



THE ASSAM GAZETTE

অসাধাৰণ

EXTRAORDINARY

প্ৰাপ্ত কৰ্তৃত্বৰ দ্বাৰা প্ৰকাশিত

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No. 2 Dispur, Tuesday, 2nd January, 2018, 12th Pausa, 1939 (S.E.)

GOVERNMENT OF ASSAM
ORDERS BY THE GOVERNOR
ELECTION DEPARTMENT ::::: DISPUR

NOTIFICATION

The 29th December, 2017
8 Pausha, 1939 (Saka)

No.ELE.65/2017/46.- The Election Commission of India's Notification No. 82/AS-LA/2011 dated 20th December, 2017 is hereby published for general information.

ELECTION COMMISSION OF INDIA**NirvachanSadan, Ashoka Road, New Delhi-110001**

Dated: 20th December, 2017
29 Agrahayana, 1939 (Saka).

NOTIFICATION

No.82/AS-LA/2011: - In pursuance of Section 116(c) and Section 106 of the Representation of the People Act, 1951 (43 of 1951), the Election Commission of India, hereby, publishes the judgement/order dated 30-11-2017 passed by Gauhati High Court in the Election Petition No. 2 of 2011- Shri Bharat Chandra Narah V/s Shri Naba Kumar Doley and Ors..

By order,

(NARENDRA N. BUTOLIA)
PRINCIPAL SECRETARY
ELECTION COMMISSION OF INDIA

IN THE GAUHATI HIGH COURT
(HIGH COURT OF ASSAM, NAGALAND, MIZORAM AND
ARUNACHAL PRADESH)

ELECTION PETITION 02/2011

PETITIONER:

Shri Bharat Chandra Narah,

Son of Late Tileswar Narah,
At present resident of
Village, P.O. & P.S. Boginadi,
District - Lakhimpur, Assam.

By Advocates :

Mr. D. Mazumdar, Sr. Advocate,
Mr. R. Sharma, Advocate.

:: VERSUS ::

RESPONDENTS:

1. Shri Naba Kumar Doley,

S/o. Sri Paramananda Doley,
R/O Ward No.4,
Dhakuakhana Chariali,
P.O. & P.S. Dhakuakhana,
DIST. Lakhimpur, ASSAM, PIN-787055.

2. Sri Ranjit Doley,

Son of Late Kumud Doley,
Resident of village – Matmora,
PO. Kherkatamukh,
PS. Dhakuakhana,
District-Lakhimpur, Assam,
PIN – 787055.

3. Sri Memud Pagag,

Son of Sri Maikeswar Pagag,
R/o. Village – Alimur Baligaon,
PO. Mornoi Bebejia,
Dist. Lakhimpur, Assam,
PIN – 787055.

4. Sri Indrajit Narah,

Son of Sri Naba Narah,
R/o. village – Namani Gorghe,
PO. Gereki Baginadi,
Dist. Lakhimpur,
PIN – 787032.

5. Smti. Jutika Doley,

D/o. Kandarpa Doley,
R/o. village – Baghchuk,
PO. Kangkan Chapori,
Dist. Lakhimpur, Assam,
PIN – 787055.

6. Sri Bhaben Kumar Panyang,

S/o. Late Sona Ram Panyang,
R/o. of village – Obhata Chaparmukh,
PO. Mornoi Bebejia,
PS. Ghilamara,
Dist. Lakhimpur, Assam,
PIN – 787055.

7. Smt. Lakhimai Pegu,

D/o. Sri Khageswar Pegu,
R/o. village & PO. Ga-Dangarchuk,
Dist. Lakhimpur,
Assam, PIN – 787053.

8. Sri Gyananath Mili,

Son of Sri Jadav Chandra Mili,
R/o. village – Belunpara,
PO. Ouguri Dangdhara,
PS. Dhakuakhana,
Dist. Lakhimpur, Assam,
PIN – 787055.

By Advocates:

Mr. K. Agarwal, Senior Advocate,
Mr. R. Baruah, Advocate.

**B E F O R E
HON'BLE MR. JUSTICE UJJAL BHUYAN**

Date of hearing : 19-04-2017

Date of Judgment: 30 -11-2017

JUDGEMENT & ORDER

Heard Mr. D. Mazumdar, learned Senior counsel assisted by Mr. R. Sharma, learned counsel for the election petitioner and Mr. K. Agarwal, learned Senior counsel assisted by Mr. R. Baruah, learned counsel for respondent No.1.

2. This petition has been filed under Sections 80 and 81 of the *Representation of the People Act, 1951* (in short, the RP Act) seeking a

declaration that the election of respondent No.1 to Assam Legislative Assembly from No.112 Dhakuakhana (ST) Legislative Assembly Constituency is *void* as per Sections 98(b) and 100(1) (b) of the RP Act with a further declaration that petitioner is elected from the said constituency having received the maximum number of valid votes following declaration of the election of respondent No.1 as *void*.

3. Challenge to the election of respondent No.1 has been made on the ground of *corrupt practice*. Respondent No.1 is alleged to have been involved in *bribery* as well as *booth capturing*.

4. As per pleadings in the election petition, Election Commission of India had issued notification for holding election in respect of No.112 Dhakuakhana (ST) Legislative Assembly Constituency (constituency hereinafter) notifying the following dates:-

- (i) Last date for nomination – 17.03.2011,
- (ii) Scrutiny of nomination – 18.03.2011,
- (iii) Last date for withdrawal of candidature – 21.03.2011,
- (iv) Date of poll – 04.04.2011,
- (v) Counting of votes – 13.05.2011

5. Petitioner filed his nomination paper for the said constituency as a candidate nominated by the Indian National Congress Party. Respondent No.1 also filed his nomination paper for the said constituency as a candidate nominated by the *Asom Gana Parishad* Party. Respondent Nos.2, 3 and 4 had filed their nomination papers as independent candidates whereas respondent Nos.5 to 8 had filed their nomination papers for the said constituency as candidates belonging to the SUCI (C), AITC, BJP and CPI(M) political parties respectively.

6. One nomination paper for the said constituency was filed by Shri Ranjit Chintey as an independent candidate. However, Shri Chintey withdrew his nomination paper on 21.03.2011.

7. Nomination papers filed by the petitioner and the respondents were found to be in order and declared to be valid. They were allotted the following election symbols:-

Petitioner – Hand,

Respondent No.1 – Elephant,

Respondent No.2 – Cup and saucer,

Respondent No.3 – Table,

Respondent No.4 – Saw,

Respondent No.5 – Battery torch,

Respondent No.6 – Flower and grass,

Respondent No.7 – Lotus and

Respondent No.8 – hammer, sickle and star.

8. Main contest was between petitioner and respondent No.1. Petitioner had appointed Shri Lalitya Kumar Das as his election agent while respondent No.1 had appointed Shri Pradip Chamua as his election agent.

9. As notified, polling was held on 04.04.2011 and counting of votes was held on 13.05.2011. As per final result sheet issued by the Returning Officer of the constituency, total number of valid votes cast was 1,26,803; total number of postal ballots received were 342; total number of votes polled by the petitioner was 56,456; and total number of votes polled by respondent No.1 was 63,963. Thus, respondent No.1 having secured 7507 more votes than the petitioner, was declared elected from the said constituency.

10. According to the petitioner, one Shri Ranjit Chintey had filed his nomination paper for the said constituency as an independent candidate. However, respondent No.1 offered huge amount of money to Shri Chintey to withdraw his candidature. Acting under such promise and offer, Shri Chintey withdrew his candidature. It is alleged that this act of respondent No.1 amounted to *bribery* within the meaning of Section 123(1)(A)(a) of the RP Act.

11. Respondent No.1 made offer and promise to pay huge amount of money to Shri Memud Pagag, son of Shri Maikeswar Pagag, to contest the election as an independent candidate from the said constituency. Acting on such offer and promise, Shri Memud Pagag filed his nomination paper and thereafter contested the election from the said constituency as an independent candidate. This act of respondent No.1 has also been alleged to be an act of *corrupt practice of bribery* within the meaning of Section 123(1)(A)(a) of the RP Act.

