Supreme Court of India
Dr. Jagjit Singh vs Giani Kartar Singh And Ors. on 25 November, 1965
Equivalent citations: AIR 1966 SC 773
Author: Gajendragadkar
Bench: P Gajendragadkar, M Hidayatullah, V Ramaswami
JUDGMENT Gajendragadkar, C.J.

1. This appeal has been brought to this Court by the appellant, Dr. Jagjit Singh, on a certificate granted to him by the Punjab High Court. It arises from an election petition filed by him on April 10, 1962 before the Election Tribunal (II), Chandigarh (No. 99 of 19,62) against the five respondents. These respondents are: Giani Kartar Singh, Shiv Singh, Chanan Ram, Om Prakash and Bhagat Singh, respectively. The appellant contested the election to the Punjab Legislative Assembly from the Dasuya Constituency at the last General Election in the beginning of 1962. The result of this election was declared on February 25, 1962 when respondent No. 1, Giani Kartar Singh, was declared to have been duly elected. The appellant and respondent No. 1 had secured 22,406 and 22,803 votes, respectively' and so, it is clear that respondent No. 1 had a very narrow margin over the appellant. The other respondents appeared to have played no significant part in the election, because the votes they secured were 948, 682, 240 and 756, respectively. After the result of the election was announced, the appellant filed an election petition under the relevant provisions of the Representation of the People Act, 1951 (No. 43 of 1951) (hereinafter called "the Act"). By his petition, the appellant claimed a declaration that the election of respondent No. 1 was void and that he had in fact been duly elected at the said election. The proceedings before the Tribunal were lengthy and protracted and the dispute between the parties appears to have been fought with great bitterness and heat. The appellant made several allegations against respondent No. 1 and urged on the strength of the said allegations that his election was void. One of the prayers made by the appellant in his election petition was that for the reasons which he had indicated therein, he was entitled to have an inspection of the ballot boxes and a recount made of the votes cast in favour of the respective parties. The Tribunal upheld his plea and allowed inspection of the ballot boxes. As a result of the recount made by the Tribunal, the Tribunal came to the conclusion that the appellant be declared to have been elected at the said election.

2. At the trial, the Tribunal initially raised 14 issues; some of them were in the nature of preliminary issues, while others had reference to the merits of the controversy between the parties. On the 24th August 1962, on a request made by respondent No. 1, two more issues were added, and that made the number of issues 16. Thereafter, on the 3rd September 1962, the Tribunal added three more issues. In consequence, 19 issues came to be tried by the Tribunal.

3. The decision of the Tribunal which was in favour of the appellant, however, rested on three findings. It held that respondent No. 1 had committed the corrupt practice of bribery by offering and giving Rs. 1,000 to Tapasvi Gir with the object of inducing him to withdraw from being a candidate at the election, and by offering and giving Rs. 2,000 at Safdarpore to Balwant Singh and others with the object of inducing the electors in that village to vote for him at the election. These two findings would show that respondent No. 1 had committed corrupt practices as defined by Section 123(1)(A)(a) and (b) of the Act. The Tribunal further found that the result of the election in so far as

it concerned the returned candidate had been materially affected by the improper reception of votes in his favour which were void and by the improper rejection of valid votes polled in favour of the appellant. On a proper re-counting, the Tribunal, came to the conclusion that respondent No. 1 had received 22,412 votes, and the appellant was found to have received 22,491 votes. This conclusion of the Tribunal was recorded under Section 100(1)(d)(iv) of the Act. In the result, the Tribunal allowed the election petition, declared the election of respondent No. 1 to be void, and gave the appellant a declaration that he had been duly elected to the Punjab Legislative Assembly from the Dasuya Constituency of Hoshiarpur District. This decision of the Tribunal was pronounced on the 7th April 1964.

4. Against this decision, respondent No. 1 preferred an appeal before the Punjab High Court. Before the High Court respondent No. 1 challenged the correctness of the findings which had been recorded against him by the Tribunal. The appellant supported the said findings and also attempted to support the final conclusion of the Tribunal on the additional ground that the Tribunal was in error in recording findings against him on two issues. These two issues arose from the case made out by the appellant that respondent No. 1 had, in the course of his election, exceeded the amount of Rupees 7,000 which is the permissible expenditure under the law. According to the appellant, respondent No. 1 had in fact spent Rs. 16,340. The Tribunal had rejected this case, and the appellant urged before the High Court that the decision of the Tribunal on this issue was wrong. Similarly, the appellant had urged before the Tribunal that respondent No. 1 had paid by way of bribe Rs. 1,000 to Chanan Ram, respondent No. 3 who was a contesting candidate at the election; and the Tribunal has found that this story had not been satisfactorily proved. The appellant argued before the High Court that even this finding was wrong.

5. That is how the High Court was called upon to consider the correctness of the findings recorded by the Tribunal against respondent No. 1, and also to consider whether the appellant was right in contending that the findings recorded by the Tribunal in favour of respondent No. 1 on two issues were justified. The two learned Judges of the High Court who heard this appeal have delivered separate, but concurring, judgments dealing with the points which had been conveniently divided between them for elaborate treatment and discussion. In the result, the High Court has held that the findings recorded by the Tribunal on two issues in favour of respondent No. 1 were justified, whereas the findings recorded by it in favour of the appellant arid against respondent No. 1 were not justified. The" appeal preferred by respondent No. 1 was accordingly allowed, and the election petition filed by the appellant was ordered to be dismissed.

