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**AIR 2011 SC 570 : (2011) 2 CALLT 14 : (2010) 12 JT 613 : (2011) 1 RCR(Civil) 262 : (2010) 12 SCALE 287 : (2011) 2 SCC 621 : (2010) 10 UJ 5229**

**Supreme Court of India**

**Case No:** Civil Appeal No. 2719 of 2006

Govind Singh — APPELLANT

Vs

Harchand Kaur — RESPONDENT

**Date of Decision:** Nov. 22, 2010

**Acts Referred:**
Civil Procedure Code, 1908 (CPC) â€" Order 6 Rule 15(2)#Conduct of Elections Rules, 1961 â€" Rule 94A#Representation of the People Act, 1951 â€" Section 100(1), 116A, 123, 123(1), 15

**Citation:** AIR 2011 SC 570 : (2011) 2 CALLT 14 : (2010) 12 JT 613 : (2011) 1 RCR(Civil) 262 : (2010) 12 SCALE 287 : (2011) 2 SCC 621 : (2010) 10 UJ 5229

**Hon'ble Judges:** J. M. Panchal, J; Gyan Sudha Mishra, J

**Bench:** Division Bench

**Final Decision:** Allowed

**Judgement**

Gyan Sudha Misra, J.
This appeal has been preferred u/s 116A of the Representation of People Act, 1951 (hereafter referred to as the

Act of 1951) assailing the Judgment and Order of the High Court of Punjab and Haryana dated April 28, 2006 delivered in Election petition No.

22/2002 as a consequence of which the election of the appellant, Govind Singh as MLA to the Punjab Legislative Assembly held on February 13,

2002 from the reserved 82-Sherpur (S.C.) Assembly Constituency was declared void and hence was set aside awarding a cost of Rs. 50,000/- to

the respondent Smt. Harchand Kaur.

2. The election of the appellant was challenged by the respondent- Smt. Harchand Kaur who is the defeated candidate and although she had

secured third position in the polling, she challenged the election of the appellant alleging corrupt practice against him within the meaning of Section

123(1)(A) of the Act of 1951.

3. The essential details of the Election petition which formed the basis of challenge to the election of the appellant, disclose that on June 26, 2001

the Governor of Punjab issued a notification u/s 15 of the Representation of People Act, 1951 calling for election of MLAs from all constituencies

in Punjab to constitute the Punjab Legislative Assembly. The appellant-Govind Singh, at the relevant time was functioning as a Minister of Social

Security, Women and Child Development and the party in power to which the appellant belonged was Shiromani Akali Dal (Badal). However, the

appellant admittedly resigned on January 12, 2002 from the primary membership of Akali Dal as he was denied party ticket to contest the election

from the said Assembly Constituency. The Election Commission published the election schedule which stated that the last date for filing nomination

would be January 23, 2002 and the date for scrutiny of nominations was fixed for 24.01.2002. The schedule further indicated that the last date for

withdrawal of candidature would be January 28, 2002 after which the poll was to be held on February 13, 2002 and finally the counting of votes

on February 24, 2002.

4. In view of the aforesaid schedule fixed by the Election Commission, the appellant - Govind Singh and nine others filed nominations for contesting

the election for the reserved 82-Sherpur (S.C.) Assembly Constituency. The appellant had filed nomination as an independent candidate since he

had resigned from the membership of the Shiromani Akali Dal (Badal) party.

5. The election to the concerned constituency was held as per schedule on 13th February, 2001 and the process was finally complete on February

24, 2002 after counting of the votes when the appellant was declared elected to the reserved 82-Sherpur (S.C.) Assembly Constituency since he

had secured highest number of votes which was 30132. The nearest rival to the returned candidate i.e. the appellant-Govind Singh, was Piara

Singh of the Shiromani Akali Dal (Badal) in whose favour 26525 votes had been polled and the contesting respondent - Smt. Harchand Kaur

secured third position in whose favour 19439 votes had been polled. The total number of votes polled was admittedly 90882 in the Assembly

Constituency where all these three candidates had contested.

6. The Respondent - Smt. Harchand Kaur, having been defeated in the election felt aggrieved of the election result as she apprehended, which

obviously was a late realisation on her part to the effect that the elected candidate i.e. the appellant herein, Govind Singh, had indulged in corrupt

practices in the election process due to which she could not emerge as a victorious candidate. This prompted her to file an Election petition in the

High Court of Punjab and Haryana, bearing Election petition No. 22/2002 wherein she challenged the petitioner''s election alleging illegal acts of

omission and commission at the instance of the appellant which amounted to indulgence in corrupt practice within the meaning of Section 123(1)

read with Section 100(1)(b) of the Act of 1951.

7. Elaborating the details of her alleged plea of corrupt practice on the basis of which the respondent Smt. Kaur had filed the Election petition in

the High Court challenging the election of the appellant -Govind Singh, it was stated that the returned candidate while holding the charge of Social

Security Minister in the State Cabinet misused his power with an intention to gain benefit in the election 2002 violating the procedure as he

sanctioned and released the old age/widow/handicapped pensions in favour of the residents of Sherpur Constituency and this was clearly with a

view to secure votes of the electorates in the ensuing election. A list of 16 persons with their addresses was furnished along with a few forms

pertaining to those persons indicating that the petitioner had sanctioned their pension directly.

8. The respondent herein Smt. Harchand Kaur further alleged that the returned candidate, the appellant herein, while holding the post of Cabinet

Minister in charge of Social Security Department misused his power and got various women voters of his Constituency employed as Anganwadi

Workers for the period upto 28.2.2002 and they were employed in service with a motive to compel them to undertake the work of his election

and cast their votes as also manage other votes in his favour in the constituency in the election scheduled to be held on 13.2.2002. A list of 13

women with their addresses was given alongwith the true translated copy of one such appointment letter. Relying on these facts, the respondent

alleged that the appellant is guilty of committing corrupt practice with a view to secure votes in the election which is covered u/s 123 of the Act of

1951.

9. The Respondent Smt. Harchand Kaur levelled a third allegation also alleging corrupt practice by stating that the returned candidate Govind

Singh- the Appellant herein, distributed money among the voters in exchange of their promise to vote for him directly as well as through his agents

with his consent in the presence of respectable village persons who stood surety on their behalf. The appellant had also promised to facilitate

construction of drains and many pacca pavements and streets in case he was voted and emerged as a victorious candidate. Elaborating further on

this aspect, the respondent herein alleged that the appellant Shri Gobind Singh paid cash at various places for getting votes as informed by the

respectable persons of that area, namely, Avtar Singh, S/o Baldev Singh, Balbir Singh, S/o Budh Singh, both r/o village and Post Office Ladda,

Tehsil Dhuri, District Sangrur; Jaspal Singh, Sarpanch village Bir Mamgarh, Tehsil Malekotla, District Sangrur and Ramzan Khan Sarpanch, village

Jatewal, Tehsil Malerkotla district Sangrur. However, only Balbir Singh out of these persons was cited in the list of witnesses filed later on by the

respondent in her Election petition. He was subsequently cited as a witness who could not prove the allegation of cash for votes but was cited as a

witness only to prove the allegation that the petitioner had delivered speeches at various places to promote enmity on the ground of religion. He,

however, was finally never examined by the respondent.

10. Thus, the sum and substance of the entire allegations levelled by the defeated candidate Smt. Harchand Kaur - the respondent herein, is to the

effect that the appellant-returned candidate Shri Gobind Singh with the active support of his supporters indulged in corrupt practice and offered

bribery in the form of gift and promise to give cash to those who voted in his favour. This vitiated the election and hence he is guilty of committing

corrupt practice which is covered u/s 123(1)A(b) and B (b) of the Act of 1951 due to which the election held on 13th February, 2002 deserves to

be quashed and set aside since the corrupt practice at the instance of the appellant is covered u/s 123 of the Act of 1951.

11. The appellant Shri Singh responded to the Election petition by filing his written statements to the petition on August 12, 2002 wherein he

initially took the preliminary objection that no material facts and material particulars had been pleaded in the petition concerning the allegations of

corrupt practice and no time, date and place had been mentioned and hence the contents were liable to be struck off as no cause of action was

disclosed by the petitioner/respondent herein. It was further averred that no attested or true copy of the Election petition had been served on the

petitioner nor the verification of the petition was done as per the 1951 Act as well as the CPC due to which the same was also defective as the

affidavit had not been filed in support of the allegations of corrupt practice, in terms of the requirements of the Act of 1951. In so far as, the merits

of the allegations in the petition are concerned, they were denied and it was clarified that the returned candidate / the appellant herein had already

resigned from the Government as Minister of Social Security as also from the primary membership of the Shiromani Akali Dal on January 12,

2002. The appellant submitted that the sanction or release of pensions was done by the District level authorities and the appellant who was then a

Minister at the most, had recommended acceptance which was always subject to the legal norms for such pension. It was further stated that all the

documents annexed by the respondent with her Election petition in the High Court pertained to the period 2001, and therefore, were irrelevant to

the period of the election that is January 23, 2002 to February 24, 2002. The pass books of the pension receivers annexed by the respondent

merely showed the normal flow of pensions into the pension accounts in 2001 without even a statement that these were sanctioned by the

petitioner in 2002 since this was inherently impossible after his resignation. It was further stated therein that none of the allegations contained the

relevant material facts and the material particulars as to the date, time and place which could substantiate the allegation.