12. That apart, on the day of polling, i.e., on 04.04.2011, election agent of respondent No.1 Shri Pradip Chamua committed *corrupt practice of booth capturing* as defined under Section 123(8) read with Section 135A of the RP Act. To substantiate the allegation of *booth capturing*, the following instances have been mentioned in the election petition:-

12.1. At about 8.30 am of the polling day, Shri Pradip Chamua with about 30 agents and workers of respondent No.1 as well as a local youth group called '*Ganashakti*' came in three vehicles AS-07-D/6348, AS-01-AR/7347 and AS-04-D/0181 and some motor cycles to the Khajuapathar LP School where Polling Station No.180 was situated. The aforesaid persons gheraoed the Polling Station and thereafter asked the assembled voters to go away. Thereafter, election agent of respondent No.1 along with certain other persons, namely, Governor Doley, Dipkanta Doley, Joydip Patir, Anil Pegu, Feroz Chungkrang, Rakesh Doley,

Dhiren Doley, Satya Nath Pegu, Lakhya Moran, Jagannath Doley, Smt. Hirumoni Doley, Krishnalal Patir, Dwipen Doley, Rajesh Chungkrang, Rajib Doley, Komal Pegu, Dhruba Patir, Kamraj Patir, Kripan Patir, Kameswar Patir, Arabinda Pegu, Sabal Pegu, Nara Nath Sondi, Jatin Khambang, Jayanta Pegu and others seized the polling station making the authorities surrender the voting machine facilitating the aforesaid persons to randomly cast votes in favour of respondent No.1. Some of the voters, namely, Jogyalata Pegu, Krishna Kanta Doley, Deobar Doley, Sibanath Patir, Sadananda Patir and Muhidhar Patir whose votes were so cast by the above persons reported the incident to the petitioner.

12.2. Thereafter, at about 9.30 am of the polling day, the aforesaid election agent of respondent No.1 along with the above group of persons reached Polling Station No.182 situated at Lepong Baliyan LP School and in similar fashion, made seizure of the said Polling Station and thereafter cast votes by using the voting machine in favour of respondent No.1. Some of the voters of the said Polling Station who were prevented from voting and whose votes were so cast by the above group of persons, such as, Narayan Patir, Jibash Doley, Hiran Doley, Jyoti Prasad Doley and Smti Jubalata Doley reported the incident to the petitioner. The said group of people had even cast vote in the name of one Shakuntala Pegu who was in fact dead.

12.3. Another group of persons of the election agent of respondent No.1 numbering about 10 went to neighbouring Niganisuti LP School around 9.45 am of the polling day and seized the Polling Station No.183 situated there, under the command and leadership of the election agent of respondent No.1. They cast votes by preventing the genuine voters from exercising their franchise. Some of such voters including Rakesh Doley, Rabi Kanta Pator, Lakhi Kumbang, Nagen Kumbang and Smt. Bimala Doley who were prevented from voting and whose

votes were so cast by the above group of persons reported the incident to the petitioner.

12.4. At about 10.30 am, the other members of the group brought by election agent of respondent No.1 joined the rest of the group at Polling Station No.183 and thereafter went to Polling Station No.199 situated at Moderguri LP School and seized the Polling Station; some members of the group went to the neighbouring Kathalguri LP School where Polling Station No.204 was situated and seized the Polling Station. In both the Polling Stations, the group owing allegiance to Shri Pradip Chamua illegally cast votes in favour of respondent No.1 and in the process, prevented the genuine voters from exercising their right of franchise. Some voters like Smt. Madhusmita Pegu, Smt. Phul Kumari Pegu, Smt. Shilpa Doley, Smt. Satya Pegu, Shri Dharmeswar Pegu, Smt. Rina Pegu, Shri Pitambar Pegu, Shri Gyananda Pegu and Smt. Lina Pegu reported the incident to the petitioner.

12.5. Thereafter, at about 12.30 pm, the entire group led by the election agent of respondent No.1 proceeded to Polling Station No.203 situated in the Luitporia LP School and repeated the same illegal act. This was followed by seizure of Polling Station No.200 situated in Modarguri Tribal High School at about 1.30 pm and thereafter seizure of Polling Station No.195 situated at All Assam Miri H.E. School at about 1.45 pm. In both the Polling Stations, the voting machines were forcibly taken over and thereafter votes were randomly cast in favour of respondent No.1 by preventing genuine voters from exercising their franchise. Names of some of the voters who were so prevented from voting have been mentioned.

12.6. Presiding Officers of such Polling Stations along with Government *Gaonburhas* present there did not offer any resistance to such act of *booth capturing*, rather, they passively facilitated such illegal act.

13. On receipt of information of widespread *booth capturing*, petitioner instructed his election agent to file complaint before Dhakuakhana Police Station. Accordingly, on 04.04.2011 itself, election agent of the petitioner Shri Lalitya Kumar Das lodged a complaint before the Officer-in-Charge of Dhakuakhana Police Station complaining about the aforesaid illegal act committed by the election agent and supporters of respondent No.1. On the basis of the said complaint, Dhakuakhana Police Station Case No.64/2011 was registered under Section 171(D) of the Indian Penal Code read with Section 129 of the RP Act.

14. According to the petitioner, following enquiry, he could learn that the acts of *booth capturing* in the above Polling Stations were carried out directly by the election agent of respondent No.1 along with the above group of workers owing allegiance to respondent No.1.

15. Election agent of the petitioner also filed a complaint before the District Election Officer on the polling day itself demanding holding of re-poll in the Polling Station Nos.180, 182, 183, 195, 199, 200, 203 and 204.

16. It is contended that the aforesaid acts of *bribery* by respondent No.1 himself and the acts of *booth capturing* by the election agent of respondent No.1 are *corrupt practice* which have rendered the election of respondent No.1 *void*. Consequently, petitioner having received highest number of valid votes is liable to be declared elected from the said constituency.

17. Hence, the election petition seeking the reliefs as indicated above.

18. Respondent No.1 has contested the election petition by filing a detailed written statement. Preliminary objections have been raised regarding

maintainability of the election petition. The allegations of indulging in *corrupt practice* by resorting to *bribery* and *booth capturing* have been denied by respondent No.1. It is stated that material facts have not been pleaded in the election petition either to substantiate the allegation of *bribery* or the allegation of *booth capturing*. The factum of Shri Ranjit Chintey filing his nomination paper and thereafter withdrawing the same has been denied; so also the allegation of offering huge amount of money by respondent No.1 to Shri Ranjit Chintey. Likewise, the allegation of offering huge amount of money to Shri Memud Pagag by respondent No.1 to contest the election as an independent candidate has been denied. All the allegations of *booth capturing* have also been denied. It is contended that respondent No.1 as well as his election agent do not have any relation with the group called '*Ganashakti*'. Since there was no commission of *corrupt practice* of *booth capturing*, question of preventing the genuine voters from exercising their right of franchise did not arise at all. Ingredients constituting the offence of *bribery* and *booth capturing* are totally absent and, therefore, election petition should be dismissed. In so far the complaint made before the District Election Officer is concerned, in a proceeding conducted on 05.04.2011 by Mr. H. Rajesh Prasad, IAS, Observer of the constituency, election agents of petitioner and respondent No.1 were present and in their presence, the complaint was examined. It was found that there was no merit in the complaint and accordingly the complaint was disposed of. Election of respondent No.1 is legal and valid. Therefore, question of declaring such election to be *void* and thereafter declaring the petitioner to be the elected candidate does not arise at all.

19. On the basis of the above pleadings, this Court framed the following issues on 29.03.2012:-

“(1) Whether the respondent No.1, the Returned Candidate, induced Sri Ranjit Chintey, an independent candidate, not to stand in the election and to withdraw his nomination paper thereby committing Corrupt Practice of 'Bribery' within the meaning of Section 123(1)(A)(a) of the Representation of People Act, 1951?

(2) Whether the respondent No.1, the Returned Candidate made offer and promise inducing Sri Mamud Pagag to stand as a candidate in the election thereby committing the corrupt practice of 'Bribery' within the meaning of Section 123(1)(A)(a) of the Representation of People Act, 1951?

(3) Whether the respondent No.1/Returned Candidate committed corrupt practice of booth capturing within the meaning of Section 123(8) read with Section 135-A of the Representation of the People Act, 1951, as alleged in Paragraphs 13(a) to 13(g)?

(4) Whether the election of the respondent No.1/Returned Candidate from No.112 Dhakuakhana (ST) Assembly Constituency to Assam Legislative Assembly Constituency is liable to be declared void on the grounds mentioned in Section 100(1)(b) of the Representation of People Act, 1951?

(5) Whether the election petitioner is entitled to be declared elected from No.112 Dhakuakhana (ST) Legislative Assembly Constituency?”

