
Md. Mohibul Haque Vs Banendra Kumar Mushahary

Election Petition No. 2 of 2001

Court: Gauhati High Court

Date of Decision: Dec. 7, 2004

Acts Referred:

Representation of the People Act, 1951 – Section 80, 80A

Citation: (2006) 1 GLR 818 : (2005) 1 GLT 120

Hon'ble Judges: D. Biswas, Acting C.J.

Bench: Single Bench

Advocate: S.S. Dey, M. Nath and M. Bhuyan, for the Appellant; N.M. Lahiri, N. Choudhury, S.K. Ghoshe and R.C. Paul, for the Respondent

Final Decision: Dismissed

Judgement

D. Biswas, Actg. C.J.

1. This petition u/s 80 and 80A of the Representation of People Act, 1951, hereinafter referred to as the Act has been filed by the petitioner Shri

Mohibul Haque challenging the election of the sole respondent Shri Banendra Kumar Mushahary to the Assam Legislative Assembly from No. 24

Gauripur Legislative Assembly Constituency in the general election held in the year 2001.

2. The petitioner was a candidate from Indian National Congress while the Respondent was a candidate of Asom Gana Parishad. The result of the

election was declared on 14.5.2001 declaring the respondent elected from the above constituency. The petitioner had polled 47332 votes as

against 50624 polled by the Respondent.

3. The election of the respondent has been challenged on the ground of corrupt practice of bribery and booth capturing. It is alleged that on

8.5.2001 at about 9 P.M., the returned candidate along with two other unknown persons visited the house of Md. Jalaluddin Sheikh at village

Chapgarh Part-1 within the jurisdiction of Polling Station No. 48(Ka). The said two unknown persons collected some villagers, namely - Md.

Abdul Sattar, Ajjur Rahman, Kashim Ali Sheikh, Md. Samsul Haque and Noor Mohammad Sarkar and they were paid Rs. 2000 each by the

returned candidate as consideration for casting their votes in his favour. The respondent also handed over a bundle of 500 rupee notes to Prof.

Noor Mohammad Sarkar directing him to distribute the same to the villagers of Chapgarh Part-1. The petitioner came to know of the same

transaction on 15.5.2001 from Md. Jalaluddin Sheikh and Prof. Noor Mohammad Sarkar.

4. On the same day, the returned candidate also visited the house of Md. Abdul Jabbar Sarkar at Batuatoli Village along with two other unknown

persons. The two unknown persons brought Md. Sabahan Alt, Md. Abdul Karim Bepari, Md. Haidar Ali Sarkar and Md. Nurazzaman Sarkar to

the house of Md. Abdul Jabbar Sarkar. The respondent also paid Rs. 2,000 each to all the villagers as consideration for favour in the election. The

petitioner was informed of the incident by Md. Abdul Jabbar Sarkar on 15.5.2001.

5. With regard to booth capturing, it is alleged that on 10.5.2001, the day of poll, the returned candidate himself along with his supporters captured

Polling Station Nos. 1, 1(A), 2 and 2(A), 14 and 14(A), 15 and 15(A), 17 and 17(A) by force, took possession of the ballot papers and other

voting materials. They prevented voters present their from exercising their right of franchise and stamped the ballot papers registering votes in his

favour.

6. The returned candidate along with 15 unknown persons armed with fire arms in two white coloured Sumo Vehicles came to the Polling Station

Nos. 1 and 1(A) at about 6.15 A.M., ordered the Polling Officers to go to the next room and took possession of the ballot papers. The persons

accompanying the returned candidate stamped the ballot papers and also fixed their thumb impression in the counter foils. In these counter foils the

roll numbers of the voters were not recorded. The entire exercise was completed within half an hour and, by that time, a few voters assembled

near the polling station. But, they were chased away by the respondent and his companions. Thereafter, the returned candidate left the polling

station towards Dukhisukhi Village.

7. The allegation of forceful seizure of polling station and illegal marking of votes have been made in respect of all the polling stations by the

returned candidate as well as his election agent Shri Jyotish Chandra Roy with the help of armed persons. The high percentage of votes cast in

Polling Station No. 5 and 5(A) and abnormally higher percentage of votes polled in favour of the returned candidate in some polling stations have

been cited in support of the allegation of "corrupt practice".