6. As we have already indicated, the contest between the parties in the present proceedings has been very bitter, and elaborate evidence has been led by both of them in regard to the several issues which arose for decision. The paper-books which have been prepared in this appeal for our use extend over nearly 1,700 printed pages, the judgment of the Tribunal spreads over 172 pages, whereas the two judgments delivered by the learned Judges of the High Court occupy about 100 pages. Even so, as often happens, the controversy between the parties before this Court has been limited to a few points which can be legitimately raised under Article 136 of (he Constitution.

7. It is relevant at the outset to indicate briefly the approach which this Court generally adopts in dealing with election appeals brought before it under Article 136. It is well settled that the jurisdiction of the High Court in dealing with an election appeal under Section 116-A of the Act is very wide. It is open to the High Court to re-appreciate the evidence and consider the propriety, correctness or legality of the findings recorded by the Tribunal in its order under appeal. Naturally, as a Court of Appeal, the High Court would not interfere with the findings of the fact recorded by the Tribunal which are based merely on appreciation of oral evidence. But that is not to say that the High Court cannot so interfere if it comes to the conclusion that the impugned finding is erroneous and deserves to be reversed. When the matter comes to this Court under Article 136 against the appellate decision of the High Court, this Court generally does not interfere with question of fact. Ordinarily, the findings of fact recorded by the High Court in dealing with an appeal under Section 116-A of the Act are not disturbed, unless there are strong and compelling reasons to do so. The position becomes still more difficult for the appellant where the findings of fact recorded by the High Court happen to confirm similar findings recorded by the Tribunal. That is why the limits of the controversy in election appeals brought to this Court under Article 136 naturally become very narrow.

8. In the present case on two points the High Court and the Tribunal have made concurrent findings. The first is in relation to the expenses alleged to have been incurred by respondent No. 1 in excess of the permissible limit of Rs. 7,000; and the other is in relation to the bribe alleged to have been paid by respondent No. 1 to Chanan Ram, respondent No. 3. Both the Tribunal and the High Court have elaborately considered the oral evidence led by the parties and have examined the probabilities in the case and the conduct of the parties respectively. It appears from these findings that neither the High Court, nor the Tribunal was satisfied that it would be safe to accept the evidence adduced by the appellant and hold that respondent No. 1 was guilty of the charge of excessive expenditure or of offering a bribe to Chanan Ram. That being so, we have not allowed Mr. Garg for the appellant to raise these points before us, because we thought that we would not be justified in examining the evidence ourselves to consider the propriety or correctness of the said findings.

9. That takes us to the two allegations of bribe-giving on which the High Court has reversed the conclusions of the Tribunal. Even in considering Mr. Garg's contention that the findings recorded by the High Court on these two points are erroneous, our approach naturally is to enquire whether Mr. Garg is able to show any serious error in the approach adopted by the High Court or in its appreciation of evidence which would justify our interference. In considering this aspect of the matter, the nature of the enquiry would be not whether this Court would necessarily have come to the same conclusion as the High Court has done, but whether the conclusion of the High Court is so erroneous that this Court must interfere with it. After all, in dealing with questions of this kind, the High Court has to take into account the oral as well as the documentary evidence bearing on the points and the other relevant and material circumstances. If, after carefully considering all such evidence, the High Court comes to a definite conclusion, ordinarily this Court would not feel inclined to interfere with such a conclusion after appreciating the relevant evidence itself. That is the approach which we propose to adopt in dealing with the contentions raised by Mr. Garg in the present appeal.

10. The first charge of bribe made by the appellant against respondent No. 1 is that respondent No. 1 persuaded Tapasvi Gir to withdraw his candidature from the election. It was his case that Tapasvi Gir is an Ad-Dharmi and an influential member of his community; and he urged that Tapasvi Gir had been adopted as an official candidate by the Republican Party. The appellant specifically averred that respondent No. 1 had offered to Tapasvi Gir Rs. 1,000/- with a view to induce him to withdraw from his candidature. In that connection, it was alleged that respondent No. 1 met Tapasvi Gir on the 30th January, 1962 along with Narain Das, a Congress worker, and Lalji Ram, the District Secretary of the Republican Party, and made a formal request that Tapasvi Gir should withdraw. As a result, Rs. 1,000/- were paid and Tapasvi Gir withdrew his candidature from the election.