20. Mr. Mazumdar, learned Senior counsel for the petitioner, has referred to the evidence of PW1, PW2, PW3, PW4 and PW5 on the one hand and that of the evidence of RW1 and RW2 on the other hand, to contend that the allegations of *bribery* and *booth capturing* have been substantiated by the oral testimony of the witnesses. The oral evidence together with the exhibits would prove the offence of *bribery* and *booth capturing*. Therefore, election of respondent No.1 stood vitiated and should be declared as void. Consequently, petitioner having polled second highest number of valid votes should be declared elected. Not only that, the consequence of Sections 171C and 171F IPC would follow. In support of his

submissions, learned Senior counsel for the petitioner has placed reliance on several decisions which would be adverted to in the course of the judgment.

21. On the other hand, Mr. Agarwal, learned Senior counsel for respondent No.1 submits that evidence tendered on behalf of the petitioner are wholly inadequate to establish the offence of *bribery* and *booth capturing*. Referring to the evidence of RW1, RW2, RW3 and RW11, he submits that respondent No.1 had duly discharged his burden to prove that no such *corrupt practice* were committed either at his instance or at the instance of his election agent to vitiate his election. Therefore, election petition should be dismissed. Mr. Agarwal has also relied upon a host of decisions to buttress his contentions.

22. Submissions made by learned counsel for the parties have been considered. All the decisions cited at the Bar have also been considered.

23. Before deliberating upon the issues framed, it would be apposite to refer to the relevant provisions of the RP Act and the Indian Penal Code (IPC).

24. Section 83 of the RP Act deals with contents of an election petition. As per Section 83(1)(a), an election petition shall contain a concise statement of the material facts on which the petitioner relies. Section 83(1)(b) stipulates that an election petition shall set forth full particulars of any *corrupt practice* that the petitioner alleges, including as full a statement as possible of the names of the parties alleged to have committed such *corrupt practice* and the date and place of the commission of each such practice. As per the proviso, where an election petitioner alleges any *corrupt practice*, the petition shall also be accompanied by an affidavit in the prescribed form in support of the allegation of such *corrupt practice* and the particulars thereof.

25. Section 100 deals with grounds for declaring an election to be *void*. Section 100 is quoted hereunder:-

"100. Grounds for declaring election to be void.- (1) Subject to the provisions of sub-section(2), if the High Court is of opinion-

*(a) *** *** ****

(b) that any corrupt practice has been committed by a returned candidate or his election agent or by any other person with the consent of a returned candidate or his election agent ; or

*(c) *** *** ****

(d) that the result of the election, insofar as it concerns a returned candidate, has been materially affected-

*(i) *** ****

(ii) by any corrupt practice committed in the interests of the returned candidate by an agent other than his election agent, or

*(iii) **** ******

*(iv) ******

the High Court shall declare the election of the returned candidate to be void.

(2) If in the opinion of the High Court, a returned candidate has been guilty by an agent, other than his election agent, of any corrupt practice but the High Court is satisfied -

(a) that no such corrupt practice was committed at the election by the candidate or his election agent, and every such corrupt practice was committed contrary to the orders, and without the consent of the candidate or his election agent;

*(b) *** *** ****

(c) that the candidate and his election agent took all reasonable means for preventing the commission of corrupt practices at the election ; and

(d) that in all other respects the election was free from any corrupt practice on the part of the candidate or any of his agents.,

then the High Court may decide that the election of the returned candidate is not void."

26. Thus, subject to the provisions of Sub-Section (2), if the High Court is of the opinion that any *corrupt practice* has been committed by a returned candidate or by his election agent or by any other person with the consent of the

returned candidate or of his election agent or if result of the election in so far it concerns a returned candidate has been materially affected by any *corrupt practice* committed in the interest of the returned candidate by an agent other than his election agent, then the High Court shall declare the election of the returned candidate to be *void*. Sub-Section (1) of Section 100 is subject to Sub-Section (2) thereof. As per Sub-Section (2), if in the opinion of the High Court, a returned candidate is guilty by an agent other than his election agent of any *corrupt practice* but the High Court is satisfied that no such *corrupt practice* was committed by the candidate or by his election agent and every such *corrupt practice* was committed contrary to the orders and without the consent of the candidate or of his election agent; that the candidate and his election agent took all reasonable means for preventing the commission of *corrupt practice* at the election and that in all other respects, the election was free from any *corrupt practice* on the part of the candidate or any of his agents, than the High Court may decide that the election of the returned candidate is not *void*.

27. Part VII of the RP Act deals with *corrupt practices* and electoral offences. Chapter-I thereof deals with *corrupt practices*. *Corrupt practices* have been defined in Section 123 of the RP Act. It is an inclusive definition and says that *bribery*, receipt of or agreement to receive any gratification, whether as a motive or as a reward, undue influence, *booth capturing* by a candidate or by his agent or by other person, etc, shall be deemed to be *corrupt practices* for the purpose of the RP Act. In this case, we are primarily concerned with *corrupt practices* of *bribery* and *booth capturing*. *Bribery* has been defined under Section 123 (1)(A) as under:-

“123. Corrupt Practices. – The following shall be deemed to be corrupt practices for the purposes of this Act:-

(1) "Bribery", that is to say –

(A) any gift, offer or promise by a candidate or his agent or by any other person with the consent of a candidate or his election agent of any gratification, to any person whomsoever, with the object, directly or indirectly of inducing –

(a) a person to stand or not to stand as, or to withdraw or not to withdraw from being a candidate at an election, or

(b) an elector to vote or refrain from voting at an election, or as a reward to –

(i) a person for having so stood or not stood, or for having withdrawn or not having withdrawn his candidature; or

(ii) an elector for having voted or refrained from voting;"

28. Likewise, Section 123(8) mentions that *booth capturing* by a candidate or his agent or other person shall be deemed to be a *corrupt practice*. Section 135(A) of the RP Act deals with the offence of *booth capturing*, which is extracted as under:-

"135(A). Offence of booth capturing.- (1) Whoever commits an offence of booth capturing shall be punishable with imprisonment for a term which shall not be less than one year but which may extend to three years and with fine, and where such offence is committed by a person in the service of the Government, he shall be punishable with imprisonment for a term which shall not be less than three years but which may extend to five years and with fine.

Explanation. – For the purposes of this sub-section and section 20B, "booth capturing" includes, among other things, all or any of the following activities, namely: –

(a) seizure of a polling station or a place fixed for the poll by any person or persons making polling authorities surrender the ballot papers or

voting machines and doing of any other act which affects the orderly conduct of elections;

(b) taking possession of a polling station or a place fixed for the poll by any person or persons and allowing only his or their own supporters to exercise their right to vote and prevent others from free exercise of their right to vote;

(c) coercing or intimidating or threatening directly or indirectly any elector and preventing him from going to the polling station or a place fixed for the poll to cast his vote;

(d) seizure of a place for counting of votes by any person or persons, making the counting authorities surrender the ballot papers or voting machines and the doing of anything which affects the orderly counting of votes;

(e) doing by any person in the service of Government, of all or any of the aforesaid activities or aiding or conniving at, any such activity in the furtherance of the prospects of the election of a candidate.

(2) An offence punishable under sub-section (1) shall be cognizable."

29. Thus, *booth capturing* has been defined as seizure of polling station, making the polling authorities surrender ballot papers or voting machines and doing of any other act which affects the orderly conduct of elections; taking possession of a polling station and allowing only his supporters to exercise their right of vote and prevent others from free exercise of their right to vote, coercion or intimidating or threatening directly or indirectly any elector and preventing him from going to the polling station to cast his vote; seizure of a place for counting of votes by any person(s) making the counting authorities surrender ballot papers or voting machines and doing of anything which affects orderly counting of votes; doing by any person in the service of the Government and/or any of the aforesaid activities or aiding or conniving at any such activity in furtherance of

prospects of the election of a candidate. An offence of *booth capturing* is punishable with imprisonment for a term which shall not be less than one year but which may extend to three years and with fine; where such offence is committed by a person in the service of the Government, he shall be punishable with imprisonment for a term which shall not be less than three years but which may extend to five years and with fine.

30. IPC also defines *bribery* while declaring the same to be an offence. Section 171(B) defines *bribery*. It says that whoever gives a gratification to any person with the object of inducing him or any other person to exercise any electoral right or of rewarding any person for having exercised any such right; or accepts either for himself or for any other person any gratification as a reward for exercising any such right or for inducing or attempting to induce any other person to exercise any such right, commits the offence of *bribery*.

30. As per Section 171E IPC, whoever commits the offence of *bribery* shall be punished with imprisonment of either description for a term which may extend to one year or with fine or with both.

31. Having noticed the relevant legal provisions, we may advert to some of the judicial pronouncements dealing with the aforesaid provisions.