8. The petitioner was informed of the aforesaid incidents relating to booth capturing by the returned candidate with the help of armed supporters at

about 10 A.M. The petitioner submitted a complaint to the Returning Officer on 10.5.2001 at 10 A.M. complaining about the booth capturing and

mass rigging by the Returned Candidate. On the same day, at 11 A.M., the petitioner faxed a complaint to the Chief Election Commissioner of

India informing of booth capturing and mass rigging in 40 polling stations. Another complaint was also sent to the Chief Electoral Officer, Assam by

fax complaining about mass scale booth capturing and rigging.

9. The petitioner also took exception with regard to the manner in which the counting of votes took place. According to the petitioner, the ballot

papers relating to Polling Station No. 1 and 1(A) were on Table No. 1. The petitioner and his agents noticed that all the ballot papers of Polling

Station No. 1 were sealed on the election symbol of the returned candidate. The ballot papers were not properly marked as per provisions of

Section 39 of the Conduct of Election Rules, 1961. Objection was lodged to the Assistant Returning Officer with request for cancellation of all the

ballot papers. The matter was referred to the Returning Officer and as per his order the ballot papers pertaining to Polling Station No. 1 were kept

separately. However, at the end of the second round of counting, the Returning Officer declared that as per instruction received from the Election

Commissioner of India, counting would proceed. Accordingly, 551 defective ballots polled in favour of the returned candidate were also taken into

consideration.

10. The respondent in his written statement denied the allegations made in the plaint. It is submitted that the petition is not maintainable for non-

joinder of essential parties and non-disclosure of material facts. The allegation of corrupt practice, bribery and booth capturing by the respondent

and his election agent and other workers and supporters have also been denied. According to the answering respondent, the allegations of

payment of monies to the voters are incorrect and fabricated. It is further averred that there was no irregularities in the counting process and the

petitioner himself had admitted in writing at the end of each round of counting that the counting was proper.

11. On consideration of the pleadings and after hearing the learned Counsel for the parties, the following issues were framed :

(i) Whether the election petition is maintainable in its present form ?

(ii) Whether the election of the respondent is vitiated by corrupt practice of bribery as alleged in paragraphs 6 and 7 of the election petition ?

(iii) Whether the election of the respondent has been vitiated because of corrupt practice of booth capturing as alleged in paragraphs 8 to 13 of the

election petition ?

(iv) Whether there was any irregularity in the counting process vitiating the result of the election of the respondent ?

(v) What reliefs, if any, the parties are entitled to ?

12. The petitioner has examined as many as 12 witnesses in support of his election petition including himself. The respondent examined himself and

22 other witnesses. Both the parties also tendered documentary evidence.

13. I have heard Mr. S.S. Dey, learned Counsel for the petitioner and also Mr. N.M. Lahari, learned senior counsel assisted by Mr. N.

Choudhury, learned Counsel for the respondent.

14. Issue No. 1 :

The issue relating to the maintainability of the petition was not raised during the course of the argument. There is nothing on record to show that the

petition is not maintainable. The objection as to maintainability raised earlier has been settled in Miscellaneous Cases No. 9 of 2002 and 20 of

2003. Hence, this issue stands answered in favour of the petitioner.

15. Issue No. 2 :

In paragraphs - 6 and 7 of the election petition, it has been alleged that the respondent had paid moneys to the electors of Chapgarh Part-I and

Batuatoli Villages on 8.5.2001. The petitioner got the information about payment of moneys on 15th May, 2001 from Md. Jalaluddin Sheikh, Prof.

Noor Mohammad Sarkar and Md. Abdul Jabbar. The petitioner (PW 1) in his evidence reiterated his statements made in paragraphs 6 and 7 and

said that he came to know of the same from the aforesaid three persons. In his cross-examination he admitted that he was not present on the

occasion when the voters were bribed. But none of the three witnesses who have reported to him about the payment of moneys to the Villagers of

Chapgarh Part-1 and Batuatoli has been examined by the petitioner. Therefore, his statement that he was informed by the aforesaid three persons

about payment of moneys to the voters remains uncorroborated.