11. In support of this case, the appellant examined Narain Das, P. W. 16, Thakur Das, P. W. 30, and Chanan Ram, P. W. 31, whereas respondent No. 1 examined Lalji Ram, R. W. 14, and Ajit Kumar, R. W. 13. According to Tapasvi Gir, when the bribe of Rs. 1000/- was offered by respondent No. 1, he did not accept the money, but Thakur Das did. It would thus be seen that the decision of this question depends on whether the evidence given by the 3 witnesses whom the appellant examined, was to be preferred to the evidence given by the 2 witnesses whom respondent No. 1 examined. The High Court was not prepared to believe the evidence of the appellant's witnesses. It held that Thakur Das appeared to be the tenant of the appellant at the relevant time, and in that sense, was not reliable. In regard to Chanan Ram, the High Court thought that part of the evidence given by him was inadmissible; and with regard to Narain Das, it took the view that he was not a trustworthy witness. On the other hand, the High Court was inclined to take the view that the evidence given by respondent No. 1's witnesses Lalji Kumar and Ajit Kumar was more reliable,

12. There are two comments which the High Court has made in reversing the conclusion of the Tribunal on this part of the appellant's case. The first comment is that the Tribunal has not given due' consideration to the fact that the evidence of Lalji Ram and Ajit Kumar satisfactorily shows that Tapasvi Gir was not adopted by the Republican Party as its own candidate at all; and the High Court has observed, and we think, rightly, that if Tapasvi Gir had not been duly adopted as an official candidate by the Republican Party, the whole basis of the appellant's case that he was an important rival and had, therefore, to be persuaded to withdraw from the election, falls to the ground. The evidence to which the High Court has referred in support of its finding that Tapasvi Gir had not been adopted by the Republican Party as its candidate, is very satisfactory; and so, the criticism made by the High Court against the Tribunal in that behalf cannot be said to be unjustified.

13. The other comment which the High Court has made in regard to the decision of the Tribunal has reference to the criticism made by respondent No. 1 against Narain Das. Narain Das claimed to be a staunch Congressworker of long-standing and presumably to support this claim, he appeared in the witness-box dressed in 'khaddar' clothes which generally constitute the uniform of Congress workers. It was suggested to Narain Das in cross-examination that he had put on 'khaddar' clothes only a day before he appeared in the witness-box to create an impression that he always put on the 'khaddar' uniform of the Congress Party. Dealing with this criticism made by respondent No. 1 against the conduct of Narain Das, the Tribunal has observed in its judgment that the 'khaddar' clothes which Narain Das had worn did not appear to be new. The High Court has pointed out that this observation made by the Tribunal does not appear to be justified, because the Tribunal had not

made any note to this effect when the evidence of Narain Das was recorded. The Tribunal delivered its judgment long after the evidence of Narain Das was recorded, and if it wanted to make an observation of this character, it should have made a contemporaneous note to that effect in the record of the proceedings. We cannot see how Mr. Garg can quarrel with the comment thus made by the High Court against the Tribunal's observation. Therefore, we are satisfied that no legitimate or valid grievance can be made by the appellant in regard to the finding recorded by the High Court in respect of the appellant's case that Rs. 1,000/- were paid by respondent No. 1 for the withdrawal of Tapasvi Gir from the election.

14. The next charge of bribery is in relation to the payment of Rs. 2,000/- alleged to have been made by respondent No. 1 to Balwant Singh Sarpanch of village Safdarpore. The appellant's case is that when respondent No. 1 offered Rs. 2,000/- to Balwant Singh on the 22nd February, 1962, Balwant Singh was first reluctant to accept that amount; but respondent No. 1 left the amount with him and it was subsequently credited to the Panchayat funds. The appellant urged that the receipt of this amount was expressly referred to in the Panchayats resolution passed on the 8th March, 1962. In support of this case, the appellant examined Sansar Singh, P. W. 17, a member of the Panchayat and Nasib Singh, P. W. 18, a resident or the village. It appears that Balwant Singh was called upon to produce the records of the Panchayat in order to enable the appellant to prove his case. Ext. P. 41 is the proceeding book in which the resolution of the 5th March, 1962 is recorded. When Balwant Singh produced the said record, two loose sheets of paper were found among the pages of the Cash Book (Ext. P. 42) and they have been admitted and marked as Exts. P. 43 and P. 43-A in spite of the objection of respondent No. 1. The appellant relied on these two sheets as well as the resolution. Respondent No. 1 examined Balwant Singh, Sarpanch, R. W. 23, Harnam Singh, the Secretary of the Panchayat R. W. 20 and Vakil Singh, R. W. 24, a Member of the Panchayat. The High Court has held that the position disclosed by the evidence led by the parties was unsatisfactory and that the matter "is not free from doubt", with the result that the High Court was unable to make a finding that the charge leveled against respondent No. 1 in respect of the payment of Rs. 2,000/- to the Panchayat of the village had been brought home to him.

15. Mr. Garg has strenuously contended that the High Court was in error in recording this finding. He does not dispute the fact that when an Election Tribunal deals with allegations about the commission of corrupt practice by a returned candidate, the charges framed are in the nature of quasi-criminal charges. The proof of the charge has a double consequence; the election of the returned candidate is set aside, and he incurs subsequent disqualification as well. Therefore, when a charge of this kind is framed against a returned candidate, it has to be proved satisfactorily. It is true that the High Court itself has observed that the cross-examination of Sansar Singh and Nasib Singh did not disclose any intrinsic infirmity to justify the rejection of their evidence; but it has also pointed out that there is no reason why the evidence of Balwant Singh, Harnam Singh and Vakil Singh should be disregarded either. Thus, the state of the oral evidence was fairly equally balanced, and the decision of the issue, therefore, depended upon the documentary evidence produced in the proceedings, and it is on the documentary evidence that Mr. Garg has placed considerable reliance.