32. In *Rahim Khan Vs. Khurshid Ahmed, (1974) 2 SCC 660*, Justice Krishna Iyer speaking for the Bench stated that *corrupt practices* as alleged are examined in the light of the evidence with scrupulous care and merciless severity. An election once held is not to be treated in a lighthearted manner. An election is a politically sacred public act, not of one person or of one official, but of the collective will of the whole constituency. Courts naturally must respect this public expression secretly written and show extreme reluctance to set aside or declare *void* an election which has already been held unless clear and cogent

testimony compelling the Court to uphold the *corrupt practice* alleged against a returned candidate is adduced. Election petitions where *corrupt practices* are imputed, must be regarded as proceedings of a *quasi-criminal* nature wherein strict proof is necessary. The burden is, therefore, heavy on the person, who assails an election which has been concluded.

33. The above position was further elaborated by the Supreme Court in ***Choudhury Razik Ram Vs. Choudhury Jaswant Singh Chouhan, (1975) 4 SCC 769***. Supreme Court held that a charge of *corrupt practice* is substantially akin to a criminal charge. Commission of *corrupt practice* entails serious penal consequences. It not only vitiates the election of the candidate concerned but also disqualifies him from taking part in elections for a considerably long time. The standard of proof is the same as in a criminal trial. A grave and heavy onus rests on the accuser to establish each and every ingredient of the charge by clear, unequivocal and unimpeachable evidence beyond reasonable doubt.

34. In ***Abdul Hussain Mir -Vs- Shamsul Huda, (1975) 4 SCC 533***, Supreme Court held that if a candidate pays money to a VIP of the locality to use his good offices and canvass votes for him, it is a border line case but if the money is paid as consideration for votes promised to be secured by him using his sway, it is bribery even though indirectly exercised. On the other hand, if it is money received for the purpose of organizing effectively the election campaign by hiring workers, going round to places in cars, meeting people and persuading them to vote for the candidate, it is proper election expense. The crucial point is the nexus between the gratification and the votes, one being the consideration for the other, direct or indirect.

35. In *D. Venkata Reddy -Vs- R. Sultan, (1976) 2 SCC 455*, Supreme Court referring to the provisions contained in Section 123 (1) (A) of the RP Act, clarified that an offer of bribe or payment of actual bribe are both electoral offences amounting to corrupt practices which are to be visited with similar consequences. The offences of an offer of bribe or of actual payment of bribe are of the same nature and it cannot be said that one is a lesser crime and the other is a graver one.

36. Again in the case of *S. Iqbal Singh -Vs- S. Gurdas Singh, (1976) 3 SCC 284*, Supreme Court made it clear that there is hardly any need to say that giving of anything whose value is estimable in money is bribery. Thereafter Supreme Court discussed the law regarding bribery in elections in our country. Citing a few instances, it was held that offer by a candidate to construct a well in a village if the voters voted for him and not for the rival candidate and money was actually deposited for this purpose and was to await the result of the election, would be a clear case of bargain for votes. Again, it may be meritorious to make a donation for a charitable purpose but on the eve of an election, such a gift may be open to construction that it was made with the intention of buying votes. However, giving of gift must be proved to have a direct or indirect connection with votes and this must admit of no other reasonable excuse.

37. In *N.C. Zeliang Vs. Aju Newmai, 1980 (Supp) SCC 591*, Supreme Court held that it is well-settled by a large catena of authorities that a charge under Section 123 of the RP Act must be proved by clear and cogent evidence as a charge for a criminal offence. It is not open to the Court to hold that a charge of *corrupt practice* is proved merely on a preponderance of probabilities but it

must be satisfied that there is evidence to prove the charge beyond reasonable doubt.

38. This position was reiterated by the Supreme Court in ***Surinder Singh Vs. Hardial Singh, (1985) 1 SCC 91***, wherein it was held that allegations of *corrupt practice* are *quasi-criminal* charges and the proof that would be required in support of such allegations would be as in a criminal charge.

39. In ***Nand Singh Vs. Ajit Inder Singh, (2001) 10 SCC 685***, Supreme Court reiterated the proposition that a charge of *corrupt practice* is in the nature of *quasi-criminal* charge. Evidence to be led in support of *corrupt practice* has not only to be cogent and definite but for an election petitioner to succeed, he must also establish definitely to the satisfaction of the Court that the charge of *corrupt practice* which he levels against the returned candidate has been positively established. The onus lies heavily on the election petitioner to establish a charge of *corrupt practice*. The standard of proof required to set aside election of a returned candidate on a charge of *corrupt practice* requires strict proof of the charge, i.e., beyond reasonable doubt.

40. However, having said that, it is to be borne in mind that there is a subtle yet significant difference between a criminal trial and trial of an election petition.

41. In ***Razik Ram*** (supra), Supreme Court held that nature of trial of an election petition is not the same in all respects as that of a criminal trial. If a fact constituting or relevant to an ingredient of corrupt practice is pre-eminently within the knowledge of the respondent, it may affect the quantum of its proof but does not relieve the petitioner of his primary burden. Petitioner must adduce *prima-facie* proof even of such a fact. That is to say, he must establish such other relevant facts and circumstances which, if un-rebutted or left un-explained

by the respondent, would raise a presumption as to the existence of such fact in issue.

42. Explaining this aspect of the matter, Supreme Court in ***Gajanan Krishnaji Bapat –Vs- Dattaji Raghobaji Meghe, AIR 1995 SCC 2284*** held that though insistence on standard of proof in an election trial where the charge is of corrupt practice is akin to that of criminal trial, it should not mean or imply that the returned candidate is absolved from his liability to bring forth evidence on record to rebut the case of the petitioner and to particularly prove such facts which are within his special knowledge. Unlike in a criminal trial where an accused has the liberty to keep silent, during the trial of an election petition the returned candidate has to place before the Court his version and to satisfy the Court that he had not committed the corrupt practice as alleged in the election petition by adducing necessary evidence besides giving his sworn testimony denying the allegations. However, that stage would be reached only when the election petitioner discharges his primary burden.

43. In the case of ***Borgoram Deuri Vs. Premodhar Bora, (2004) 2 SCC 227***, Supreme Court held that allegations of *corrupt practice* must conform to the provisions contained in Sections 123 (3) and 123 (3) A of the RP Act. Section 83 of the said Act is mandatory in nature. It is imperative that the election petitioner must disclose source of his information in the election petition fully. After holding that allegations of *corrupt practice* are considered to be *quasi-criminal* in nature and that standard of proof required in proving *corrupt practice* for all intent and purport is equated with the standard expected in a criminal trial, Supreme Court, however, held that difference between an election petition and a criminal trial is that an accused in a criminal trial has the liberty to keep

silent but during trial of an election petition, the returned candidate has to place before the Court his version and to satisfy the Court that he had not committed the *corrupt practice* as alleged in the election petition. The burden on the election petitioner can be said to have been discharged only if and when he leads cogent and reliable evidence to prove the charges levelled against the returned candidate. For the said purpose, charges must be proved beyond reasonable doubt and not merely by preponderance of probabilities as in a civil action.

44. In *Pradip Buragohain Vs. Pranati Phukan, (2010) 11 SCC 108*, Supreme Court summed up the basic principles of election cases involving *corrupt practices* as under:-

- (1) Pleadings should be absolutely precise and clear containing all necessary details and particulars as required by law;
- (2) Allegations in the election petition should not be vague, general in nature or lacking in material particulars or frivolous or vexatious;
- (3) Evidence adduced in support of the pleadings should be of such nature leading to an irresistible conclusion or unimpeachable result that the allegations made have been committed rendering the election *void* under Section 100;
- (4) Evidence produced before the Court in support of the pleadings must be clear, cogent, satisfactory, credible and positive. It must stand the test of strict and scrupulous scrutiny;
- (5) It is unsafe in an election case to accept oral evidence at its face value without looking for assurances for some surer circumstances or unimpeachable documents; and

(6) Onus of proof of the allegations made in the election petition is undoubtedly on the person who assails an election which has been concluded.

45. However, sounding a note of caution, Supreme Court in ***Govind Singh Vs. Harchand Kaur, (2011) 2 SCC 621***, held that while insisting upon standard of strict proof beyond reasonable doubt, the Courts are not required to extend or stretch the doctrine to such an extreme extent as to make it well-nigh impossible to prove any allegation of *corrupt practice*. Such an approach would defeat and frustrate the very laudable and sacrosanct object of the RP Act for maintaining the purity of the electoral process. Continuing further, Supreme Court held that even though burden is on the petitioner to prove the charge of *corrupt practice*, it should not be understood to mean or imply that the returned candidate is absolved from his liability to bring forth the evidence on record to revert the case of the petitioner and particularly prove such facts which are within the special knowledge of the elected candidate.