Md. Sobahan Ali, P.W. 2 deposed that on 8.5.2001 he was in his house. At about 11 A.M., two unknown persons called him from outside and

told him that the Respondent wanted him to go to the house of Md. Abdul Jabbar Sarkar. He along with his brother-in-law Md. Haidar Ali Sarkar

went to the house of Md. Abdul Jabbar Sarkar where respondent was found sitting in courtyard along with Abdul Karim Bepari and Kachu. The

respondent offered him Rs. 2000 and told him to distribute it to the poor voters so that they may not cast their votes in favour of the petitioner. He

further stated that the money is still with him and he had not disbursed it to the voters. He further stated that he informed the petitioner about the

incidence on 15.5.2001. In his cross-examination he stated that he did not inform about the incidence to any person except the petitioner till

15.5.2001, i.e., one day after the result of the election was announced. It appears that he came to Gauripur about 11 K.M, away to inform the

election petitioner about the incidence.

P.W. 3 - Md. Haydar Ali Sarkar is a residence of Village Balajan. On 8.5.2001, he went to the house of his sister-in-law at Batuatoli Village who

was seriously ill. In the night at around 10/10.30 P.M., some persons informed them that the Respondent has come to the residence of Abdul

Jabbar Sarkar and they are required to go there. This witness along with his brother-in-law (P.W. 2) went to the house of Md. Abdul Jabbar

Sarkar where the Respondent offered him Rs. 2000. His brother-in-law was initially unwilling to accept the money. The Respondent also asked

him about his identity and offered him Rs. 2000 but he refused to accept the same. In his cross-examination he stated that he did not know the

person who had called him to go to the house of Md. Abdul Jabbar Sarkar. He denied a suggestion that he is a supporter of the election petitioner

and deposed as per election petitioner's instruction.

P.W.s 1, 2 and 3 are witnesses to the allegation of bribery. P.W. 1 is a reported witness. The persons who had reported him have also not been

examined. P.W. 1 stated that Md. Jalaluddin informed him that Respondent along with other persons went to their house at 9 P.M. and paid them

Rs. 2,000, but Md. Jalaluddin has not been examined in this case. P.W. 2 claimed that he was given Rs. 2,000 to be distributed to the poor voters

for not casting votes in favour of the election petitioner. It is not understood as to why the returned candidate had not solicit votes in his favour and

instead told them not to cast votes in favour of the election petitioner. P.W. 3 is a chance witness. He is not a resident of Batuatoli Village and,

therefore, there cannot be any reason for the respondent to offer him money, particularly when he was not known to him. Besides, P.W. 3 did not

report the matter to the election petitioner. Situated, thus, a strong doubt arises as to the credibility of P.Ws. 2 and 3, If they are truly honest, they

should have reported the matter to the petitioner without loss of time. The claim by P.W. 2 that the money is still with him also leads to an adverse

presumption. He did not hand over the money to the election petitioner on 15.5.2001 when he went to his house at Gauripur to report about the

matter. He is still holding the money. The evidence of P.Ws. 2 and 3 because of these infirmities cannot be acted upon to conclude that the

respondent had bribed the electors of Chapgarh Part-1 and Batuatoli Villages. Non-examination of the three persons named in the election petition

creates a strong doubt as to the authenticity of the petitioner's claim. The respondent in his evidence has totally denied the charge. Nothing could

be elicited out of him or from other witnesses during the course of cross-examination to show that the respondent was present at Chapgarh Part-1

and Batuatoli Village, as alleged by P.Ws. 2 and 3. According to the respondent (R.W.23), he did not come out of the house after 4 P.M. on

8.5.2001 when the campaign ended except for casting his vote on 10.5.2001. He confined himself inside the house for security reasons. He has

been supported by R.Ws. 21 and 22, the security personnel who were attached with the respondent from before the day of election. The evidence

of R.Ws 21, 22 and 23 read together belie the evidence of P.W.s 2 and 3 that the respondent personally went to the house of Md. Abdul Jabbar

Sarkar and Md. Jalaluddin Sheikh. The quality and quantity of evidence required for the purpose of establishing a charge of bribery are not there in

the instant case.

Hence, this issue is decided against the petitioner.

16. Issue No. 3 :

Issue No. 3 relates to the allegation of booth capturing and large scale rigging made in paragraphs 8 to 13 of the election petition,

At the very outset, I would like to refer to the evidence of the election petition in brief. The election petition is not an eye witness to the alleged

booth capturing and rigging of election. According to the election petitioner, on the day of election the respondent went to Postibari Polling booth

with some armed persons in two white coloured Tata Sumo Vehicles. They threatened the Presiding Officer Shri Dhrubo Kumar Brahma (R.W.