16. The resolution passed by the Panchayat on the 5th March, 1962 reads thus:--

"It was also passed that the Panchayat Safdarpur has got collected a sum of Rs. 3,000/- for the school and that the Government should also give a grant of Rs. 3,000/- for the school. This grant should be given Immediately and should be sent without any loss of time in order that the construction work of the school building may be started. This was passed. It was also resolved that a copy of the resolution be sent to the Block Development Officer with the request that the grant of the school should be sent immediately."

Mr. Garg contends that the first part of the resolution clearly indicates that an amount of Rs. 2,000/- had been received by the Panchayat from respondent No. 1. It is common ground that at the relevant date, the Panchayat had about Rs. 1,200/- cash balance with it; and the argument is that the said cash balance and the amount of Rs. 2,000/- paid by respondent No. 1 represent Rs. 3,000/- which is referred to as having been collected by the Panchayat. This argument has not been accepted by the High Court. The High Court took the view that since the object of the resolution plainly was to secure from the Government a matching grant of Rs. 3,000/-, the recital that Rs. 3,000/- had already been collected need not be literally construed. The High Court referred to the fact that about Rs. 2,200/-was lying in deposit with the Board which was due to the Panchayat by way of compensation for the acquisition of some land in the village for the construction of a road; and since the Panchayat was entitled to recover this amount, it might have treated that amount as already received. On the other hand, it is shown by evidence that this amount had not in fact been received on the date of the resolution, and was not received even thereafter before the school building was completed. In dealing with the question as to whether the conclusion of the High Court is right or not, we cannot lose sight of the fact that the object of the resolution was undoubtedly to secure a matching grant from the Government for the construction work of the school building; and so, we are not prepared to hold that the High Court was in error in refusing to treat me first recital in the resolution too literally.

17. Mr. Garg, however, strenuously contended before us that this conclusion of the High Court is shown to be erroneous by the fact that the construction work was substantially completed between March and July, 1962, and the necessary expenses actually incurred; and he points out that unless Rs. 2,000/- bad been actually received by the Panchayat, it would have been impossible for the Panchayat to pay the expenses incurred in the construction of the school building. This aspect of the matter, no doubt, makes the appellant's case arguable; but the difficulty in accepting the argument lies in the fact that the High Court hag made a definite finding that the slips of paper Exts. P. 43 and P. 43-A as well as the cash book produced in the proceedings showed that the Panchayat had received considerable amount during the period from its legitimate sources of income. The High Court has found that "all that is shown by the entries in the cash book and the abstracts P. 43 and P. 43-A is that the money spent on the work of construction came from the Panchayat funds available to the Panchayat without either any Rs. 2,000/- from Giani Kartar Singh or from the compensation". The High Court has also found that the said documents showed that the Panchayat had about Rs. 1,200/- in hand in March, 1962 and that at no time had the expenditure on the construction work exceeded the amount available in the Panchayat funds up to July. Therefore, the main argument on which Mr. Garg rested his case before us does not appear to be well founded. The evidence shows that the Panchayat had funds at its disposal from which the expenditure involved in the construction of the school building could be, and must be, deemed to have been incurred. It is

not, therefore, possible to accept the argument that but for the receipt of Rs. 2,000 from respondent No, 1, this expenditure could not have been incurred. That is why we do not think that we would be justified in interfering with the finding of the High Court on this point.

18. That takes us to the question as to whether respondent No. 1 was guilty of a corrupt practice under Section 123(4) of the Act. The appellant's case is that respondent No. 1 was responsible for the publication of a pamphlet in "Quami Ekta" which made four false allegations in regard to the personal character of the appellant, and he made those allegations believing them to be false, or not believing them to be true. That is how a charge under Section 123(4) was leveled against respondent No. 1 by the appellant. He also urged that by the publication, in Quami Ekta, of certain false reports respondent No. 1 had made false statements in relation to the candidature of the appellant knowing that the said statements were false and not believing them to be true. That, again, is a charge under Section 123(4). The Tribunal and the High Court have made concurrent findings against the appellant on both these points; but Mr. Garg contends that in recording the said findings, they have misdirected themselves in law, and that is why it is necessary to consider the points of law raised by Mr. Garg in this connection.

19. Section 123(4) provides, inter alia, that the publication by a candidate of any statement of fact which is false, and which he either believes to be false or does not believe to be true, in relation to the personal character or conduct of any candidate, or in relation to the candidature of any candidate, being 4 statement reasonably calculated to prejudice the prospects of that candidate's election, is a corrupt practice. It would be noticed that the onus to prove the essential ingredients prescribed by the said subsection is on the appellant. He has to show that the impugned statement has been published by the candidate or his agent or by any other person with the consent of the candidate or his election agent. This fact has been proved in the present case in regard to both the statements. The appellant has further to show that the impugned statement is a statement of fact which is false; that respondent No. 1 either believed that the said statement was false, or did not believe it to be true; and that the statement is in relation to the personal character or conduct of the candidate or his candidature.