12. The Respondent Smt. Harchand Kaur thereafter filed rejoinder to the written statement wherein the facts stated in the Election petition were

reiterated in order to contend that the appellant in fact indulged in corrupt practice to ensure his victory in the election.

13. The learned single Judge on the aforesaid case and counter case of the contesting parties initially framed as many as nine issues but ultimately

confined to the following issues:

5. Whether the respondent is guilty of corrupt practices committed by him or with his consent as enumerated in paras No. 12, 13, 14, 17, 18, 19,

20, 21, 22, 23, 24, 25 and 26 which materially affected the result of election and his election deserves to be set aside.

6. Whether any corrupt practice (bribery, offer any gift or money as a reward to an Elector for having voted or refrain from voting, gives a

gratification to any person with the object of inducing him to exercise any other Elector right) has been committed by returned candidate or his

election agent or any other person with the consent of a returned candidate or his election agent u/s 123 of the Representation of the People Act,

1951?

7. Whether disbursement of money under the pretext of old age pension etc. between the day of nomination and polling day by the returned

candidate or by his consent by other persons through department of Social Security Women and Child Development, of which he was a Minister,

to induce the electors in his constituency to vote for him, amounts to a corrupt practice u/s 100(1)(b)?

9. Whether the returned candidate himself or on his behalf or with his consent, large number of fresh appointments as Anganwari workers were

issued for specific period, by the department of Social Security Women and Child Development to induce the voters in his constituency to vote for

him and thus committed a corrupt practice under the Act?

14. Thus, the High Court although initially framed nine issues on the basis of the Election petition filed by the Respondent, the same was eventually

confined to the challenge to the election of the returned candidate only on the ground of corrupt practices as envisaged u/s 123(1) read with

Section 100(1)(b) of the Act of 1951 wherein ''bribery'' has been considered to be a corrupt practice i.e. 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 inducing him to vote or refrain from voting at an election or as a reward to an election for having voted or refrain from

voting. Hence, the analysis of oral and documentary evidence made by the High Court has been confined to the issues Nos. 5, 6, 7 and 9 quoted

hereinbefore as to whether the returned candidate is guilty of corrupt practices alleged against him or has been committed by him or his election

agent or any other person with the consent of the returned candidate-the appellant herein. The analysis made by the High Court also indicated that

it took into consideration issue No. 7, as to whether disbursement of money under the pretext of old age pension etc. between the day of

nomination and polling day by the returned candidate or with his consent by other persons through The Department of Social Security Women and

Child Development of which he was a Minister, induced the electorate in his constituency to vote for him so as to bring it within the ambit and

scope of corrupt practice laid down u/s 100(1)(b) of the Act of 1951.

15. The High Court further proceeded to consider issue No. 9 as to whether the returned candidate himself or on his behalf or with his consent,

large number of ladies were recruited as fresh Anganwadi Workers for a specific period by the Department of Social Security women and Child

Development in order to induce the voters in his constituency to vote for him and thus committed a corrupt practice under the Act.

16. The learned single Judge of the High Court who tried the Election petition therefore scrutinized the oral evidence led by the contesting parties

as also the documents produced and on its scrutiny in the light of the submissions advanced by the contesting parties, recorded a finding that the

returned candidate/the appellant Gobind Singh had used the tool of payment of pension to bribe the voters. The learned Judge went on to record

that the election petitioner had succeeded in establishing that the returned candidate had committed corrupt practice within the meaning of Section

79(2) of the Act by inducing the voters to vote for him in consideration of payment of cash named as pension on 10.2.2002, 11.2.2002 and

12.2.2002 when the polls were to be held on 13.2.2002. The learned Judge further found considerable merit in the submission of the election

petitioner-the respondent herein to the effect that the case concerning corrupt practices had been sufficiently pleaded in the Election petition at

paras 17 to 21, 24, 26 and 30. The learned Judge further proceeded to observe that the affidavit in the prescribed form in support of the

allegations of corrupt practice and the particulars thereof which was required to be attached with the petition, had also been done. The learned

single Judge was therefore of the view that the broad and basic features of the case of the election petition stands established and the corrupt

practice committed by the returned candidate is fully covered by Section 123(1)(A) of the Act. The money in the name of pension was presented

as a gift to the voters directly for inducing the voters to vote in favour of the returned candidate which would be clearly covered by the

aforementioned provision of the Act.

17. The High Court was further pleased to observe that the resignation of the appellant from the Cabinet or from the primary membership of the

Shiromani Akali Dal had no connection with the distribution of cash in the name of pension on 10.2.2002, 11.2.2002 and 12.2.2002 when voting

was to take place on 13.2.2002. Hence, the election of the returned candidate to 82-Sherpur (SC) Assembly Constituency to which the appellant

Gobind Singh had been declared elected, was declared void and consequently was set aside. It was, therefore, directed that the Election Branch

of the Registry with regard to the disqualification of the returned candidate to contest any further election be communicated. The Election petition

thus was allowed with cost which was determined at Rs. 50,000/-.

18. The returned candidate Shri Govind Singh-the appellant herein, obviously felt aggrieved with the judgment and order of the High Court setting

aside his election and hence has preferred this appeal assailing the judgment and order of the High court. However, we were informed that during

pendency of this appeal, the appellant has already completed his term as a member of the Legislative Assembly but this appeal could not be

treated as infructuous since the appellant is bound to suffer the consequence of disqualification on account of the setting aside of his election on the

alleged indulgence in corrupt practice in the previous election which will affect his candidature to contest any election in future.

19. Assailing the judgment and order passed by the High Court, it was submitted at the threshold by learned senior counsel for the appellant- Shri

Hansaria, that the allegation of the respondent herein, while challenging the election of the appellant, relates to the acts attributed to the appellant as

Minister prior to filing his nomination on 23.1.2002 as in paragraphs 17, 18 and 19 the respondent alleged that the appellant Shri Gobind Singh got

released pension to various persons by misusing his position as a Minister, Social Security Department. In paragraph 20, it has been alleged that

the appellant misused his power as Social Security Minister and violated the procedure in sanctioning/releasing the old age/widow/handicapped

persons. In para 21 of the election petition, the Respondent has further alleged that the appellant being the Cabinet Minister holding the charge of

Social Security Department misused his power and got various women voters of his Constituency employed as anganwadi workers.

20. In order to demolish the case of the respondent, a sure shot argument advanced by the counsel for the appellant was that none of the aforesaid

allegations even if assumed to be correct - although the same are disputed, would amount to corrupt practice within the meaning of Section 123(1)

(A) of the Act as those acts related to the period when the appellant was holding the charge of the Social Security Minister and the acts were in

discharge of his official duties which was perfectly legal and justified. In support of this submission, reliance was placed by the learned Counsel on

the decision delivered in the matter of 294794 , wherein it was held that any allegation made with reference to a period prior to nomination as a

candidate, does not amount to corrupt practice. It was submitted that in the instant case, the appellant resigned as a Minister on 12.1.2002 and

became a candidate for the election only on 23.1.2002 when he filed his nomination for contesting the election as an independent candidate.

Hence, it was contended that any act attributed to the appellant in his capacity as a Minister, even if assumed to be correct, although the same are

disputed, would not come within the ambit of the allegation of indulgence in corrupt practice. It was further averred that the sanction, approval or

grant of pension by a Minister does not amount to bribery under Clause (1) of Section 123 of the Act as it is not a gift, offer or promise of any

gratification which is sine qua non for attracting the said provision. It was still further submitted that the act of approval of appointment of some

women as anganwadi workers by a Minister is also not covered by the provision of Section 123 of the Act as there is no evidence on record,

either oral or documentary, that the appellant appointed any anganwadi workers. The only material relied upon by the respondent in this regard is

Exhibit PW-1/46 to PW-1/70 which are applications for appointment of anganwadi workers. In any event, all these 25 applications except 6 of

them (Ext. PW-1/52,58,62,66,68 and 69) are undated. Even the 6 applications which bears date are from 22.2.2001 (Ext. PW1/62) to

24.12.2001 (Ext.PW1/69), i.e. prior to the appellant becoming a candidate in the election. In addition, only 2 of 25 applications (Ext. PW-1/50

and 70) bear endorsement by the appellant and both of them are undated. There is also no whisper in paragraphs 17 to 21 that the appellant

distributed any amount in cash by way of pension.