13) and his election agents, namely - Md. Anyad Ali and Saifur Rahman and compelled them to seal the ballot papers in favour of the respondent.

The voters in the queue could not cast their votes. The Presiding Officer had no option but to obey the direction of the respondent. Altogether 551

votes were cast in favour of the respondent. They were in a hurry and by mistake they used the round seal of the Presiding Officer while marking

the ballots instead of the specified seal. In the same fashion they entered the Dukhi Sukhi Polling Station, took possession of the booth, compelled

the police personnel present there to surrender and to mark the ballot papers in his favour. This polling station is 10/12 K.M. way from Postibari.

After Dukhi Sukhi Polling Station they went to Malandubi and Jaldoba Polling Stations. In the same way they captured Malandubi booth and

marked the ballots in favour of the respondent. They resorted to blank firing to scare away the voters. After Malandubi and Jaldoba, they went to

Kursakathi Polling Station, threatened the people present there, captured and marked the ballots in favour of the respondent. According to the

election petitioner, the respondent himself took leading part in capturing the booths. The petitioner further stated that Shri Jyotish Chandra Roy, the

election agent of the respondent was sent to Tulshijhora Polling Station with a Jeep and an Ambassador car boarded with 10/12 armed persons.

They also captured Tulshijhora Polling Station and in the similar fashion marked the ballots in favour of the Respondent No. 2. Thereafter, they

went to Debitola and Parbatijorwar Polling Stations and marked ballot papers in favour of the Respondent by threat and force. All these polling

stations named by the petitioner are situated in deep forest area. According to the election petitioner, the respondent and his party captured as

many as 40 polling booths and rigged the election. However, the petitioner in his examination-in-chief itself stated that he was not present in all

these polling stations, but was reported about the incidents by his polling agents and voters. On 10.5.2001, apprehending trouble, the election

petitioner submitted a written complaint to the Returning Officer to the effect that there was possibility of booth capturing in 40 polling stations. On

the same day, the election petitioner also sent a faxed message to the Election Commission of India and Chief Electoral Officer. According to him,

the Returning Officer did not give any importance to the complaint lodged by him before and also on the day of the election. It is further averred

that because of these corrupt practices, he lost the election by a margin of 3292 votes.

In his cross-examination the election petitioner admitted that he was not present at the time of booth capturing. It appears from his statement in

cross-examination that apart from Presiding Officer, there were three other polling officers in each polling stations besides the police personnel

deployed by the District Administration. He, however, denied a suggestion that there were armed police personnel posted at each polling stations

by the authority. On the day of election, the petitioner did not go out of his house except for casting his vote. On Md. Amzad Ali and Md. Saifur

Rahman came to his house and reported about the booth capturing. On 10.5.2001, at about 9.30 A.M., he complained to the Returning Officer

about the booth capturing of Pastibari over telephone. He further stated that the polling agents and voters of the locality of Dukhi Sukhi Village

came to his house at 9.30 A.M. and informed him about booth capturing.

It appears from the evidence of the election petitioner, both in chief and cross-examination, that Md. Amzad Ali, Md. Saifur Rahman, Md.

Sakawat Hussain, Md. Faizar Ali, Md. Samwaar Hussain, Md. Ali and Md. Azizul Haque had reported him about booth capturing and large scale

rigging of election. But, of all these seven witnesses, only Md. Amzad Ali has been examined as P.W. 4. Md. Amzad Ali was the polling agent of

the election petitioner at Pastibari Middle Vernacular School Polling Station. Shri Dhrubo Kumar Brahma (R.W. 13), Presiding Officer, who was

alleged threatened according to P.W. 1, has been examined by the respondent. He has categorically stated that the election was free and fair.

Capturing of 40 booths and casting of votes cannot be made possible within a span of two-and-half hours.