46. As already discussed above, *bribery* and *booth capturing* are different facets of *corrupt practices* and therefore the principles relating to standard of proof to establish the allegation of *corrupt practice* would extend to the allegations of *bribery* and *booth capturing*.

47. In ***Rajendra Prasad Jain Vs. Shilbhadra Yajee, AIR 1967 SC 1445***, dealing with the electoral offence of *bribery*, Supreme Court held that the mere fact that a candidate goes and offers some money is enough to show that he has already made his offer to corrupt the voter and to secure his vote though there may still be a possibility that if subsequently the negotiations as to the precise amount to be paid as bribe fail, he may not actually succeed in his objective.

48. Explaining the meaning of *bribery* in the context of the RP Act, Supreme Court in ***S. Iqbal Singh Vs. S. Gurdas Singh (1976) 3 SCC 284***, held that giving of anything whose value is estimable in money is *bribery*.

49. In so far the offence of *booth capturing* is concerned, Supreme Court in ***Basanagouda Vs. Dr. S.B. Amarkhed, (1992) 2 SCC 612***, referred to the definition of *booth capturing* provided in Section 135A of the RP Act and held that this is an inclusive explanation and seizure of polling station, taking possession thereof and making the polling authorities to surrender the ballot papers or voting machines and doing of any other act which affects the orderly conducting of elections, etc, have been enumerated. These illustrations have been held to be only explanatory and inclusive but not exhaustive. *Booth capturing* wholly negates an election process and subverts the democratic set up which is the basic feature of our Constitution.

50. Having discussed the relevant legal provisions and the decisions of the Supreme Court as above, we may now advert to the evidence on record issue-wise.

ISSUE NOS.1 & 2 ::

51. Issue No.1 relates to the allegation of inducing Shri Ranjit Chintey, an independent candidate, by respondent No.1 not to contest the election and to withdraw his nomination paper, thereby committing *corrupt practice of bribery* within the meaning of Section 123(1)(A)(a) of the RP Act. Issue No.2 relates to allegation of respondent No.1 making offer and promise inducing Shri Memud Pagag to contest as a candidate in the election thereby committing *corrupt practice of bribery* within the meaning of Section 123(1)(A)(a) of the RP Act. Both the issues being somewhat inter-related and relating to *bribery*, are taken up together for decision.

52. In the election petition, petitioner stated in paragraph-5 thereof that one nomination paper was filed by Shri Ranjit Chintey for contesting election in the constituency as an independent candidate. He, however, withdrew his nomination paper on 21.03.2011. Elaborating further, in paragraph-11, petitioner has stated that Shri Ranjit Chintey had filed his nomination paper before the Returning Officer on 17.03.2011 as an independent candidate. Respondent No.1 who had by then submitted his nomination paper for the said constituency as a candidate belonging to the *Asom Gana Parishad* party offered huge amount of money to the independent candidate Shri Ranjit Chintey to withdraw his candidature. Acting under such promise and offer made by respondent No.1 on and from the evening of 17.03.2011, Shri Ranjit Chintey ultimately withdrew his nomination paper. It is alleged that the said act of respondent No.1 amounts to *bribery* thereby vitiating the election of respondent No.1 from the said constituency. Further averments made in paragraph-12 of the election petition relate to offer and promise made by respondent No.1 to pay huge amount of money to Shri Memud Pagag, son of Shri Maikeswar Pagag, to contest as an independent candidate in the election from the said constituency. Shri Memud Pagag acting on such offer and promise made by respondent No.1, filed his nomination paper before the Returning Officer of the constituency within the due date. His nomination paper having been found valid, Shri Pagag contested the election as an independent candidate. Petitioner has alleged that this act of respondent No.1 constitutes commission of *corrupt practice of bribery* which would be sufficient to declare election of respondent No.1 to be *void*. The above statements have been verified to be true to knowledge of the petitioner.

53. In his written statement, respondent No.1 denied in paragraphs 34 and 35 the allegations of committing *corrupt practice of bribery* by him. It is stated

that petitioner in his pleadings failed to state the amount offered, date, place and time of offer, place and time of making payment as well as date of withdrawal of nomination by Shri Ranjit Chintey. Respondent No.1 categorically denied that anyone by the name of Shri Ranjit Chintey had filed nomination paper either on 17.03.2011 or on any other date. All the allegations made in this regard have been denied. In so far filing of nomination by Shri Memud Pagag is concerned, respondent No.1 while terming the allegation made against him as scandalous, frivolous and vexatious, however, has stated that petitioner has failed to state the amount offered, the date, place and time of offer including the date, place and time of making the payment to Shri Pagag. It is stated that Shri Pagag had submitted his nomination as an independent candidate at his own volition and that he had neither offered nor paid any money, either directly or indirectly, to Shri Memud Pagag to contest the election from the said constituency as an independent candidate. These submissions have been verified as true to knowledge of respondent No.1.

54. Proceeding to the evidence, we find that PW1, Shri Bharat Chandra Narah, i.e., the election petitioner, in his evidence-in-chief stated that one Shri Ranjit Chintey @ Ranjan Chintey had submitted nomination paper as an independent candidate in respect of the said constituency. But the returned candidate Shri Naba Kumar Doley, i.e., respondent No.1, promised to pay him a huge amount of money if he withdrew his candidature. Explaining this, PW1 stated that there is common vote bank between Shri Ranjan Chintey and Shri Naba Kumar Doley. The returned candidate realized that if Shri Ranjan Chintey remained in the fray, he will secure not less than 10,000 (ten thousand) votes which would otherwise be cast in his favour and thereby he would have lost the election. Acting on such promise and offer made by Shri Naba Kumar Doley on

and from the evening of 17.03.2011, i.e., the day of filing nomination by Shri Ranjan Chintey, Shri Ranjan Chintey withdrew his nomination on 21.03.2011 having been *bribed* by Shri Naba Kumar Doley. Thus, Shri Naba Kumar Doley is guilty of committing electoral *corrupt practice* under Section 123(1)(A) of the RP Act.

54.1. Petitioner further stated that Shri Naba Kumar Doley had approached one Shri Memud Pagag, son of Shri Maikeswar Pagag, of village Alimur Baligaon to contest the election as an independent candidate. In this regard, Shri Naba Kumar Doley had promised to pay and in fact paid huge amount of money to Shri Memud Pagag for submitting his nomination paper and to contest the election as an independent candidate from the said constituency. It is alleged that Shri Naba Kumar Doley had twin objectives for doing so, i.e., for eating into the vote bank of the petitioner and to illegally use double number of vehicles permitted to a candidate by the Election Commission. Acting upon such offer and promise made by Shri Naba Kumar Doley, Shri Memud Pagag had filed his nomination paper as an independent candidate. His nomination paper was found valid and he remained in the fray during the election. Thus, Shri Naba Kumar Doley had committed the *corrupt practice of bribery* under Section 123(1)(A)(a) of the RP Act.

54.2. In his cross-examination, petitioner stated that before filing the election petition, he had made necessary enquiries personally though he got information from Shri Lalitya Kumar Das, his election agent, Shri Mukul Gogoi, Shri Guna Gogoi, Shri Robin Chutia, Shri Chidananda Kaman, Shri Anil Saikia, Smt. Monica Patir, Shri Raj Kumar Kutum, Shri Rakesh Pegu, Shri Guna Hazarika and some other persons. However, except Shri Lalitya Kumar Das, petitioner did not cite other persons as witnesses. He admitted that he did not look into the nomination

paper of Shri Ranjit Chintey. He also admitted that he had mentioned the name of Shri Ranjit Chintey and not Shri Ranjan Chintey and that he did not mention that Ranjan Chintey was also known as Ranjit Chintey in the village. He stated that Shri Ranjan Chintey had told him on 21.03.2011, i.e., on the day fixed for withdrawal of nomination, that he had withdrawn his candidature. PW1 stated that he did not know about any permission granted by the Returning Officer to Shri Ranjan Chintey to withdraw his nomination paper. PW1 also admitted that he did not know the exact amount given by respondent No.1 to Shri Ranjit Chintey for withdrawal of his nomination paper though Ranjit Chintey had told him that a huge amount of money was offered to him. PW1 stated that he did not ask Shri Ranjit Chintey as to whether the money offered was accepted by him or not; he neither filed FIR nor informed police about this. He also did not inform the Returning Officer or any of his party colleagues. Since 21.03.2011 till the time he instructed his lawyer to draft the election petition, he did not disclose to anyone about offering of huge amount of money by the returned candidate to Shri Ranjit Chintey.