20. The question as to what allegations can be said to amount to allegations in regard to the personal character of a candidate, as distinguished from his public character, is not always easy to decide on consideration of abstract principles. The policy underlying the present provision is that in the matter of elections, the public and political character of a candidate is open to scrutiny and can be severely criticised by his opponents, but not so his private or personal character. In order that the elections in a democratic country should be freely and fearlessly conducted, considerable latitude has to be given to the respective competing candidates to criticise their opponents' political or socio-economic philosophy or their antecedents and character as public men. That is why even false statements as to the public character of candidates are not brought within the mischief of Section 123(4), because the legislature thought that in the heat of election it may be permissible for competing parties and candidates to make statements in relation to the public character of their opponents, and even if some of the statements are false, they would not amount to corrupt practice. Having regard to this policy of the statute, it often becomes necessary to examine carefully whether the false statement impinges on the personal character of the candidate concerned. Though it is not

easy to lay down any general considerations which would help the determination of this issue in every case, in actual practice it may not be very difficulty to decide whether the false statement impinges on the personal character of the candidate or on his public character. It would be inexpedient and undesirable to lay down any general principle in that behalf [vide Inder Lal v. Lal Singh, ; and T.K. Gangi Reddy v. M.G. Anjaneya Reddy, (1961) 22 Ele LR 261 (SC)].

21. Let us now refer to the statements published in the "Quami Ekta" (Ext. P-22) which according to the appellant, constitute a corrupt practice under Section 123(4) of the Act. The said statements read as under:--

"1. that among those who drink, his rank is very high;

2. that he trimmed his beard which was contrary to the Sikh religion;

3. that he falsely claimed to be the Chief Minister's man and the C. I. D. Police, therefore, was after him; and

4. that he was an unprincipled 'chhokra'."

22. Roth the Tribunal and the High Court have held in the present proceedings that the first two statements have relation to the personal character of the appellant, whereas the last two have relation to his public character. We see no reason to differ from this conclusion. Roth the Tribunal and the High Court have also held that it is not shown that at the time when the statements were made, respondent No. 1 believed them to be false, or did not think them to be true. It is the correctness of this conclusion which is seriously challenged before us by Mr. Garg.

23. It appears that a criminal case is pending between the appellant and respondent No. 1 in regard to this pamphlet, and the Tribunal thought that having regard to the fact that the matter had gone before a criminal Court, it would be better if it did not make a specific and definite finding as to the falsity of the statements made in the pamphlet. Even so, the Tribunal considered the oral evidence led by the parties and came to the conclusion which we have already mentioned. The High Court has adopted the same approach and has concurred with the findings of the Tribunal. It appears that the oral evidence adduced by respondent No. 1 shows that the appellant was in the habit of taking drinks, and that he had trimmed his beard which is contrary to the Sikh religion. Having considered the said evidence, a finding has been made in favour of respondent No. 1 on the lines just indicated.

24. Mr. Garg, however, contends that in reaching this conclusion, both the Tribunal and the High Court have failed to take into account one important fact arising from the pleadings of the parties. He argues that in the petition filed by the appellant, he had specifically, clearly, and definitely averred that the publication of the pamphlet amounted to a corrupt practice on the part of respondent No. 1; and he points out that though respondent No. 1 denied that he had anything to do with the publication of the pamphlet, he did not traverse the plea made by the appellant that the impugned statements were false, that they concerned his personal character, and that they were believed to be false by respondent No. 1 and not believed to be true by him. Mr. Garg's case is that if

respondent No. 1 did not specifically controvert the material allegations made by the appellant in his petition in respect of this charge, it was not open to the Tribunal to allow respondent No. 1 to lead evidence in rebuttal; and both the Tribunal and the High Court should have ignored that evidence and should have given full effect to the fact that respondent No. 1 had not denied the essential ingredients of the charge which had been specifically pleaded by the appellant in his election petition. In substance, the argument is based on the provisions of Order 8, Rule 5 of the Code of Civil Procedure: Mr. Garg contends that the procedure prescribed by the Code applies to election proceedings; and so, he relies on the provisions of Order 8, Rule 5 in support of his argument that the present charge should have been held to be proved against respondent No. 1.

25. We are not impressed by this argument. In considering the question as to whether the strict rule of pleadings prescribed by Order 8, Rule 5 applies to election proceedings with all its rigour, we must bear in mind the fact that the charge like the present is in the nature of a criminal charge and the proceedings in respect of its trial partake of the character of quasi-criminal proceedings. It is true that Section 90 of the Act provides that subject to the provisions of this Act and of any rules made thereunder, every election petition shall be tried by the Tribunal, as nearly as may be, in accordance with the procedure applicable under the Code of Civil Procedure, 1908, to the trial of suits. This provision itself emphasises the fact that the whole of the Civil Procedure Code is not fully applicable. What the section provides is that the proceedings should be tried "as nearly as may be" according to the Code of Civil Procedure. If the contention raised by Mr. Garg is accepted at its face value, it may logically lead to this consequence that if a returned candidate does not controvert the allegations made by the petitioner in his election petition alleging the commission of a corrupt practice by the returned candidate, a finding would have to be made in favour of the petitioner without any evidence at all. In other words, the question is: can a corrupt practice prescribed by Section 123(4) of the Act be held to be proved merely on the ground that no specific denial has been made by the returned candidate in his written statement in that behalf? In considering this point, we cannot overlook the fact that the onus to prove the essential ingredients of Section 123(4) is on the petitioner, and so, it would be for him to prove that the statement is false, and that the other requirements of the section are satisfied. Having regard to the nature of the corrupt practice which is prescribed by Section 123(4), we are not prepared to hold that the strict rule of pleadings prescribed by Order 8, Rule 5 of the Code can be blindly invoked in election proceedings of this type.