According to Md. Amzad Ali, the respondent along with 14/15 armed persons entered Postibari Polling Station No. 1 at about 7,15 A.M., took

possession of the ballot papers from the Presiding Officer and polling officers and sealed the ballot papers marking on the election symbol of the

respondent. Some of them also went to nearby Polling Station No. 1(A), took possession of the ballot papers and marked them registering votes

in favour of the respondent. According to him, he informed the election petitioner about the incident at 9 A.M. In his cross-examination, this

witness further stated that there were no police personnel in the polling station and the casting was due to start at 7 A.M. In support of the

allegation of booth capturing and rigging, the petitioner also examined P.W. 5 Md. Abdul Hussain, P.W. 6 Md. Haidar Ali, P.W. 7 Md. Nasir

Khan, P.W. 8 Md. Abdul Rahman Pradhani, P.W. 9 Md. Khan Minnas Ali, P.W. 10 Md. Sofior Rahman, P.W. 11 Md. Abul Hussain Pradhani

and P.W. 12 Md. Ahial Hoque, most of them are polling agents and workers of the election petitioner. All these witnesses have deposed about the

manner in which the booths have been captured by the respondent and his election agent Shri Jyotish Chandra Roy with the help of armed

personnel. According to them, there were no police personnel in most of the polling stations and the respondent and his election agent Jyotish

Chandra Roy set out in two groups to capture the polling booths numbering 40. It appears from their evidence, both in chief as well as in cross-

examination that by 9/9.30 A.M. that the process of booth capturing and rigging was completed in about 40 polling stations spread over the

constituency. All these witnesses denied the suggestion put to them that they were deposing as per instructions of the election petitioner.

The evidence of booth capturing and rigging of the witnesses above will have to be weighed along with the evidence of the official witnesses

examined by the returned candidate in order to determine the evidentiary value of the statements made by them.

The features that emerge from the statements of the above witnesses are that the respondent himself and his election agent Shri Jyotish Chandra

Roy in two groups set out to capture the polling stations and rigged the election. Further, the entire process was completed before 9.30 A.M., i.e.,

within two-and-half hours. By 9/9.30 A.M., the witnesses named by the election petitioner reported to him about the incidents. That apart, the

evidence of the witnesses show that there was no armed police guard in any of the polling stations and this facilitated booth capturing without any

hindrance.

R.W. 1, Smti Gyatri Baruah, IAS was the Deputy Commissioner and Returning Officer of Dhubri District. The Returning Officer in her evidence

stated that before election, they had identified the sensitive polling stations and planned security measures. According to her, the election petitioner,

a few days before the polling, submitted an application identifying certain polling stations as sensitive and prayed for necessary precaution. Ext-2 is

the complaint submitted by the election petitioner. It mentions of 40 polling stations as sensitive. The witness immediately informed the

Superintendent of Police as well as the Election Observer deputed by the Election Commission of India, Steps were taken accordingly. She did

not receive any report from any of the Presiding Officers about booth capturing. On receipt of the complaint, on the day of election, she had

deputed the Additional Superintendent of Police and Additional Deputy Commissioner to enquire into the matter. After due enquiry, they reported

that everything was peaceful. The Observer of the Election Commission of India also visited all the sensitive polling stations as mentioned by the

election petitioner.

R.W. 2, Shri Apurba Jiban Baruah, IPS was the Superintendent of Police at the relevant time. He stated that the administration received complaint

from the election petitioner beforehand and, accordingly, they planned major security arrangement. The administration deployed armed and other

para-military forces for the purpose of maintaining law and order during the election to neutralise threat perception from the extremists. As a

normal practice, this witness stated that one constable and one home guard were deployed to each polling booth and in sensitive areas, one section

or half section of armed police pickets were deployed. In addition to Army and Police personnel, BSF personnel were also deployed to the

sensitive polling stations. According to him, he along with the returning officer went out to verify and ascertain the truth of the complaint. On

enquiry, they found that the allegation that some voters were prevented by a group (bodo people) from casting votes is not correct. In the morning

hours, Shri Jyotirmoy Chakraborty, Deputy Inspector General of Police also went out and found that the allegation of booth capturing was not

correct. R.W. 4, Shri Arun Kr. Debnath, the Zonal Magistrate, was in-charge of the polling stations in so far law and order is concerned. He

stated that the election was held in a peaceful atmosphere. He also tendered in evidence Ext-Q, Ext-Q-1 and Ext.Q-2 to show that precautionary

measures were taken before the election in all the sensitive polling stations. R.W. 5, Shri B.N. Choudhury, was the Zonal Magistrate of Zone-B as

per master plan prepared for smooth conduct of the election. His duty was to ensure free and fair election. According to him, the election was held

in a peaceful atmosphere. He further stated that Army and CRPF personnel were also deployed for maintaining law and order in sensitive polling

stations.