21. While challenging the finding recorded on corrupt practice, it was further elaborated that the averments made at paragraph 24, 26 and 30 are

vague and lack in material facts with full particulars as Section 83(1)(a)(b) of the Act mandates that Election petition must contain material facts

and if there are allegations of corrupt practice, it must also contain full particulars. This is the mandatory requirement of law and no election petition

can be entertained without full particulars of material facts. In order to substantiate this contention, it was stated that in paragraph 24, 26 and 30

alleging that the appellant distributed money in cash amongst voters, no particulars about the date, time and place where money was allegedly

distributed, nor the name of the people to whom it was distributed have been mentioned. It was, therefore, contended that the averments are

vague, general and omnibus and hence the averments relating to allegation of corrupt practice made in paragraph 24, 26 and 30 cannot be looked

into and are fit to be ignored. Reliance was placed by the learned Counsel in support of this submission, on the ratio of judgments delivered in the

matter of 300556 , 300108 , 268501 and 285237 . It was still further submitted that material facts as well as material particulars have not been

supplemented by the respondent election petitioner in spite of specific objection taken by the appellant in preliminary objections 1 and 2 and the

respondent having opportunity to supplement and amplify the material facts and particulars not doing it could not have been allowed to adduce

evidence beyond the pleadings as the evidence which is led beyond the pleadings, is liable to be ignored.

22. Objections have also been raised by the returned candidate-appellant herein by placing reliance on Section 83(1)(c) of the Act on the plea that

this provision requires that every petition shall be verified in the manner laid down in the CPC and proviso thereof requires filing of an affidavit in

the prescribed form in support of the allegation of corrupt practice. Order VI Rule 15(2) CPC requires that the persons verifying shall specify, by

reference to numbered paragraphs of the pleading, what he verifies of his own knowledge and what he verifies upon information and believed to be

true. Rule 94A of the Conduct of Election Rules, 1961 provides that the affidavit in terms of proviso to Section 83(1) shall be in Form 25. Form

25 requires the Election petition to separately state which allegations of the corrupt practice are true to his knowledge and which allegations are

true to his information. On these averment, it was submitted that the respondent in the present case has stated in the verification of the Election

petition, that the contents of paragraph 17, 18, 20, 21, 24 and 30 are true to his knowledge as well as information and contents of paragraph 19

and 26 are true and correct being reproduction/reference to the provisions from the Representation of People Act/Constitution of

India/Registration of Electors Rules, 1960. It was, therefore, submitted that such a verification is no verification in the eye of law as the same facts

cannot be both true to knowledge and also true to information. It was further stated that paragraph 19 has not been verified at all as the said

paragraph does not contain any reproduction/reference of any provision of law; whereas this paragraph contain specific averment regarding release

of pension by the appellant to ineligible persons.

23. In substance, it was contended that the issue of defective verification and affidavit in the written statement in paragraph 4 and 5 are specific

issues which were framed by the High Court being issue No. 3 and 4 as preliminary issues. Yet, the High Court proceeded to record evidence

without deciding the aforesaid preliminary issues and recorded finding on merits. It was, therefore, submitted that merely because the High Court

has considered the case on merits, the same is no ground to ignore defective pleading, verification and affidavit in the Election petition so as to

consider the evidence on merits. In support of this submission, reliance was placed by learned Counsel for the appellant on the ratio of the

decisions delivered in the matter of 286757 , 268501 , and 297720 .

24. Learned Counsel finally submitted that in the present appeal, this Court is exercising power u/s 116A of the Act, which is an appeal both on

law and fact as mentioned in the aforesaid section itself. Hence, the contention of the respondent that this Court should be slow in interfering with

the finding of fact arrived at by the High Court is untenable. This Court, as the first appellate court, is entitled to re-assess and re-appreciate the

entire pleading and evidence on its own and come to an independent conclusion. In any event, the impugned judgment of the High Court suffers

from inherent legal infirmities and recorded perverse findings and hence the judgment is liable to be set aside and the appeal is fit to be allowed.

Learned Counsel therefore invited the attention of this Court to the evidence of PWs 1, 2, 4, 5, 6 as also 9, 10, 11 and 12 relied upon heavily by

the Respondent and commented extensively on the value of the testimony of oral evidence as well as documentary evidence.

25. Countering the submissions advanced on behalf of the appellant, learned Counsel for the respondent Ms. Kamini Jaiswal submitted that on a

bare perusal of the Election petition, it is apparent that the verification of the Election petition was proper and the same was done on the proper

format and in compliance of the settled law on that issue. It specifically provided the paras which were based on the knowledge and the paras

which were based on the information gathered from the various sources. The verification also provides the exact source of the information which

was mentioned in the appeal paper book. It was stated that the election petition is in the appropriate format in form 25 as per the Rule 94 A of the

Conduct of Rules, 1961. The format required the affidavit to state distinctly as to which are the paragraphs of the Petition based on the knowledge

and which are the paragraphs based on the information and the same has been done in the manner as required in the appeal paper book. It was,

therefore, urged that the Petition should be read in its entirety and not in isolation which disclosed that the petitioner immediately before the dates of

25.01.2002 and 11.02.2002 was the Cabinet Minister holding the charge of Social Security and Development Department and had exercised his

influence over the officials to get amounts released to the residents of his Constituency in the name of the pension for the old aged, handicaps etc.

The pension was not only released to the eligible pensioners but the ineligible persons also who received money in the name of pension. The

Petitioner although had ceased to be a Minister and may not have had the official authority to approve the grant of pension, he had enough clout as

he held the charge as a Minister for all these years and hence with a view to allure the voters, he exercised his influence by recommending the

applications of the residents of his Constituency, during the period immediately before the election which resulted in payment of money to as many

as 27856 persons in the Sherpur Constituency. PW-1 Smt. Paramjit Kaur- Child Development Officer, Dhuri admitted that the petitioner during

the period of January and February 2002, had signed on the applications, approving them and this fact has not been contested in cross-

examination. Learned Counsel asserted that PW-9, PW-10, PW-11 had stated categorically that the public meetings were called and forms were

filled and the amount of Rs. 600 to 1200 were paid to various people in the name of pension, during a public meeting. It was therefore submitted

that the grounds contended are not such that this Hon''ble Court in the exercise of its appellate jurisdiction would set aside a well reasoned order of

the High Court. The said witnesses are truthful and would not come to make a false statement. The witnesses are material and truthful which would

be evident from the evidence of PW-9, PW-10, PW-11 and the learned Counsel also critically analysed the evidence of these witnesses in support

of the contention that these witnesses who supported the plea of the respondent in regard to her allegation of corrupt practice, are reliable

witnesses.

26. Learned Counsel submitted that PW-9 Ram Singh who was a Tailor Master deposed that in the gathering held on 13.2.2002 and 11.2.2002,

Rs. 600 or Rs. 800 were paid and Shri Kanjla also gave Rs. 1200 to some of them. In his cross-examination, he has further accepted that the

amount of Rs. 1200 was given as pension but he did not ask anyone in his family to accept Rs. 1200 for casting votes. He has further also

deposed that it is wrong to suggest that pension was only for the old age pension but it was also for the handicapped persons like him. This witness

further has stated in his cross-examination that after the election was held, he told Bibi Harchand Kaur that he would be prepared to appear as a

witness that the votes were cast in consideration of money. He accepted that he was a frequent visitor to the House of Bibi Harchand Kaur whom

he knew since long. She also knew all his family members for the last 5/6 years. He further accepted the fact that he alongwith Bibi Harchand Kaur

had come in the car for deposition and the whole expenses of travel as well as eatables had been born by her. He also denied suggestion that being

an associate with the party of Bibi Harchand Karu and being related to her community, he was making a false statement.

27. Learned Counsel for the respondent further placed reliance on PW-10 Jaspal Singh son of Sarwan Singh who deposed that Shri Gobind Singh

Kanjla alongwith a group of people with him came for the purposes of filling up pension forms. The pension forms were filled up on 12.2.2002,

although he had been coming to his village earlier. The work of filing up the forms for pension was executed opposite to State Bank of India,

Sandhaur Branch at about 6.30 to 7.00 p.m. The Minister was calling the ladies and made the entries in the pension books from Rs. 200/- to Rs.