54.3. PW1 admitted that he did not ascertain the exact amount of money offered and promised to Shri Memud Pagag by the returned candidate. Though Shri Pagag had informed him that a huge amount was offered to him, petitioner did not ask the exact amount offered and whether Shri Pagag had received any amount. PW1 neither informed the police nor lodged any FIR about the offer of money made by the returned candidate to Shri Pagag though he knew that the same amounted to commission of electoral offence of *bribery* which has penal consequences. He also admitted that he neither informed his party colleagues nor the Returning Officer or anyone else in the Election Commission regarding offer of money by the returned candidate to Shri Memud Pagag.

54.4. In his cross-examination, PW1 further admitted that he was not personally present when the returned candidate, i.e., respondent No.1 had offered to pay the huge amount of money to Shri Ranjit Chintey. He stated that he got this information from "other sources".

55. PW2, Shri Lalitya Kumar Das, was the election agent of the petitioner. In his evidence-in-chief, he stated that Shri Ranjan Chintey @ Shri Ranjit Chintey had submitted nomination paper as an independent candidate for the said constituency but he withdrew his candidature on being promised a huge amount of money by respondent No.1. Shri Ranjit Chintey and respondent No.1 had a common vote bank. Respondent No.1 realized that if Shri Ranjan Chintey remained in the fray, he would secure not less than 10,000 (ten thousand) votes which would be from his share of votes and, therefore, he might lose the election. Shri Ranjan Chintey withdrew his nomination on 21.03.2011 by taking a handsome amount from respondent No.1. After withdrawal of nomination, Shri Ranjan Chintey informed PW2 about taking of money from respondent No.1.

55.1. PW2 further stated that respondent No.1 had approached one Shri Memud Pagag to contest the election as an independent candidate. Respondent No.1, thereafter, paid huge amount of money to Shri Pagag for submitting nomination and to contest as an independent candidate for two purposes; firstly, to eat into the vote share of the petitioner and secondly, to use more vehicles in the name of Shri Memud Pagag which would, otherwise, not be permissible. Accordingly, Shri Pagag filed his nomination paper and contested the election as an independent candidate.

55.2. In his cross-examination, PW2 stated that after declaration of election result, petitioner had told him that he would file an election petition challenging the election result. One of the grounds of challenge would be that the returned

candidate had made one of the contesting candidates to withdraw from the election and also to cause another candidate to contest the election by offering and paying huge amount of money to them. He stated that petitioner had told him about the above grounds after about one week of declaration of result.

55.3. In his further cross-examination, PW2 admitted that at the time of filing the election petition, he had not read the averments made in paragraphs 11 and 12 of the election petition pertaining to allegation of *bribery* in respect of Shri Ranjit Chintey and Shri Memud Pagag. He also admitted that his source of knowledge of Shri Ranjan Chintey taking money from respondent No.1 is the election petitioner.

56. Shri Ranjan Chintey @ Shri Ranjit Chintey deposed as PW3. In his evidence-in-chief, he stated that he was a popular leader in his area which is predominantly dominated by *Asom Gana Parishad* (AGP) supporters. On 17.03.2011, he had submitted nomination papers accompanied by a large number of supporters which included a good number of grass-root level AGP workers. In the evening of 17.03.2011, when he had retired to his residence, respondent No.1 accompanied by his supporters appeared in his residence and requested him to join AGP party. He also requested Shri Chintey to withdraw his nomination for the current election and assured him of providing AGP nomination in the next election. Respondent No.1 also expressed that he would compensate Shri Chintey for the expenses already incurred by him. Before leaving, respondent No.1 held the hands of PW3 and made a fervent appeal to him to withdraw his candidature in the greater interest. PW3 stated that he could not say no to respondent No.1 and agreed to withdraw his nomination. Respondent No.1 handed over a packet to PW3 who later on found a sum of Rs.10,000/- on counting. It is under such circumstances that PW3 had withdrawn his

candidature. Had he not withdrawn, the vote share of AGP would have been affected and in that event, respondent No.1 would have surely lost the election. Because PW3 withdrew, respondent No.1 was successful in defeating a five-time winner like the petitioner.

56.1. In his cross-examination, PW3 stated that he had not told anybody that respondent No.1 had given him Rs.10,000/- for withdrawing his nomination till the declaration of election result. He further stated that he had spent the said amount for his own use.

57. Respondent No.1 in his evidence as RW1 categorically denied the allegation of bribing Shri Ranjit Chintey. He has stated that as a matter of fact, there was no candidate called Shri Ranjit Chintey. The candidate who had filed nomination and subsequently withdrawn was Shri Ranjan Chintey. Nowhere petitioner stated in his election petition that Shri Ranjan Chintey is also known as Shri Ranjit Chintey. Respondent No.1 also asserted that Ranjan Chintey is not known as Ranjit Chintey. According to him, his enquiry revealed that Ranjan Chintey's father was late Subhas Chintey and mother was late Roymoti Chintey. Ranjan Chintey is a matriculate and a cultivator. In 2009, he started a tea stall at Chumuni Medak Tiniali and later on by the side of the said tea stall, he started repairing bicycles. After the 2011 elections, he closed down his tea-stall but continued repairing bicycles. According to respondent No.1, his enquiry revealed that Ranjan Chintey is only known as Ranjan Chintey in his village, amongst his friends and acquaintances. He is neither called Ranjit nor as Ranjit Chintey. His enquiry further revealed that Ranjan Chintey did not have any supporter or vote bank in the constituency though initially he had submitted nomination only to withdraw later. AGP party has its own vote bank in the constituency and there is no common vote bank between Ranjan Chintey and AGP party. Respondent No.1

denied that had Ranjan Chintey contested the election, he would have secured about 10,000 votes which would have otherwise been cast in his favour. He specifically denied paying any money either to Ranjit Chintey or Ranjan Chintey for withdrawing candidature.

57.1. Regarding Shri Memud Pagag, respondent No.1 specifically denied the allegations made that he had induced Shri Pagag to contest as an independent candidate by offering bribe. Shri Memud Pagag had submitted his nomination as an independent candidate on his own volition. Respondent No.1 did not offer to pay any amount of money to Shri Memud Pagag to contest as an independent candidate to further his electoral prospects.

57.2. In his cross-examination, respondent No.1 stated that he did not know either Ranjan Chintey or Memud Pagag.

58. Shri Pradip Chamuah, election agent of respondent No.1, deposed as RW2. In his evidence-in-chief, he denied the allegations pertaining to Shri Ranjit Chintey and Shri Memud Pagag. He stated that he being one of the senior officials of AGP, was involved in the election in the said constituency from the date of giving ticket to respondent No.1 as AGP candidate to the declaration of result.

58.1. In his cross-examination, he stated that whatever facts were narrated by him and respondent No.1 to their lawyers were correctly and fully incorporated in the written statement. He also stated that he did not know Ranjan or Ranjit Chintey. One Chintey had withdrawn his nomination but he did not hear that there was offer and promise to pay money to Shri Chintey and Shri Memud Pagag.

59. Shri Bhabesh Chamuah, a voter of the constituency, deposed as RW11. He stated that he knew Ranjan Chintey from his childhood and that Ranjan Chintey does not have any other name. He is not known as Ranjit in the locality.

59.1. In his cross-examination, he reiterated that there is nobody called Ranjit Chintey. He further stated that Ranjan Chintey's mother was the elder sister of his mother. Though Ranjan Chintey had withdrawn his nomination, he had heard from villagers that he withdrew because they told him to withdraw.

59.2. It has come in evidence of RW2 Shri Pradip Chamua that on declaration of election result, it was found that Shri Memud Pagag had secured only 525 votes.

60. These are the pleadings and evidence on record regarding the allegation of *bribery* against respondent No.1. As discussed above, there are two limbs in the allegation of *bribery*, one is in respect of Shri Ranjit Chintey and the other in respect of Shri Memud Pagag. I have examined the pleadings as well as the evidence tendered. I am afraid; the pleadings as well as the evidence on record are vague and devoid of material particulars.