The evidence of the aforesaid official witnesses clearly indicate that the administration was aware of the sensitive areas and prepared a master plan

beforehand for smooth conduct of the election. The administration also deployed, in addition to the civil police, Army, CRFP and BSF personnel

for maintaining law and order. That apart, other officials entrusted with election duty were also on move to take care of any untoward incident for

ensuring free and fair election. These witnesses have been cross-examined by the election petitioner. The Returning Officer in her cross-

examination made it clear that she had received only one complaint and that she had visited all the polling stations on the same day in the evening

hours in order to ascertain the veracity of the complaint made. R.W. 2, Superintendent of Police, in his cross-examination stated that he had visited

7/8 polling stations in Rupsi area along with the Returning Officer. Similarly, both. R.W. 4 and 5 also reiterated what they have stated in

examination-in-chief. Nothing could be elicited out of these witnesses to show that there were booth capturing and rigging, as alleged by the

election petitioner.

R.W. 6, Shri P. Mushahari, R.W. 7, Shri Nareshwar Brahma, R.W. 8 Shri Tishilal Rabha, R.W. 9 Shri Amar Rabha, R.W. 10 Shri Bhuvan

Chandra Sarkar, R.W. 11 Shri Jitendra Ch. Nath, R.W. 12 Shri Madan Mohan Saha, R.W. 13 Shri Dhruba Kumar Brahma, R.W. 14 Shri

Maneswar Brahma, R.W. 15 Shri Dilip Kr. Basumatary, R.W. 16 Shri Bhumewar Gayatri, R.W. 17 Shri Binoy Ch. Karmakar, R.W. 18 Shri

Subodh Karmakar, R.W. 19 Shri Harekrishna Modak and R.W. 20 Shri Birendra Nath Brahma were either Presiding Officers or Polling Officers

deployed by the authority for conduct of the election. All of them stated that the election was peaceful and there was no incident of booth capturing

and rigging. They also proved the reports submitted at the end of the poll. All these reports show that against the relevant column, the Presiding

Officers indicated that there was no report of snatching of ballot boxes and ballot papers, and no complaint about any violence. These reports have

been tendered in evidence by the respective Presiding Officers indicating that the election was held in a free and fair atmosphere. These documents

marked as Ext. A to Ext. P support the statements made orally by these witnesses that there was nothing wrong in the election process. None of

the Presiding Officers, as is required under law, has made any complaint to the Returning Officer about any disturbance in their respective polling

stations. In some of the reports, the word ""NIL"" was stuck-off and in place thereof endorsements were made that there was no snatching of

ballots, etc. Either way, it shows that there was nothing adverse in the reports of the Presiding Officer. The word ""NIL"" also suggest that the

election was free and fair.

In the above background, we may now refer to the evidence of the returned candidate-R.W.23. According to him, he defeated the election

petitioner by a margin of 3292 votes. He further stated that he was also declared elected from this constituency in the year 1996 defeating the

election petitioner by a margin of 3400 votes. In view of the law and order situation, this witness added that the administration provided adequate

security measures. All candidates were given security cover, i.e., service of two security personnel and three commandoes. The security personnel

attached to him were moving with him during the election campaign. He was not allowed to move-alone without security people. In addition, five

police personnel were also deputed as house-guard and they also followed the respondent whenever he went out. Due to threat perception from

the extremists, this witness claimed that he never went out after sunset. The election campaign ended at 4.00 P.M. on 8.5.2001 and thereafter he

did not go out of the house till the day of election when he went out around noon to cast his vote in Basbari Polling Station. He denied that he had

distributed moneys to the electors and visited the house of Md. Abdul Jabbar and Md. Jalaluddin and others for influencing the voters. This witness

has been cross-examined by the election petitioner. His statement in cross-examination shows that in Polling Station No. 1, he had secured cent

percent votes. His election agent Shri Jyotish Chandra Roy was in-charge of the control room through out the day wherefrom he was giving

information to the respondent. There is nothing in his cross-examination which can be of any use to the petitioner. The statement of this witness that

he did not go out of the house without the security personnel and did not leave his house after 4.00 P.M. of 8.5.2001 is supported by R.W.21 Shri

Gopeswar Das and R.W. 22 Shri Purnakanta Rabha, Head Police Constable and Havildar of SSB Branch of the State Police respectively. Both

of them in unequivocal term stated that they had always accompanied the Respondent whenever he went out for election campaign. The

respondent, according to them, went out for election campaign during the day time only. According to them, the returned candidate came back

home by 4.00 P.M. on 8.5.2001 after completion of campaign and, thereafter, did not go out except for casting his votes on 10.5.2001. The

statement of R.W. 21 and R.W.22 support the claim of the respondent that all throughout the day, he was in his house except for a brief moment

when he went out to the polling station to cast his vote.