600/-. This witness stated that payment used to be made in cash and he claimed to identify this signatures of Shri Gobind Singh Kanjla. The

signatures of Exs. PW1/1 and PW1/3 in green ink were that of Shri Gobind Singh Kanjla and signature on other documents also were of Shri

Gobind Singh Kanjla.

28. This witness stated that he was a Sarpanch and had been performing the duties of attesting applications for fee concession and admission

forms. He also accepted that the old age pension forms were attested by the Sarpanch, he also had been attesting the old age forms. This witness

deposed that Shri Gobind Singh Kanjla had directed him to attest certain forms and he denied that he was attesting forms for money consideration.

He deposed that Gobind Singh Kanjla had been forcing him to attest those forms. Although, he was not a Minister but still he was acting like a

Minister. But he did not report this matter to any quarter viz. the Police, D.G., S.D.M. or anywhere else with regard to forcible signature on

pension forms at the instance of Shri Gobind Singh Kanjla but he reported the matter to Harchand Kaur-the election petitioner. The report could

not be lodged as he was physically beating the reporters. Nobody was coming forward to report the matter against Shri Gobind Singh Kanjla. He

also admitted that he did not report the matter with regard to payment of certain amount of Rs. 200/- to Rs. 600/- to any quarter as it is a usual

phenomena.

29. Reliance was also placed by the Respondent on the evidence of PW-11, Davinder Singh who deposed that Mr. Gobind Singh Kanjla the

appellant/returned candidate had visited his village before the election. Firstly, he came on 7.1.2002 and second time on 10.2.2002 to attend the

Bhog of Akhand Path Sahib. The Bhog Ceremony was kept by one Gurmail Singh, Zimindar. When he came on 7.1.2002, he had opened the

account of various persons and distributed the copies concerning pensions like old age pension and handicap pension. On 10.2.2002, when he

came for the second time, an announcement was made on the loudspeaker inviting the villagers to come over and collect the pension and in the

form of pension Rs. 500 each was given to various persons. He denied having given back this amount but he deposed that Shri Kanjhla was

exhorting the voters to cast their votes in his favour and the pension would be doubled from Rs. 500 to Rs. 1500. He denied the suggestion that

being a Congressman, he was deposing falsely in support of the allegation that the amount of pension was distributed and no passbooks were

prepared.

30. The counsel for the Respondent submitted that all material facts and material particulars were stated in the petition and what constitute material

facts and the material particulars depend on the facts of each case and no general rules can be laid down.

Learned Counsel placing reliance in this regard on the decision reported in 268967 submitted that if there are more than one allegations and the

material facts are sufficient with regards to one of such allegations, the petition is maintainable and cannot be thrown out. Learned Counsel also

placed reliance on the case of 270799 in support of his submission. It was, therefore, contended that the findings arrived at by the High Court are

fit to be sustained and the appeal was fit to be dismissed.

31. In order to test the relative strength and weaknesses of the plea of the contesting parties, while considering an election appeal which is directed

against a judgment and order by which the election of a returned candidate has been set aside on the allegation of corrupt practice, it would be

worthwhile to recollect at this stage that although the High Court has the jurisdiction and competence to declare the election of a returned

candidate to be void on the allegation of corrupt practice, it is well settled by now in view of the ratio laid down in a catena of decisions of the

Supreme Court that the mandate of the people in a democracy as expressed by the result of the election must prevail and be respected by the

Courts and, therefore, heavy onus lies on the election petitioner seeking the setting aside of the election of a successful candidate and therefore he

has to make out a clear case for such relief both in the pleading and at the trial. The electoral process in a democracy undoubtedly is too

sacrosanct to be permitted or allowed to be polluted by corrupt practice and if the Court arrives at a finding of commission of corrupt practice by

a returned candidate or his election agent or by any other person with the consent of a returned candidate or his election agent, then the election of

the returned candidate shall be declared to be void since the underlying principle is that the corrupt practice having been committed, the result of

the election does not echo the direct voice of the people. But, at the same time, it cannot be overlooked as was observed by the Supreme Court in

the case of 289583 that the consequences flowing from the proof of corrupt practice at the election are serious and hence the onus of establishing

commission of corrupt practice lies heavily on the person who alleges the same. The onus of proof is not discharged merely on preponderance of

probabilities but the standard of proof required is akin to that of proving a criminal or a quasi criminal charge. Hence, clear cut evidence, wholly

credible and reliable is needed to prove beyond doubt the charge of corrupt practice.

32. The aforesaid principle laid down by the Supreme Court in the aforesaid authority has adequately been taken care of in the election petitions

which are filed alleging corrupt practice wherein utmost caution and care are applied while dealing with the allegation of indulgence in corrupt

practices at the instance of the returned candidate, but in the process, misappreciation of evidence and hence error of judgment in coming to a

definite conclusion cannot be ruled out due to which appeals are preferred against the judgment and order of the High Court delivered in election

petitions. The instant appeal also is one such appeal where the election of the returned candidate has been set aside by the High Court vide

impugned judgment on the findings of corrupt practice which is under challenge and hence we have carefully scrutinized the evidence led by the

contesting parties and critically considered the submissions of the counsel for the respective parties in the light of the settled law laid down, before

the election of a returned candidate is allowed to be quashed and set aside.

33. The counsel for the appellant although has primarily challenged the judgment and order of the High Court in order to assail the findings

recorded on the charge of corrupt practice, the counsel had also submitted that the respondent had filed the Election petition without disclosing

''material facts'' with ''full particulars'' which is envisaged u/s 83(1)(a)(b) of the Act which mandates that the Election petition must contain material

facts and it must also contain full particulars. It was contended that this is the mandatory requirement of law and no Election petition can be

entertained without material facts with full particulars in absence of which it is not fit to be entertained.

34. In our view, the submission of the counsel for the appellant to the effect that the petition lacked material facts with material particulars, is clearly

in the nature of preliminary objection affecting maintainability of the Election petition and hence we consider it appropriate to deal with this

contention, before we proceed further to examine the correctness of the pleas raised in regard to challenge to the allegations of corrupt practice.

35. On the plea of lack of ''material facts'' with ''material particulars'', It was submitted on behalf of the appellant that in paragraphs 24, 26 and 30

of the Election petition, it has merely been stated that the appellant distributed money in cash to the voters but no specific particulars about the

date, time and place where money was allegedly distributed, nor the name of the persons to whom it was distributed have been mentioned. The

counsel, therefore, had contended that the averments of the election petitioner are vague, general and omnibus and thus cannot be looked into and

were fit to be ignored. Developing his arguments further on this plea, it was submitted that material facts as well as material particulars had not been

supplemented by the respondent - election petitioner in spite of specific objection taken by the appellant in his preliminary objections bearing

numbers 1 and 2. The respondent although had opportunity to supplement and amplify the material facts and particulars, he failed to do the same

and hence the averments of the respondent-election petitioner should not have been allowed to lead evidence beyond pleadings as the evidence

which is led beyond pleadings, is liable to be ignored. To reinforce this submission, the counsel for the appellant relied upon several

pronouncements of this Court which include the matter of 300556 , 300108 , 268501 and 285237 .

36. The counsel for the respondent Ms. Jaiswal however countered the aforesaid submission and submitted that the plea of the appellant regarding

the lack of "material particulars" and "material facts" is not sustainable and on this count, it was submitted that the election petition should be read

in its entirety and not in isolation since the petition in question in fact categorically stated that the appellant candidate immediately before the date of

filing nomination on 25.1.2002 and prior to resigning from the portfolio of Minister holding the charge of Social Security Department had exercised

his influence over the officials to get amounts released in his constituency in the name of pension for the old age widow and handicapped people

and the averments to that effect have specifically been pointed out in para 17 of the Election petition. In the alternative, the counsel for the

respondent submitted that even if the Election petition lacked extensive details regarding "material particulars", the same was not enough to reject a

petition and in support of this submission, the counsel for the respondent on her part also relied upon several authorities of the Supreme Court

which are 277174 , Mohan Rawale v. Damodar Tatyaba @ Dadasaheb 1994 (2) SCC 393, 268967 , Regu Mahesh v. Rajendra Pratap Bhanj

Dev AIR 2004 SC 42 and 43 and Ram Sukh v. Dinesh Aggarwal 2009 (10) SCC 548 and 549.