26. Besides, it is plain that there is a proviso to Order 8, Rule 5 which, in terms, confers jurisdiction on the Court that even if a fact can be deemed to be admitted by virtue of the said rule, it may nevertheless be proved otherwise than by such admission. This proviso clearly shows that even in civil proceedings to which the Code applies, it is open to the Court to exercise its discretion and require a party to prove a fact even though an admission of the said fact by the opponent can be inferred by the strict application of Order 8, Rule 5; and that is precisely what the Tribunal has done in the present ease. When this question was argued before the Tribunal, it examined the arguments urged by both the parties and held that in the interests of justice, it was necessary to allow respondent No. 1 to lead evidence in rebuttal; and it is in the light of the evidence led by respondent No. 1 that the Tribunal made its finding on this issue against the appellant and the said finding has been confirmed by the High Court. Therefore, we do not think that the points of law raised by Mr. Garg in respect of this charge really assist him to challenge effectively the correctness of the findings

recorded by the Courts below.

27. Then as to the charge that the publication of certain statements and posters by respondent No. 1 amounted to a corrupt practice under the latter part of Section 123(4), the position is not any better for the appellant. It is true that the publication of a false statement in relation to the candidature of the appellant would amount to a corrupt practice if the other ingredients of the said provision are satisfied. The Tribunal and the High Court have held that the false statement on which the argument is founded, does not have any reference to the candidature of the appellant at all, and in our opinion, this conclusion is right. Let us briefly indicate why?

28. The poster in question reads thus:--

"IMPORTANT ANNOUNCEMENT OF Shiromani Akali Dal, Amritsar Vote for Shiv Singh Jhawan Dear Khalsa Ji.

It is for your information that the Shiromani Akali Dal has nominated Shiv Singh Jhawan as its candidate. As the letter could not reach in time. Therefore he has been allotted the symbol of "Tree". We appeal to all the Akali workers and the Sangat that they should support him and make him successful. S. Shiv Singh is the only tried Sewak of the Panth. He has rendered great services during the Akali Morcha. Even now there is a warrant of arrest against him. The Sikh Masses should not labour under misunderstanding and they should help in flying the Panthic Flag high.

Panth De Dass
Fateh Singh Sant, Tara Singh Master,
Vice-President. President.

SHIROMANI AKALI DAL, AMRITSAR

Chakrala Printing Press, Urmur".

No evidence has been brought on the record to show that either Fateh Singh Sant or Tara Singh Master signed this document. In fact, Master Tara Singh who was the President of Shiromani Akali Dal has denied that he or Sant Fateh Singh had signed it; and so, in relation to the said two signatures the poster is a false document. It is also proved that respondent No. 1 is responsible for the publication of this document. But the question which arises for our decision is: does this document have relation to the candidature of the appellant? What this document purports to do is to ask the Akali workers and the Sangat to support the candidature of Shiv Singh. The argument is that since the appellant had received the support of the Akali Dal party, this poster was intended to weaken the appellant's position by making a false representation to the followers of the Akali Dal that Shiv Singh deserved their support, because he was the only tried Sewak of the Panth. It seems to us that the requirement of Section 123(4) is plain and unambiguous. The impugned statement on

which a charge under the said provision can rest, must be shown to be false, and must have relation to the candidature of the candidate. Now, this document and the other documents which were similarly published do not make any reference to the candidature of the appellant at all. Besides, it is significant that the appellant had not been adopted by the Akali Dal party as its official candidate, so that if the poster represented to the Akali workers that Shiv Singh deserved their support, it cannot be said even by necessary inference or implication that the candidature of the appellant was referred to; perhaps such an inference could have been drawn if the appellant had been adopted as an official candidate by the Akali Dal party.

29. On the contrary, the evidence in the case shows that Shiv Singh was intended to be adopted by the Akali Dal party as its official candidate. A telegram Ex. R. 2 was sent by Akali Dal, Amritsar to the Returning Officer requesting him to allot "HAND" which was the symbol of the Akali Dal, to Shiv Singh who was an Akali candidate; but apparently, this telegram was received late and the symbol of "Hand" could not be allotted to Shiv Singh. The evidence given by S. Ajmer Singh (R. W. 17) Secretary of the Akali Dal, clearly shows that the Akali Dal had nominated Shiv Singh as a candidate and a telegram had been sent to the Returning Officer by Atma Singh, who was the General Secretary, under the authority of Ajmer Singh. Ex. Rule 3 shows that Atma Singh and Ajmer Singh had been authorised by the Akali Dal to request the Returning Officer to allot the adopted candidate the symbol chosen by the Party. It may be that ultimately, Akali Dal decided to support the appellant, and not Shiv Singh; hut that has no relevance on the point which we are considering under Section 123(4) Reading the impugned poster fairly, it is difficult to accept Mr. Garg's contention that the said poster makes a false statement in relation to the candidature of the appellant. That being so, it is unnecessary to consider whether the other requirements of Section 123(4) in relation to this poster are satisfied or not.