The evidence led by the election petitioner about capturing of 40 polling booths within two and half hours by two groups of armed persons led by

the returned candidate and his election agent Shri Jyotish Chandra Roy do not inspire the confidence of this Court. It is because the polling stations

are situated kilometers apart and there were adequate number of security force on duty to guard against any unlawful activity. It is also evident

from the evidence of the official witnesses that adequate precautionary measures were taken ahead to prevent any untoward incident on the day of

the poll. The evidence of the Presiding Officers and Polling Officers and, the reports submitted by them clearly indicate that there was no snatching

of ballot, intimidation of voters or violence of any kind on the day of poll. The evidence of the official witnesses, Presiding Officers and the Polling

Officers and the police personnel establish the fact that the allegations of large scale booth capturing and rigging of election is not correct. It is not

acceptable that all the official witnesses including Presiding and Polling Officers were hostile to the election petitioner. As against this, the evidence

of the election petitioner and his witnesses sound like a fiction. The witnesses examined by the election petitioner were his polling agents and no

independent person has been examined either from the voters or the villagers in order to bring home the charge labeled by him against the

respondent. Striking a balance between the two sets of evidence, this Court has no alternative but to conclude that the election petitioner has failed

to establish the charge of large-scale booth capturing and rigging of election.

For the discussions above, this issue is answered against the election petitioner,

17. Issue No. 4 :

The allegation of alleged irregularities in the counting process is to be dealt with in this issue.

It has been averred in the election petition that there were irregularities in the counting process particularly with regard to the ballots of Polling

Stations Nos. 1 and 1(A). It is averred that the ballots not properly marked were also accounted for and credited to the account of the

respondent. The respondent in his written statement denied the aforesaid allegation and asserted that the agents of the election petitioner put their

signatures on the relevant official documents after end of every round of counting without any objection.

Strangely, the election petitioner (P.W. 1) did not say anything about any irregularity in the counting process. Not only the election petitioner but

also his witnesses did not utter a single word about irregularities in the counting process. It is, therefore, not understood as to why allegations have

been made in the election petition about irregularities in the counting process. This omission of the election petitioner is suggestive of embellishment.

This issue stands answered against the election petitioner.

18. Issue No. 5 :

In view of the decisions in the aforesaid issues, the election petition has to be dismissed. The allegation of corrupt practice is quasi-criminal in

nature because it not only vitiates the election but also disqualifies the person concerned from taking part in the election for a considerably long time.

Therefore, grave and heavy onus rests on the election petitioner to establish the charge of corrupt practice by fair, cogent and reliable evidence

beyond reasonable doubt. Mere balance of probabilities cannot establish the charge of corrupt practice. This Court in *Rainbow Ezung Vs. Mhao*

Lotha and Others, further held that mere consistency in the evidence may not weigh as the tutored witnesses are capable of being consistent.

The evidence adduced and discussed hereinbefore are capable of raising a doubt only. It cannot be accepted as proof of bribery and booth

capturing. On the factual matrix available, the judgments relied upon by the election petitioner, namely - *D. Venkata Reddy Vs. R. Sultan and*

Others, ; *Ch. Razik Ram Vs. Ch. Jaswant Singh Chouhan and Others*, ; *Pratap Singh Vs. Rajinder Singh and Another*, ; *R. Puthunainar Alhithan*,

etc. Vs. P.H. Pandian and others, ; *S. Harcharan Singh Vs. S. Sajjan Singh and Others*, ; *C. Narayanaswamy Vs. C.K. Jaffer Sharief and Others*,

; *T.A. Ahammed Kabeer Vs. A.A. Azeez and Others*, and *Ghasiram Majhi Vs. Omkar Singh*, cannot improve petitioner's case. The election

petition cannot but be dismissed as the analysis of the evidence on record clearly shows that the petitioner has failed to discharge his burden to

prove the charge of corrupt practices.

ORDER

19. The election petition is hereby dismissed with cost of Rs. 5,000. The security amount deposited to be forfeited.