37. Dealing with this preliminary question as to whether the election petition filed by the respondent was fit to be dismissed on the ground of the

lack of "material facts" with "material particulars", we are fully conscious of the well-settled legal position to the effect that if the election petition

fails to disclose any cause of action and there is non-compliance of the mandatory requirements of Section 83 of the Representation of People Act,

1951 which requires that the election petition should contain material facts on which the petitioner relies, it should set forth full particulars of any

corrupt practice including full statement of the names of the parties which is alleged to have been committed alongwith the specific date and place

of the commission of such corrupt practice. But it would also be equally appropriate to bear in mind that although the expression "material facts"

has neither been defined in the Act of 1951 nor in the Code of Civil Procedure, it has been understood by the courts in general terms to mean the

entire bundle of facts which would constitute a complete cause of action. Their Lordships of the Supreme Court in 2009 (10) SCC 548 have

observed thus:

"material facts" are facts upon which the plaintiff"s cause of action or the defendant"s defence depends. Broadly speaking, all primary or basic

facts which are necessary either to prove the cause of action by the plaintiff or defence by the defendant are "material facts". Material facts are

facts which, if established, would give the petitioner the relief prayed for. But again what could be said to be material facts would depend upon the

facts of each case and no rule of universal application can be laid down.

This authority has also taken note of the ratio of the decision in the case of Samant N. Balkrishna v. George Fernandez wherein the three Judge

Bench headed by the then Chief Justice M. Hidayatullah laid down five criteria which are mandatory u/s 83 of the Act for determination as to

whether the Election petition discloses that it does not lack in material facts and particulars. It was laid down therein that it is mandatory to first of

all record a concise statement of material facts and then the fullest possible particular. Any omission of even a single material fact leads to an

incomplete cause of action and statement of claim would be treated as bad. The function of particulars is to present in full, a picture of the cause of

action and to make the opposite party understand the case he will have to meet. The learned Judges further held therein that the "material facts"

and "material particulars" are distinct matters and while the material facts will mention statements of fact, the particulars will set out the names of

persons with date, time and place while stating the material facts as it will not be sufficient merely to quote the words of the section since the

efficacy of the material facts in that event would be lost.

38. While dealing with the question of material facts and material particulars, we also considered it appropriate to take into account the ratio of the

decision delivered in the case of 268967 wherein the three Judge Bench of this Court had been pleased to consider the question as to what would

constitute material facts and material particulars and also discussed its concept and the distinction between the two. In this authority too, it was

emphasized and held that what particulars would amount to "material facts" would depend upon the facts of each case and no rule of universal

application can be laid down. It was also held that material particulars, on the other hand, are details in support of material facts and the expression

material facts although have not been defined in the Act nor in Code of Civil Procedure, it will have to be inferred that material facts are those facts

upon which the party relies for his claim or defence. In other words, material facts are facts upon which the plaintiff"s cause of action or the

defendant"s defence depend. But what particulars ultimately will be said to be "material facts" would depend upon the facts of each case and no

rule of universal application can be laid down. Particulars, on the other hand, are details in support of material facts pleaded by the party. This

amplify, refine and embellish material facts by giving finishing touch to the basic contours of a picture already drawn so as to make it full, more clear

and more informative. Thus, material particulars ensure conduct of fair trial which would not take the opposite party by surprise.

39. The ratio that can be deduced from the aforesaid three authorities of the Supreme Court has further been reiterated in the case of Samant N.

Balkrishna v. George Fernandez and latter on in 268967 as also in Ram Sukh (supra) wherein it has been once again held that although, it is the

legal requirement u/s 83 of the Act of 1951 to clearly set out material facts and material particulars in the election petition, ultimately it has been

unequivocally held that there can be no rule of universal application which can be laid down as to what would constitute ''material facts'' and

''material particulars'' and ultimately it is the facts of each case which will be relevant for determination as to whether the election petition was fit to

be rejected on the plea of lack of material facts and material particulars or it was fit to be entertained if the same disclosed a cause of action for

consideration by the Court.

40. We have, therefore, carefully considered the correctness of the assertion of the counsel for the appellant whether the election petition in the

case at hand was fit to be rejected for want of material facts and material particulars and we have noticed that the respondent has categorically

stated the date, time and place of occurrence of the alleged corrupt practice at the instance of the appellant and has also given out the names of the

witnesses who were to support the election petition filed by the respondent. But what exactly would be the worth of the evidence of witnesses

relied upon by the counsel was a matter to be considered at the appropriate stage during trial, but to contend that the election petition lacked in

material facts and material particulars due to which the election petition filed by the respondent was fit to be rejected on the ground of lack of

material facts and material particulars, would not be legally correct and justified. In fact, we have noticed that the High Court in the impugned

judgment and order has not even addressed this issue as to whether the petition was fit to be rejected on this ground or not, but the counsel for the

appellant seems to have acquiesced with the same. However, since the counsel for the parties have addressed this Court on this issue which is

clearly in the nature of a preliminary objection, we considered it just & appropriate to deal with this issue but for the reasons stated hereinbefore,

we do not accept the contention of the counsel for the appellant that the Election petition was fit to be rejected for lack of material facts and

material particulars.

41. The next question on which the entire edifice of the election petition rests, which has been the core issue on which the counsel for the parties

have addressed this Court, is the question as to whether the appellant -returned candidate had indulged in corrupt practice or not while contesting

in the Assembly Election of Sherpur Constituency. As already stated hereinbefore, learned Counsel had, first of all, submitted that the corrupt

practice of bribery defined in Section 123(1) will be attracted only if it had been committed by the candidate after filing his nomination paper. It

was submitted that the appellant had resigned as Social Security Minister on January, 12 2002 and filed his nomination subsequently on 23rd

January, 2002. Hence, there could be no question of misuse of power by him after he resigned from the post of Social Security Minister as also the

party and subsequently became a candidate for the election. Consequently, the allegation of corrupt practice of bribery is not made out as the

alleged action relates to the period when he was no longer holding the charge of Social Security Minister. The counsel further elaborated on this

aspect and submitted that the period of misuse of power alleged by the respondent herein pertain to the period between January 23, 2002 to 9th,

10th and 11th February, 2002 during which the petitioner was admittedly not a Minister. Hence, the Petition has a fatal contradiction between the

allegation and the time period to which the allegation pertained as the petitioner had admittedly resigned as a Minister on January 12, 2002. The

counsel, therefore, submitted that the alleged corrupt practice pertains to the period when the appellant herein was the Minister which position he

relinquished before becoming a candidate in the election and hence, there could be no question of distribution of pension by him during the election

when he ceased to be a Minister. It was submitted that in the present case none of the witnesses can be relied upon to come to a conclusion that

the appellant had committed corrupt practice as PW-9, Ram Singh was summoned to prove that the appellant had delivered speeches at village

Ladda promoting feeling of enmity on the ground of religion, caste and community and further to influence people not to vote for the party

belonging to which the respondent belonged. It was submitted that this witness did not depose for the purpose for which he was called to give

evidence which was the issue of illegal distribution of pension by the appellant to his voters.

42. The counsel for the respondent, on the other hand, relied upon the evidence of PWs - 9, 10 and 11 referred to hereinbefore and submitted that

these witnesses have stated categorically that the public meetings were called and forms were filled and the amount of Rs. 600 to Rs. 1200 were

paid to various people in the name of pension during a public meeting. The counsel for the respondent, therefore, urged that these three witnesses

ought to be relied upon in support of the plea that the appellant had misused his official position and got the pension distributed which was clearly

with a motive to influence the voters in his favour. The counsel has taken us to the evidence of PW-9, Ram Singh and cross-examination of PW-

10, Jaspal Singh who was a Sarpanch of village Ibrahimpur from 1992 to 2003 and had failed in the Assembly Election of 2002 which was held

on 13.2.2002, as also in his cross-examination. The counsel further has taken us through the evidence of PW-11, Davinder Singh who was a voter

in village Gathala which falls in Sherpur Constituency.

43. On a careful analysis of the case and counter case of the returned candidate that is the appellant herein and the defeated candidate -

respondent herein, it is patently clear that the allegation of corrupt practice in regard to distribution of pension can be divided into two parts - the

first part relates to the distribution of pension which pertains to the period prior to 12.1.2002 and the second part pertains to three dates which is

10/11/12.2.2002 when the appellant was a candidate for the election but was no longer a Minister so as to distribute old age widow/handicapped

persons. In factual aspects of the matter this clearly indicate that even if the plea of the respondent - election petitioner with regard to the allegation

of distribution of pension amounting to corrupt practice which pertained prior to the period of January 12, 2002 is taken into consideration, the

same cannot by any legal yardstick or even ordinary prudence would constitute indulgence in corrupt practice by the appellant as he was duly

holding the portfolio of Social Security as Minister who had the legal authority to approve distribution of pension as part of his official duty. It is not

difficult to infer that the distribution of pension to the eligible persons in the constituency or even outside the constituency was part of the discharge

of official duty as Minister and it is nobody''s case that this distribution did not lie within the legal domain of the Minister who could order

distribution of pension to the eligible persons in the area who were either old, handicapped or widow. Therefore, distribution of pension to old

age/widow/handicapped persons which was ordered or approved ensuring its distribution could not possibly be inferred as an action which could

amount to indulgence in corrupt practice. We, therefore, find sufficient reason and force in the plea of the counsel for the appellant to the effect that

the corrupt practice of bribery as defined in Section 123(1) would be attracted only if such act had been committed by a candidate after filing of

his nomination paper and the ratio of the judgment relied upon by the counsel for the appellant in the case clearly adds weight to his submission.