30. That leaves one more point to consider, and it is related to the order passed by the Tribunal directing the inspection of the ballot boxes and examination of the voting papers cast by the electors in favour of the respective candidates. We have already noticed that the Election Tribunal allowed the appellant to inspect the ballot boxes, examined the objections raised by the appellant in regard to the validity or invalidity of a large number of voting papers, and ultimately counted the votes cast in favour of the appellant and respondent No. 1. The High Court has found that the Tribunal was in error in allowing inspection of the ballot boxes, and it has also held that the finding made by it after examining the objections raised by the appellant, is also not correct. It is unnecessary for us to consider this latter part of the High Court's conclusion, because, in our opinion, the High Court was right in holding that no case had been made out by the appellant for the inspection of the ballot boxes at all. That being so, it is unnecessary to enquire what would he the result if the objections raised by the appellant are considered and the votes are recounted. So, the narrow question at his stage is: was the Tribunal justified in allowing inspection of the ballot boxes in the present proceedings.

31. The true legal position in this matter is no longer in doubt. Section 92 of the Act which defines the powers of the Tribunal, in terms, confers on it, by Clause (a), the powers which are vested in a Court under the Code of Civil Procedure when trying a suit, inter alia, in respect of discovery and inspection. Therefore, in a proper case, the Tribunal can order the inspection of the ballot boxes and

may proceed to examine the objections raised by the parties in relation to the improper acceptance or rejection of the voting papers. But in exercising this power, the Tribunal has to bear in mind certain important considerations. Section 83(1)(a) of the Act requires that an election petition shall contain a concise statement of the material facts on which the petitioner relies; and in every case, where a prayer is made by a petitioner for the inspection of the ballot boxes, the Tribunal must enquire whether the application made by the petitioner in that behalf contains a concise statement of the material facts on which he relies. Vague or general allegations that valid votes were improperly rejected, or invalid votes were improperly accepted, would not serve the purpose which Section 83(1)(a) has in mind. An application made for the inspection of ballot boxes must give material facts which would enable the Tribunal to consider whether in the interests of justice, the ballot boxes should he inspected or not. In dealing with this question, the importance of the secrecy of the ballot papers cannot be ignored, and it is always to be borne in mind that the statutory rules framed under the Act are intended to provide adequate safeguard for the examination of the validity or invalidity of votes mid for their proper counting. It may be that in some cases, the ends of justice would make it necessary for the Tribunal to allow a party to inspect the ballot boxes and consider his objections about the improper acceptance or improper rejection of votes tendered by voters at any given election; hut in considering the requirements of justice, care must be taken to see that election petitioners do not get a chance to make a roving or fishing enquiry in the ballot boxes so as to justify their claim that the returned candidate's election is void. We do not propose to lay down any hard and fast rule in this matter; indeed, to attempt to lay down such a rule would be inexpedient and unreasonable.

32. Whenever an Election Tribunal is called upon to consider this question, it should not ignore the safeguards which have been prescribed by the relevant Rules prescribed in Part V of the Conduct of Elections Rules, 1961. Let us briefly indicate the broad features of these Rules. Under Rule 53, candidates, their election agents or counting agents are admitted to the place fixed for counting of votes. Rule 54 emphasises the importance of the maintenance of secrecy of voting. Rule 55 deals with the scrutiny and opening of ballot boxes; before a ballot box is opened at a counting table, the counting agents present at that table shall be allowed to inspect the paper seal or such other seal as might have been affixed thereon and to satisfy themselves that it: is intact. The Returning Officer has himself to take care to see that no ballot box has been tampered with. In case any tampering of the ballot boxes is disclosed, the Returning Officer has to take action under Rule 58. Rule 56 provides for the scrutiny and rejection of ballot papers. Rule 56 (1) lays down that the ballot papers taken out of each ballot box shall be arranged in convenient bundles and scrutinised. Then objections are raised as specified by Sub-rule (2) and are dealt with in accordance with the provisions of other sub-clauses of Rule 56 (2). It is thus clear that the scheme of Rule 56 is that every ballot paper can be examined by the counting agent and objections can be raised in respect of it if the election agent feels that a valid objection can be raised. It is after these objections are examined and dealt with according to Rule 56 that the stage of counting votes arrives. Even after the completion of the counting, it is open to a candidate or his election agent to apply in writing to the Returning Officer for a re-count of all or any of the ballot papers already counted stating the grounds on which he demands such recount. That is the effect of Rule 63 (2). After all this procedure has been gone through, the Returning Officer completes the result sheet in Form 20, and signs it. Once that is done, no application for a re-count shall he entertained. We have referred broadly to the

scheme of these Rules to emphasise the point that the election petitioner who is a defeated candidate, has ample opportunity to examine the voting papers before they are counted, and in case the objections raised by him or his election agent have been improperly over-ruled, lie knows precisely the nature of the objections raised by him and the voting papers to which those objections related. It is in the light of this background that Section 83(1) of the Act has to be applied to the petitions made for inspection of ballot boxes. Such an application must contain a concise statement of the material facts.