61. Regarding the allegation of *bribery* in respect of Shri Ranjit Chintey, it has come in evidence that there is no person by the name of Shri Ranjit Chintey; the person who had filed and withdrew nomination was Shri Ranjan Chintey. But in the entire election petition, there was no mention of Shri Ranjan Chintey; the allegation was in respect of Shri Ranjit Chintey. It was only in his evidence that PW1 tried to project that Shri Ranjit Chintey was also known as Ranjan Chintey, which is belied by the evidence of the other witnesses. PW1 admitted in evidence that he did not ask Shri Ranjit Chintey (even if we assume that Ranjit Chintey and Ranjan Chintey to be one and the same person) as to whether money offered by RW1 was accepted by him or not. In fact he did not even know the

amount allegedly offered by RW1 to Shri Ranjit Chintey. All that PW1 says is that he got this information from "other sources", without mentioning who the "other sources" were. Neither any FIR was lodged before the police nor any complaint filed before the Returning Officer. The evidence of PW3 Shri Ranjit Chintey as discussed above is found to be too shallow to merit any serious consideration. In so far allegation in respect of Shri Memud Pagag is concerned, it suffers from similar shortcomings. When was the money paid or offered by RW1 to Shri Memud Pagag? What was the quantum? Did he accept the same? Nothing has been stated. Neither any FIR was lodged nor any complaint filed. Petitioner i.e., PW1 also did not tell anybody including his election agent about this. Thus petitioner failed to discharge his burden to prove the allegations of *bribery*. Moreover, in the ultimate analysis, Shri Memud Pagag secured only 525 votes which belies the contention of the petitioner that Shri Memud Pagag was set up as a candidate by RW1 to materially affect the election. The pleadings and evidence are wholly inadequate to prove the electoral offence of *bribery* within the meaning of Section 123(1)(A)(a) of the RP Act. Therefore, on due consideration, Court is of the view that pleadings and evidence cumulatively taken cannot be said to prove the allegation of *bribery* against respondent No.1. Issue Nos.1 and 2 are, therefore, answered against the petitioner and in favour of respondent No.1.

ISSUE NO.3 ::

62. Issue No.3 relates to allegation of committing *corrupt practice of booth capturing* by respondent No.1 within the meaning of Section 123(8) read with Section 135(A) of the RP Act.

63. At the outset, let us examine the pleadings of the parties on this issue.

64. Allegation of *booth capturing* has been stated in paragraphs 13(a) to 13(g) of the election petition. In paragraph 13(a), petitioner has stated that on 04.04.2011, at about 8.30 am, election agent of respondent No.1 Shri Pradip Chamua along with about 30 agents and workers of respondent No.1 as well as a local youth group called '*Ganashakti*' came in three vehicles AS-07-D/6348, AS-01-AR/7347 and AS-04-D/0181 and some motor cycles to the Khajuapathar LP School where Polling Station No.180 was situated. The group led by the election agent of respondent No.1 *gheraoed* the Polling Station and asked the assembled voters to go away. Thereafter, respondent No.1 along with some of his supporters seized the Polling Station compelling the polling officials present there to surrender the voting machine thereby facilitating election agent of respondent No.1 and his group to cast votes randomly in favour of respondent No.1. Petitioner has mentioned names of some of the voters whose votes were so cast by the above group. These voters reported the incident to the petitioner later on in the day.

64.1. As per averments made in paragraph 13(b), the same group led by the election agent of respondent No.1 Shri Pradip Chamua went to Lepong Baliyan LP School where Polling Station No.182 was situated. They repeated their *modus operandi* which they had done in Polling Station No.180 in this Polling Station as well. Some of the voters of the said Polling Station who were prevented from casting their votes and whose votes were cast by the election agent of respondent No.1 and by his group reported the incident later on in the day to the petitioner. It is alleged that the said group of people had even cast vote in the name of a dead voter Shakuntala Pegu.

64.2. Petitioner stated in paragraph 13(c) that the above group led by the election agent of the petitioner thereafter split up into two groups. While one

group was continuing with the impersonation of voters in Polling Station No.182, the other group went to the neighbouring Nigonisuti LP School around 9.45 am of the polling day and seized Polling Station No.183 and repeated their activity of *booth capturing*. Some of the voters of Polling Station No.183 who were so prevented from voting and whose votes were so cast by the election agent of respondent No.1 and his group reported the incident to the petitioner later in the day.

64.3. In paragraph 13(d), petitioner has stated that other group joined the group at Polling Station No.183 around 10.30 am and went to Polling Station No.199 situated at Modarguri LP School and repeated the act of *booth capturing* there. In the meanwhile, the rest of the group went to the neighbouring Kathalguri LP School where Polling Station No.204 was situated and repeated the act of *booth capturing*. At about 11.30 am, election agent of respondent No.1 Shri Pradip Chamua along with his group went to Polling Station No.204 which was already under seizure of the other group. There also, they indulged in *booth capturing* which they repeated in Polling Station No.203 in the Luitporia LP School.

64.4. The entire group, thereafter, seized Polling Station Nos.195 and 200 at about 1.30 pm and repeated the activity of *booth capturing*. Election agent of respondent No.1 joined the group at about 2.30 pm.

64.5. As per averments made in paragraph 13(g), petitioner has stated that some of the voters of Polling Station Nos. 180, 182, 183, 195, 199, 200, 203 and 204 reported the acts of *booth capturing* by Shri Pradip Chamua and his group. The Presiding Officers of the said Polling Stations along with Government *Gaonburahs* were passively facilitating such *booth capturing*.

65. The above allegations have been denied by respondent No.1 in paragraphs 36 to 43 of the counter affidavit. Besides generally denying the allegation as being vague, incorrect, unspecific and concocted, each of the instances of *booth capturing* have been separately denied from paragraphs 37 to 43. It is stated that allegations made lack in material facts and particulars. On the basis of such pleadings, no case of *corrupt practice* can be said to have been made out. It is denied that respondent No.1 as well as his election agent have any relation with the group called *Ganashakti*. It is asserted that neither the election agent of respondent No.1 nor any other worker and supporter of respondent No.1 had *gheraoed* any of the Polling Stations or had forcibly cast votes of other voters.

65.1. Allegation of casting votes in the name of dead voters, such as, Shakuntala Pegu has been denied. The allegation that Presiding Officers and Government *Gaonburahs* had acted in collusion with the election agent of respondent No.1 and his supporters thereby facilitating commission of *corrupt practice of booth capturing* has been specifically denied. It is stated that a complaint was lodged by the election agent of the petitioner before Shri H. Rajesh Prasad, IAS, Observer of the said constituency on 04.04.2011 which was taken up for consideration on 05.04.2011. Election agents of both petitioner and respondent No.1 were present. In the said proceeding, all the materials and documents were scrutinized and it was found that there were no anomalies in Polling Station Nos. 180, 182, 183, 195, 199, 200, 203 and 204. Therefore, it is contended that no case has been made out for commission of *corrupt practice* by respondent No.1 within the meaning of Section 123(8) read with Section 135A of the RP Act.

66. In his evidence-in-chief filed by way of affidavit, PW1, i.e., election petitioner narrated more or less the same thing as stated in the election petition from paragraphs 11 to 20. It is stated that after receipt of information from his workers regarding the act of *booth capturing*, petitioner had instructed his election agent to file complaint before the Officer-in-Charge, Dhakuakhana Police Station on 04.04.2011 and accordingly complaint was lodged on the basis of which Dhakuakhana Police Station Case No. 64/2011 under Section 170(D) IPC read with Section 129 of the RP Act was registered.

66.1. In his cross-examination, PW1 admitted that nobody had given anything in writing to him about the allegations of *booth capturing* by the election agent of respondent No.1. He had got information from his election agent Shri Lalitya Kumar Das, Mukut Gogoi, Guna Gogoi, Robin Chutia, Monica Pegu, Raj Kumar Kutum, Rajesh Pegu, Guna Hazarika and others but he has not cited these persons as witnesses in the election petition except his election agent Shri Lalitya Kumar Das. He admitted that he had not lodged any FIR either against Shri Pradip Chamua or owners of the vehicles mentioned in paragraph 13(a) of the election petition. Neither did he take any step for seizure of those vehicles nor did he ascertain the names of the owners of those vehicles. He also admitted that armed guards were detailed to guard all the Polling Booths.

66.2. In his further cross-examination, PW1 stated that in the FIR lodged by his election agent, allegation of *booth capturing* was not made though such allegation was made to the Returning Officer. He also admitted that no written complaints were made either by him or by his election agent regarding the allegation of *booth capturing* in different Polling Stations.

66.3. In his further cross-examination, PW1 admitted that in so far the allegations made by him in paragraph 13(f) of the election petition are

concerned, he did not mention the names of the workers from whom he had received the information.