44. We, thus, do not agree with the High Court that although the appellant had resigned as Social Security Minister on January 12, 2002, the same

would not have any bearing on his defence that he had not indulged in corrupt practice, at least in so far as distribution of pension from to 12th

January, 2002 is concerned and the same would clearly be in favour of the appellant as any distribution of pension that was made prior to the filing

his nomination on 23rd January, 2002 whether in the capacity as a Minister or otherwise, would clearly not amount to indulgence in corrupt

practice. In the decision relied upon by the counsel for the appellant delivered in the case of 294794 also, it was held that the expression

''candidate'' in Section 79(b) of the Act completely excludes the acts by a candidate up to the date he is nominated as a candidate. Therefore, the

allegations relating to the period anterior to the commencement of the candidature cannot be relied upon to establish corrupt practice proprio

vigore.

45. Reliance was also placed by the counsel in the matter reported in 274637 wherein it was contended that any act attributed to the appellant in

his capacity as a Minister, even if assumed to be correct although the same are disputed, would not come within the ambit of corrupt practice as

sanction, approval or grant of pension by a Minister during his tenure as a Minister cannot amount to bribery under Clause (1) of Section 123 of

the Act as it is not a gift, offer or promise of any gratification which is a sine qua non for attracting the said provision. Sanction and approval for

grant of pension as a Social Security Minister clearly would be within the ambit of the authority of the Minister to get it distributed as not

distributing pension while discharging the functions of a Minister would on the contrary amount to non-performance on the part of the Minister in

the State which could also include his constituency and to hold that even though the Minister had the authority to sanction and approve old

age/widow/handicapped pension the same was done in order to lure the persons of his constituency so as to vote for him in any future election

which he might contest and the same would amount to offer or promise of any gratification, would be wholly unrealistic and a far fetched allegation.

In fact it has not even been contended and rightly so, that the appellant herein who was then a Minister, had no authority to sanction and approve

the distribution of pension although he was a Minister. What has been contended, is that the same had been done with an oblique motive to

influence the voters of his constituency so that they would vote for him in the ensuing election. This allegation would be difficult to accept and hold it

as proved as the candidature of the appellant had not even been announced in the year 2001 although it could be perceived as a mere possibility

that he might contest in future election. In any case, it was difficult to anticipate from which constituency he would be contesting and whether he

would be contesting under the banner of any party or would be contesting as an independent candidate. Hence, it is not difficult to hold that the

allegation of corrupt practice on the ground that he had distributed pension in his constituency although he was holding the portfolio of a Social

Security Minister upto 12 th January, 2002 is illogical, bereft of reasoning and hence illegal.

46. As already recorded hereinbefore, this Court in a series of decisions out of which two have been referred to hereinbefore, have taken the view

that any act performed by a candidate prior to his becoming a candidate would not amount to indulgence in corrupt practice. However, we do not

wish to be understood so as to endorse that even if any illegal act has been done by a candidate prior to his filing of nomination which is not within

the legal discharge of duty, would not amount to corrupt practice so as to protect himself from the charge of corrupt practice. But where the

appellant in discharge of his official duty distributed, sanctioned, approved or permitted the grant of old age/widow/handicapped pension prior to

the filing of his nomination which was 23rd January, 2002 in the case at hand, it cannot be construed as indulgence in corrupt practice and hence,

we find sufficient force in the contention of the counsel for the appellant on this count to the effect that he cannot be held to have committed corrupt

practice if he had distributed pension amount even in his constituency upto 12th January, 2002 which was clearly within his legal and official

domain as he was not a candidate in the election.

47. However, the respondent - election petitioner has also alleged that even after filing his nomination on 23rd January, 2002 and immediately

before the date of polling on 13.2.2002, the appellant had gone to his constituency and in brazen defiance of the Code of Conduct of Election,

distributed pension through his agent on 10/11/12.2.2002 and this part of the allegation which may be treated as second part of the allegation

obviously would have a serious bearing on the allegation of corrupt practice against the appellant in case it is held to be proved, since the

distribution of money under the garb of pension immediately prior to the date of polling, will have to be treated clearly and unambiguously as

corrupt practice within the meaning of Section 123 of the Act of 1951.

But we have to bear in mind that this serious allegation will have to pass through the litmus test in the light of the evidence of the witnesses led by

the respondent in support of his allegation so as to arrive at a conclusive finding whether the witnesses are fit to be relied upon in order to uphold

the allegation of corrupt practice.

48. At this stage, it would be worthwhile to recollect the well-settled legal position that a charge of corrupt practice is in the nature of a quasi-

criminal charge, as its consequence is not only to render the election of the returned candidate void but in some cases (as in the instant one) might

incur disqualification from contesting even the next election. The evidence led in support of the corrupt practice must therefore, not only be cogent

and definite but if the Election petition has to succeed, it must establish definitely and to the satisfaction of the court, the charge of corrupt practice

which the defeated candidate levelled against the returned candidate. The onus lies heavily on the election petitioner to establish the charge of

corrupt practice and in case of doubt the benefit goes to the returned candidate. It is well acknowledged that in the case of an election petition,

based on allegations of commission of corrupt practice, the standard proof generally speaking is that of a criminal trial, which requires strict proof

of the charge beyond reasonable doubt and the burden of proof is on the candidate who alleges corrupt practice and that burden does not shift.

This was the view expressed by their Lordships in the case of Gajanan Krishnaji Bapat v. Dattaji Raghobaji Meghe reported in 1995 (5) SCC

360 wherein their Lordships had placed reliance also on the case of Nihal Singhs case, 1970(3) SCC 239 , 261119 , 286039 and 291855

wherein the same view had been taken. However, the Courts have been cautioned to hold that even though the 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 bringforth

the evidence on the record to revert the case of the petitioner and particularly prove such facts which are within the special knowledge of the

elected candidate.

49. It was further held in the case of 286308 that the charges of corrupt practice are to be equated with criminal charges and proof thereof would

not be preponderance of probabilities, as in civil action, but proof beyond reasonable doubt and if after balancing the evidence adduced, there still

remains little doubt in proving the charge, its benefit must go to the returned candidate. Various tests have been laid down by the High Courts and

by the Supreme Court to determine the burden of proof required to establish a corrupt practice. The most well accepted test however is that the

charge must be established fully to the satisfaction of the Court. But while insisting upon the standard of strict proof beyond a 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 as was observed in the case of 277150 wherein it was held that such approach would defeat and frustrate the very laudable and

sacrosanct object of the Act for maintaining purity of the electoral process.

50. Bearing the aforesaid principle and the aforesaid legal proposition of law in mind, we have examined the evidence led by the election

petitioner/the respondent herein as to whether the allegation of distribution of pension on 10/11/12.2.2002 which was immediately prior to the date

of polling has been held to be proved or not. As already noted, the respondent in this context has relied upon PW-9, PW-10 and PW-11 which

has been extensively related hereinbefore.

51. However, when we scrutinized the evidence of PW-9, we have noticed that PW-9 has not stated as to what are the entries that are made and

who are the persons for whom the entries have been made. This witness in his cross-examination has merely stated that he disclosed to the

respondent about payment of Rs. 1200 after about a month of the incident and he was paid amount to Rs. 1200 but there is no evidence on record

that PW-9 is a pension holder or is entitled to grant of pension. No document has been produced to show that he is entitled to pension as per

Government policy or any pension was ever sanctioned to him. Thus, there is no corroboration to the evidence of PW-9 to allege payment of Rs.

1200. PW-9 has also stated in his cross- examination that he came to the High Court to give evidence with the respondent in her car and the

whole expenses of travel as well as eatables were borne by her. It, therefore, cannot be ruled out that PW-9 is a highly interested witness

belonging to the village of election petitioner who had been brought before the Court in the car of the election petitioner.

