 4 O'Malley and Hardeastle, 110.

of a presiding officer or polling officer, the ballot paper shall not be rejected merely on the ground of such defect."

On a consideration of the evidence adduced by the parties and the broad probabilities and the circumstances of the case the High Court has come to the conclusion, and in our opinion rightly, that the said two groups of ballot papers were rightly not rejected by the Returning Officer and were correctly counted for Rao. The Returning Officer while accepting a ballot paper, even though, he does so under the proviso aforesaid, is not required to record any reasons for acceptance. Reddy had not made out any case that any objection had been taken on his behalf as respects the acceptance of the above mentioned votes of the two groups. No objection was specifically raised in the election petition that any of the ballot papers counted in favour of Rao should have been rejected under rule 56(2)(h) or that it could not be accepted under the proviso. Reddy seems to have fished in troubled waters because of the order of recount made by the High Court in connection with some other defects which justified the making of such an order. The finding of the High Court in clearest term, which could not be assailed before us with any success, is as follows:

"Having regard to the above discussion, it cannot be held that in the instant case the ballot papers which did not contain both the distinguishing mark and the signature of the Presiding or Polling Officer or where either the signature or the mark was not present were accepted by the Returning Officer, without satisfying himself as to whether that defect was due to the mistake or the failure of the Presiding Officer or Polling Officer. As that is not established and as it is, also clear to the Court from the record placed before it, that these defects have occurred only due to the failure of the Presiding Officer and further as there is no doubt as to the genuineness of these ballot papers, it is held that the ballot papers were rightly accepted by the Returning Officer."

In our judgment the High Court is right in arriving at the respective figures of valid votes 'polled by the two candidates after recount as per the order of the High Court and in arriving at the conclusion that Rao had polled the majority of the votes.

For the reasons stated above we allow Civil Appeal No. 583 of 1974, set aside the judgment and order of the High Court declaring the election of M. Narayana Rao--the appellant in that appeal, void. We dismiss Civil Appeal No. 686 of 1974 filed by C. Venkata Reddy. Taking into consideration the totality of the circumstances of the case, we shall make no order as to costs in either of the two appeals.

C.A. 583 of 1974 allowed.

P.H.P.

C.A. 686 of 1974 dismissed.