33. This question has been considered by this Court on several occasions. In Ram Sewak v. Hussain Kamil, , this Court observed that an order for inspection of ballot papers cannot be granted to support vague pleas made in the petition not supported by material facts or to fish out evidence to support such pleas. The case of the petitioner must be set out with precision supported by averments of material facts. To establish a case so pleaded an order for inspection may undoubtedly, if the interests of justice require, be granted. But a mere allegation that the petitioner suspects or believes that there has been an improper reception, refusal or rejection of votes will not be sufficient to support an order for inspection. The same view has been expressed in Smt. Dr. Sushila Balraj v. Shri Ardhendu Bhushan, (1964) C. A. No. 222 of 1964, D/- 18-3-1964 (SC), and in Sitaram Mahto v. Ramanandan Rai, (1965) C. A. No. 45 of 1965, D/- 10-2-1965.

34. Let us then examine whether the appellant's petition contained a concise statement of the material facts on which a claim for inspection of ballot papers can be justified. In the application made by the appellant on the 7th March, 1963, he urged that in the election petition filed by him, it had been averred that a very large number of votes purported to have been cast in favour of the appellant had been improperly rejected, and that has materially affected the result of the election; and he added that there was also an allegation that a large number of votes which were invalid had been improperly accepted in favour of respondent No. 1 which has also materially affected the result of the election. This application further sets out the appellant's version that the Returning Officer disclosed a partisan attitude and the counting and examination of votes was done in a very irregular manner. The appellant pleaded that he had led some evidence regarding the misconduct of the Returning Officer at the time of the counting; and so, a prayer was made that the ballot papers may be allowed to be inspected "in order to enable the appellant to establish his case both regarding improper rejection and reception of ballot papers and the non-compliance with the rules under the Act on the part of the Returning Officer which have materially affected the result of the election in so far as respondent No. 1 is concerned". It may be observed that at the time when the application for inspection was made, evidence had already been led before the Tribunal; and Mr. Garg's contention is that the Tribunal, on considering the evidence in the light of the allegations made by the appellant, was satisfied that an inspection should be ordered in the interests of justice; and he argues that the High Court was in error in reversing this order on appeal.

35. We are not prepared to accept this contention. The order passed by the Tribunal clearly shows that the Tribunal did not apply its mind to the question as to whether sufficient particulars had been mentioned by the appellant in his application for inspection. All that the Tribunal has observed is that a prima facie case has been made out for examining the ballot papers; it has also referred to the fact that the appellant has in his own statement supported the contention and that the evidence led

by him prima facie justifies his prayer for inspection of ballot papers. In dealing with this question, the Tribunal should have first enquired whether the application made by the appellant satisfied the requirements of Section 83(1) of the Act; and, in our opinion, on the allegations made, there can be only one answer and that is against the appellant. We have carefully considered the allegations made by the appellant in his election petition as well as those made by him in his application for inspection, and we are satisfied that the said allegations are very vague and general, and the whole object of the appellant in asking for inspection was to make a fishing enquiry with a view to find out some material to support his case that respondent No. 1 had received some invalid votes and that the appellant had been denied some valid votes. Unless an application for inspection of ballot papers makes out a proper case for such inspection, it would not be right for the Tribunal to open the ballot boxes and allow a party to inspect the ballot papers, and examine the validity or invalidity of the ballot papers contained In it. If such a course is adopted, it would inevitably lead to the opening of the ballot boxes almost in every case, and that would plainly be inconsistent with the scheme of the statutory rules and with the object of keeping the ballot papers secret. That is why we are satisfied that the High Court was right in coming to the conclusion that the appellant had failed to make out a case for the inspection of the ballot boxes in this case.

36. Before we part with this appeal, we would like to refer to three matters which show that respondent No. 1 did not contest this litigation with clean hands. The Tribunal has referred to the part played by respondent No. 2 Shiv Singh in the present proceedings, and has made a bitter comment about the relation between Shiv Singh and respondent No. 1. The High Court has referred to the sordid story about the part played by Madan Lal in collusion with respondent No. 1 in relation to the evidence which he gave in the present proceedings. Similarly, the part played by respondent No. 1 in assisting the adoption of a somewhat coercive and terrorising attitude in relation to Thakur Das who was a witness for the appellant, has also been criticised by the Tribunal in strong words. While expressing our concurrence with the comments made by the Tribunal and the High Court in regard to these three matters, we wish to express our strong disapproval of the course of conduct adopted by respondent No. 1 in relation to these three matters. We have no doubt that the said conduct of respondent No. 1 is wholly unworthy of the high position which he holds in public life.

37. The result is, tine appeal fails and is dismissed. There would be no order as to costs.