52. The evidence by PW-10 Jaspal Singh is also not free from blemish. When the first list of witness filed by the respondent Jaspal Singh was

summoned to prove that the appellant distributed cash at various places for getting votes, the name of Jaspal Singh had been deleted in the revised

list of witnesses and in any event, there were no details as to the date and place of alleged distribution of cash regarding which this witness was to

depose. On perusal of the deposition of this witness, it is evident that he has not stated the name of any person to whom cash was allegedly paid as

was claimed by him. No pension book entry made by the appellant had been produced on record and the pension book which was produced on

record bearing Exhibit PW-4/1, PW-4/84 does not have any entry made by the appellant. This witness has also not stated that the appellant has

made any entry in the aforesaid book produced on record and no other pension book except aforesaid are on record. The witness also appears to

be highly interested as he admitted that he belongs to the party to which the respondent belongs.

53. PW-11 had stated in his evidence that the appellant came to his village on 7.1.2002 and opened accounts of various persons and distributed

copies of passbook concerning pensions. It was submitted that opening of accounts and or distribution of paper is not a corrupt practice even if

such evidence is believed it pertains to the period when the appellant was functioning as Minister and hence was legally authorized to approve of

the sanction. PW-11 has further deposed that on 10.2.2002 appellant came to his village for the second time and invited the villagers to come over

and collect the pension in the form of Rs. 500 each. But the names of persons by whom the alleged amount of Rs. 500 was given have not been

mentioned. This witness has not stated that any amount was given to him. It was, therefore, submitted that no reliance ought to have been placed

on this vague statement by this witness that cash was given to person in the absence of identity of those persons. This witness also appears to be

highly interested witness as he has admitted that his wife was given ticket for Panchayat Samiti election by the party to which the respondent

belongs. It was, therefore, submitted by the counsel for the appellant that reliance ought not to have been placed on the evidence of PW-9, PW-

10 and PW-11 for recording of finding of corrupt practice of testimony of these witnesses. It was also pointed out that PW-12 the respondent

herself has not given any evidence and her evidence is only hearsay. Therefore, her evidence is of no worth or value so as to prove the charge of

corrupt practice.

54. In so far as the documentary evidence relied upon by the High Court is concerned, it was submitted that Exhibit PW 1/1 to PW 1/45 are the

applications for grant of pensions. It was stated that these applications pertain to the period of 28.2.2001 to 4.12.2001 when the appellant was a

Minister and the appellant became a candidate for the election on 23.1.2002 when he filed his nomination paper and thus any action taken by him

prior to this date cannot amount to corrupt practice within the meaning of Section 123 of the Act. Furthermore, these applications also bear the

endorsements of (a) Village Sarpanch (b) Halka Lambardar, (c) village Patwar, (d) Block Development Project Officer, (e) Clerk in the office of

the Sub Divisional Magistrate, and (f) Sub Divisional Magistrate, who are the sanctioning authorities. It was, therefore, submitted that these exhibits

ought not to have been relied upon to conclude that the appellant had committed corrupt practice.

55. From the aforesaid critical analysis made by the counsel for the contesting parties on the evidentiary value of the witnesses for proving and

disproving the alleged charge of corrupt practice, it is evident that in so far as the alleged distribution of cash on 10/11/12.2.2002 is concerned, the

oral evidence of PW-9, PW-10 and PW-11 alone are on record but the documentary evidence which has been placed by the respondent has

absolutely no connection and link in regard to distribution of pension on 10/11/12.2.2002 and it is not difficult to notice the reason for non-

production of these documents as admittedly, the appellant had ceased to be a Minister on that date. Hence, if any endorsement of the distribution

of pension even if it were made for 10/11/12.2.2002, the same cannot be attributed to the appellant in order to prove the charge of corrupt

practice alleging distribution of cash to the voters. Thus, the allegation of the distribution of cash on 10/11/12.2.2002 rests only on the oral

testimony of PW-9, PW-10 and PW-11 as even the defeated candidate Smt. Harchand Kaur PW-12 has not been able to state anything which

would prove the charge of distribution of cash on these three dates prior to the date of election.

56. But having analyzed the oral evidence relied upon by the High Court, we have noticed that the High Court has placed heavy reliance on the

evidence of PWs-9, 10 and 11 but has failed to take into account the evidence of PW-1-Smt. Paramjit Kaur, Child Development Project Officer,

Dhuri, PW-2-Shri Devinder Kumar, Superintendent Social Security in the office of District Programme Office, Sangrur, PW-4 - N.K. Kapur ,

Assistant Manager, State Bank of Patiala, Ghanauri Kalan, PW-5 - Shri Satish Kapur son of Shri Sohan Lal Kapu, District Social Security

Officer, Sangrur and PW-6 -Jagmail Singh, C.D.P.O. Block Malrerkotla-II and PW-7 - Pritpal Singh, C.P.D.O. Block Sherpur. These witnesses

have deposed which unambiguously are in the nature of rebuttal of the evidence of PW-9, PW-10 and PW-11 who have been relied upon by the

High Court yet the evidence of PW-1, PW-2, PW-4 and PW-6 have been brushed aside although they were competent authorities for distribution

of pension and hence independent witnesses who were more trustworthy in comparison to the four witnesses i.e. PW-9, PW-10 and PW-11 who

are clearly interested witnesses as they themselves have admitted their link to the Respondent Smt. Kaur.

57. On scrutiny of the evidence of PW-1 Smt. Paramjit Kaur who was the Child Development Project Officer, Dhuri and had produced the

record of old age pension of voters of Sherpur Constituency in respect of 12 villages indicate that it pertained to January/February, 2002 and had

been exhibited as PW-1/1 to PW-1/4. This witness has deposed that old age pension is given to the males of 65 years and females of 60 years.

The application in this regard had to be submitted to the Child Development Project Officer for grant of pension which was to be forwarded to the

Sub-Divisional Magistrate who was the sanctioning authority. The pension letters were issued after the sanction was accorded by the Sub-

Divisional Magistrate. The attention of this witness was drawn to the words (Parwan) written in the Punjabi script which in English means approved

and underneath the words ''Parwan'', the signatures were alleged to be of the appellant herein Govind Singh. This signature was alleged to have

appeared in all the applications Exhibits PW-1/1 to PW-1/45 but this PW1-Child Development Project Officer deposed that a Minister is not

directly involved in sanctioning the old age pension and if an applicant is not eligible and does not fulfill the requirement of getting pension, then even

on the asking of the Minister such a person cannot be granted pension. She has further admitted familiarity with the returned candidate as she had

been meeting the appellant as a Minister in the official meetings. Thus, this witness can clearly be treated as an independent witness who has not

supported the case of the respondent in regard to distribution of pension at the hands of the appellant.

58. Similarly PW-2 Shri Devinder Kumar, Superintendent Social Security in the office of District Programme Office, Sangrur has conceded in the

cross-examination that approval letters were in respect of the whole District of Sangrur and not of Sherpur Constituency alone and the orders did

not have the signatures of the returned candidate.

59. PW-4 Shri N.K. Kapur, Assistant Manager, State Bank of Patiala, who was posted at Ghanauri Kalan Branch of the Bank had produced on

record the original ledger and photocopies of samples from the original ledger in respect of 84 persons belonging to village Ghanauri Kalan and

Ghanauri Khurd. These documents were exhibited as Exs. PW-4/1 to PW-4/84. This witness stated that no other amount could be credited in

these accounts except the pension received by the person concerned from the Social Security Department. In his cross-examination, this witness

stated that those accounts were opened on 7.9.2001, 6.8.2001 and on some other dates. But this witness has further deposed that he was not in a

position to state whether any deposit had been made in these accounts in the year 2002 and in one of the accounts no transaction has been

recorded showing any credit. In another account opened on 25.2.2002 he denied the opening of account by him or the procedure for releasing the

pension or personal knowledge about the identity of any of the 84 persons.

60. PW-5 Shri Satish Kapur son of Shri Sohan Lal Kapur, District Social Security Officer, Sangrur stated that pension was released from

November 2001 to March 2002 and the payments have been made from August, 2001 to February, 2002. He had produced copies of

compilation made from originals as well as the original themselves. He showed his inability to explain as to who had sanctioned the pension by

stating that he was not posted at Sangrur. The compilation placed on record had been duly certified by the District Social Welfare Officer,

Sangrur.

61. PW-6 Jagmail Singh, C.D.P.O. Block Malrekotla-II, had produced 92 applications in respect of pension out of which 86 belong to old age

pension, 5 of handicapped and only 1 belonged to widow category. These applications were submitted before July, 2001 which was admitted by

this witness himself. Similar is the position with regard to the pension record pertaining to the year 2001 which had been produced by PW-7

Pritpal Singh, C.P.D.O. Block Sherpur.