67. PW2, i.e., election agent of the petitioner Shri Lalitya Kumar Das also reiterated the averments made in the election petition pertaining to *booth capturing* in his evidence-in-chief filed by way of affidavit. However, in his cross-examination, he admitted that one of the grounds in the election petition was that voting was not done in accordance with law in some of the Polling Stations. Election petitioner had told him about the same after about one week of declaration of result.

68. In his cross-examination, PW5 Nityananda Patir, a voter of Polling Station No.180, stated that he was informed that an FIR was lodged in the Dhakuakhana Police Station against him and others in respect of polling held on 04.04.2011. But he could not recollect the names of the persons who had informed him. He also stated that he was told that he might have to give evidence in the case.

69. PW7 is Sushil Doley @ Ashil Doley, a voter of Polling Station No.182. In his cross-examination, he stated that some of the voters exercised their franchise 4-5 times for which he made a complaint to the Presiding Officer but no heed was paid to his complaint. Besides the said incident, no other incident took place in Polling Station No.182.

70. PW8 Jyoti Prakash Doley is a voter of Polling Station No.183. In his evidence-in-chief, he stated that when he had reached the Polling Station at about 9 am, he found that a large number of voters had already assembled there. They were in a queue which was progressing very slowly. At around 9.45 am, about 10/12 persons of AGP party and *Ganashakti* under the leadership of Shri Pradip Chamua had stormed into the Polling Station and forcibly took possession of the EVM. While Shri Pradip Chamua gave direction to his men, the

others stopped the voters from entering into the Polling Booth whereafter they themselves started casting votes.

70.1. In his cross-examination, PW8 stated that he was standing in the queue in Polling Station No.183 behind 30/35 persons. From that place, it could not be seen as to what had happened inside the Polling Station.

71. Though PW11 Sanka Nath Pegu, a voter of Polling Station No.203 and a polling agent of the petitioner, stated in his evidence-in-chief that around 12.30 pm, a group of about 25/30 persons under the leadership of Shri Pradip Chamua had captured the booth and cast about 300/350 votes in favour of the AGP candidate restraining the genuine voters, in his cross-examination, he admitted that he had lodged only verbal complaint to the Presiding Officer and did not lodge any written complaint to anybody.

72. While PW12 Hilesh Doley deposed in favour of the petitioner by supporting the statement of PW11, in his cross-examination, he stated that he cannot read and write English and that he cannot read the contents of the evidence-in-chief filed by him by way of affidavit.

73. PW13, Suren Pegu, a voter of Polling Station No.200 and a polling agent of the petitioner in his evidence-in-chief stated that at about 1.30 pm, a group of about 25/30 persons under the leadership of Shri Pradip Chamua had come to Polling Station No.200. They had divided their group into two, one group led by Shri Pradip Chamua captured the said booth and after taking possession of the EVM, randomly cast votes in favour of the AGP candidate about 300/350 times. The other group proceeded to Polling Station No.195.

73.1. In his cross-examination, he admitted that though he had informed about the aforesaid incident to the Presiding Officer and to PW2, he himself did not lodge any written complaint about the aforesaid incident.

74. Respondent No.1, Shri Naba Kumar Doley, i.e., RW1, the returned candidate, in his evidence-in-chief by way of affidavit, specifically denied the allegation of *booth capturing* made in paragraphs 13(a) to 13(g) of the election petition. Regarding Dhakuakhana Police Station Case No.64/2011, RW1 has stated that after investigating the case, police submitted final report on 29.03.2012. Following the same, by order dated 02.04.2012 passed in GR Case No.79/2011 corresponding to Dhakuakhana Police Station Case No.64/2011, learned Sub-Divisional Judicial Magistrate, Dhakuakhana had issued notice to PW2, the informant. But in spite of receiving notice, PW2 did not submit any objection. Thereafter, Sub-Divisional Judicial Magistrate, Dhakuakhana passed the order dated 02.05.2012 accepting the final report.

74.1. In so far Ext. B complaint dated 04.04.2011 is concerned, it is stated that Returning Officer Shri Bubul Lekharu, RW13, had conducted a proceeding on 05.04.2011. In the proceeding, Ranadip Kumar Dam, Election Officer of Dhakuakhana (RW12) was present. Election agents of both petitioner and respondent No.1, i.e., Lalitya Kumar Das and Pradip Chamua were also present. In their presence, complaint was scrutinized whereafter it was found that there was no merit in the complaint which was accordingly disposed of.

74.2. Nothing much of substance could be elicited from RW1 in cross-examination.

75. RW2, Shri Pradip Chamuah, election agent of respondent No.1, also supported the version of RW1. He stated that on 04.04.2011 at about 8 am, he along with his family members, went to cast vote in Polling Station No.139 and cast his vote. After that, he went to the party office at around 11.15 to 11.30 am where he remained till 3 pm. He also stated that when the results were declared on 13.05.2011, respondent No.1 was declared as the returned candidate having

secured highest number of valid votes, i.e., 63,963 out of the 1,26,803 valid votes polled. Petitioner had secured 56,456 votes. Amongst other candidates, Shri Memud Pagag who had contested as an independent candidate had secured 525 votes. All the allegations of *booth capturing* involving him and supporters of RW1 have been denied by RW2 as false and baseless.

75.1. Nothing much could be elicited from RW2 in his cross-examination and his deposition-in-chief could not be shaken. He also stated that there was no alliance between AGP and *Ganashakti*.

76. Shri Bubul Lekharu, who was the District Election Officer as well as the Returning Officer in respect of the constituency, deposed as RW13. Referring to Ext. B complaint dated 04.04.2011 lodged by Shri Lalitya Kumar Das, he stated that allegations made in the complaint were as under:-

- (1) Threatening of voters by supporters of AGP party and *Ganashakti*; debarring them from casting votes;
- (2) Casting of votes by the supporters of *Ganashakti* party in respect of voters who were debarred from voting and casting of votes in the name of dead persons by the supporters of *Ganashakti*; and
- (3) Casting of votes in respect of voters who had already left the Polling Station and not allowed to vote after 3 pm and threatening of voters who were in the queue and debarring them from voting.

76.1. The said complaint was disposed of vide Ext. C as no substance was found in the complaint. He also stated that during the election, he did not receive any information from any officer regarding violation of law and order on the day of polling or about any irregularities or illegalities in conducting election including *booth capturing*.

77. Thus, from a careful analysis of the entire evidence on record, what comes to the fore is that the Ext. B complaint dated 04.04.2011 was primarily made against *Ganashakti*. The allegations pertained to threatening of voters, who were in the queue and casting votes on their behalf and also on behalf of dead persons but such complaint was rejected by the Returning Officer who also deposed that he did not receive complaint from any official quarter regarding any incident of *booth capturing*. The FIR lodged by PW2 on the basis of which Dhakuakhana Police Station Case No.64/2011 was registered ended in final report. Despite notice, PW2 did not file any objection whereafter Sub-Divisional Judicial Magistrate, Dhakuakhana accepted the closure report. Therefore, on the basis of such unsubstantiated pleadings and evidence, it cannot be said that petitioner has been able to make out a case of *booth capturing* by attracting the rigours of Section 123(8) read with Section 135A of the RP Act.

78. On the other, we find that the oral testimony of the petitioner and that of his witnesses are very weak, incoherent and devoid of material particulars. Such vague oral evidence in the face of specific documentary evidence to the contrary would nail the case projected by the petitioner.

79. Resultantly, this issue is decided against the petitioner.

ISSUE NOS. 4 & 5 ::

80. This brings me to the remaining two issues, which are residuary in character. Issue No.4 raises the question as to whether election of respondent No.1 can be declared void on the grounds mentioned in Section 100(1) (b) of the RP Act whereas issue No.5 relates to entitlement of the petitioner to a declaration of being elected.

81. We have already noticed the provisions of Section 100 of the RP Act in its entirety. We have also noticed that petitioner had taken up *bribery* and *booth*

capturing as the grounds for assailing the election of respondent No.1. Both these grounds have been rejected as discussed above. Therefore, question of declaring election of respondent No.1 as *void* under Section 100(1)(b) of the RP Act does not arise. As a consequence, question of declaring petitioner to be elected from the constituency also does not arise.

82. Issue Nos.4 and 5 are, therefore, answered accordingly against the petitioner.

83. Resultantly, I find no merit in the election petition, which is hereby dismissed.

84. Parties to bear their own costs.

**Sd/- UJJAL BHUYAN,
JUDGE.**

DIGANTA DAS,
Joint Chief Electoral Officer, Assam,
Dispur.