62. All the aforesaid witnesses namely PWs 1, 4, 5, 6 and 7 therefore who can clearly be treated as non-partisan witnesses and were competent

to depose as to how the pension applications were sanctioned have not supported the case of the respondent that any illegality had been

committed by the appellant while distributing pension which started from the year 2001 and continued up to March 2002. In spite of this, the High

Court has not given any weightage to the depositions of these witnesses but has chosen to rely only on the evidence of PW-9 Ram Singh, PW-10

Jaspal Singh, PW-11 Devinder Singh and PW-12 Harchand Kaur who can clearly be treated as interested witnesses. The depositions of these

witnesses clearly stand contradicted by the evidence of PW-1-Child Development Project Officer, Dhuri who had deposed and stated the

procedure and the manner in which the application for grant of pension had to be approved. As indicated hereinabove, she has stated that the

application had to be submitted to the Child Development Project Officer for grant of pension and the same was forwarded to the Sub-Divisional

Magistrate who is the sanctioning authority and after sanction was accorded by the Sub-Divisional Magistrate, the pensions are issued. It is difficult

to appreciate as to how the statement of this witness can be treated less trustworthy than PW-10 Jaspal Singh who was the Sarpanch and claims

to have identified the signature of the appellant herein when the competent authority PW-1- Child Development Project Officer could not

recognize the signature of the appellant. PW-1-Child Development Project Officer, Dhuri in comparison to PW-10 was more competent who is a

sarpanch and cannot be treated to be the competent authority to sanction the application for grant of pension who could be relied by the High

Court when the competent authority Child Development Project Officer has not supported the evidence of PW-10. The sarpanch PW-10 Jaspal

Singh as per his own version was a supporter of the party to which the respondent belong and hence the credibility of this witness cannot be more

weighty than the credibility of PW-1 -Child Development Project Officer who was competent to approve the application after which it was

forwarded to the Sub-Divisional Magistrate for grant of pension. The value of the evidence of PW-10 definitely, therefore, cannot be treated to be

more weighty and worthy of credence than the evidence of PW-1.

63. PW-11 Devinder Singh although has supported the case of defeated candidate Smt. Kaur in regard to grant of old age and handicapped

pension but he also has conceded that the election petitioner i.e. the defeated candidate Smt. Kaur / respondent herein had helped his wife during

the election and she secured ticket for his wife. Thus this witness has also clearly admitted personal allegiance to the respondent herein and hence

his evidence cannot be treated to be more trustworthy than the evidence of the officers who were PW-1, PW-2, PW-4, PW-5 and PW-6 who

have not supported the case of the respondent and Smt. Kaur herself has not been able to depose anything which could improve her case in any

manner. Thus, while comparing the evidence of PW-9, PW-10, PW-11 and PW-12 relied upon by the respondent Smt. Kaur with the evidence

of PW-1, PW-2, PW-4, PW-5 and PW-6, it is not possible to attach more weight to the witnesses relied upon by the respondent herein as we

cannot overlook the well-settled position that the behaviour, character and demeanor of the witnesses who had been examined at the stage of trial

has to be taken into account and is of prime consideration. In view of this position, the evidence of PW-1, PW-2, PW-4, PW-5 and PW-6 is

clearly more reliable than PW-9, PW-10 and PW-11.

64. In so far as the allegation of appointment of some ladies as Anganwadi workers is concerned, PW-1-Child Development Project Officer,

Dhuri who is Smt. Paramjit Kaur had deposed that applications of various candidates who sought appointment as Anganwadi workers which has

been exhibited as Exs. 1/46 to PW-1/70 were given appointments till 2002 and in her cross-examination she further stated that she was not posted

at Dhuri which covered the Constituency in question when these appointments were made. She further deposed that a Selection Committee on the

basis of the instruction issued in the year 1988 was constituted. The Child Development Project Officer as well as the Senior Medical Officer used

to be the members. The Anganwadi workers were required to be selected from the village or at the most from the adjoining village. No MLA or

Minister was the member of the Selection Committee. She has given details of marks which had been allocated in the interview. The witness was

confronted with the instructions dated 31.5.2000 to show the allocation of marks for various qualifications and the document was taken on record

as Exs. PW-1/71, she has candidly and unequivocally accepted that all applicants were appointed before 11.11.2001 and no one was appointed

thereafter and it may be reiterated herein that even if the Anganwadi workers were appointed in the year 2001, the same cannot clearly be held to

be illegal as the appellant was admittedly a Social Security Minister at the relevant time and therefore any appointment made during this period

cannot be alleged to be indulgence in corrupt practice in order to impress the voters as these appointments were made in the year 2001 much

before the appellant became the candidate in the election. We, therefore, find substance in the plea that the exhibits relied upon by the appellant

alleging illegal appointment of the Anganwadi workers do not strengthen the case of the respondent in any manner. As already stated hereinbefore,

we fail to comprehend as to how the appellant could be held to be instrumental in appointing the applicants as Anganwadi workers when he had

ceased to be a Minister and had already declared his candidature as an independent candidate as he had no legal authority to appoint Anganwadi

worker after he had resigned from the post of Minister on 12.1.2002 and had filed his nomination on 23.1.2002. The counsel for the respondent

also has not laid much emphasis on this plea and the arguments that have been advanced by the counsel for the parties are primarily on the

allegation of corrupt practice regarding distribution of cash as pension amount while he was a Minister and even after he had been declared as a

candidate.

65. Thus, we have noticed serious infirmities, inconsistencies in the evidence of the three witnesses i.e. PW-9, PW-10 and PW-11 relied upon by

the High Court in support of the case of the respondent herein who could not be treated as independent and trustworthy witnesses as against PW-

1, PW-2, PW-4, PW-5 and PW-6 discussed hereinbefore who were the competent authorities/officials to sanction pension applications as also in

regard to grant of appointment to Anganwadi workers in the year 2001 when the appellant was a Social Security Minister and not a candidate in

the election so as to brush aside their evidence and prefer to rely upon the evidence of PW-9, PW-10 and PW-11 which were extremely shaky,

subjective and fragile. Besides this, the High Court has clearly mixed up the alleged charge of corrupt practice which pertains to the period prior to

the filing of nomination of the appellant which was on 25.1.2002 and had been pleased to set aside the election of the appellant not after a careful

and meticulous scrutiny of the evidence but on an overall view that the appellant had indulged in corrupt practice on the evidence primarily of three

witnesses only whose testimony were neither independent nor free from inconsistencies and at the most were general in nature.

66. Thus, on a threadbare scrutiny of the evidence which we have carefully analyzed, it is not difficult to notice that the election of the appellant

could not have been set aside only on the testimony of PW-9, PW-10, PW-11 who had failed to stand the test of scrutiny to the extent that even

though the appellant was alleged to have indulged in corrupt practice, the same for the reasons assigned hereinbefore do not lead to the irresistible

conclusion that the appellant had indulged in corrupt practice merely on account of the fact that he had distributed old age pension or handicapped

and widow pension to the voters of his constituency although he was the Minister holding the portfolio of Social Security Minister within whose

domain lay the approval and distribution of pension which was in clear discharge of official duty. The alleged case that this was done even after he

ceased to be a Minister and after he had filed his nomination for contesting election, could not be proved with unimpeachable evidence since there

was no reason for the appellant to ensure compliance of formality of filling pension forms for distribution of cash as he had ceased to be a Minister

on those dates. As the specific case of the respondent is that pension was distributed to influence the voters, then any distribution made in the

capacity as a Minister could not be legally faulted as long as the same was distributed during his tenure as Minister and after the appellant had

ceased to be a Minister, he was not legally entitled to distribute the pension and hence ensuring compliance of formality of filling up pension forms

with the aid of PW-10- Sarpanch by pressurizing him to fill up pension forms makes no sense or reason so as to prove the charge of illegal

distribution of pension amounting to corrupt practice.

67. In view of the unsatisfactory analysis of the evidence and erroneous approach of the High Court while recording the finding on the issue of

corrupt practice, we consider this appeal fit to be allowed as no conclusive inference can be drawn that the respondent Smt. Kaur who had

secured only third position in the election has succeeded in proving the charge of corrupt practice against the returned candidate-the appellant

herein and the same at best can be held to be based on allegations which desperately required unimpeachable evidence of trustworthy nature

adduced by independent witnesses which could not be treated as tainted or evidence of doubtful nature. Since the charge of corrupt practice has

to be proved beyond reasonable doubt and not merely by preponderance of probabilities, the evidence relied upon by the High Court cannot be

held to be of such probative value which do not reflect on the credibility of the witnesses relied upon by the High Court, so as to interfere with the

election result by which the appellant had been elected. Consequently, we set aside the judgment and order of the High Court and allow this

appeal. However, the parties are left to bear their own cost.