Goa, 19th September, 1964

SERIES II No. 38

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GOVERNMENT GAZETTE

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SUPPLEMENT

(SUPLEMENTO)

GOVERNMENT OF GOA, DAMAN AND DIU

Planning and Development Department

Office of the Chief Electoral Officer

Notification

Following notification no. 82/3/64 dated the 28th August, 1964 issued by the Election Commission India, is hereby published for general information.

A. F. Couto, Chief Electoral Officer.

Panjim, 1st September, 1964.

ELECTION COMMISSION INDIA

New Delhi-1, dated 28th August, 1964

Bhadra 6, 1886 (SAKA)

Notification

No. 82/3/64. — In pursuance of section 106 of the Representation of the People Act, 1951, the Election Commission hereby publishes the order pronounced on the 21st August, 1964, by the Election Tribunal, Panjim,

Before the ELECTION TRIBUNAL, PANJIM — GOA

PRESIDED OVER BY SHRI P. S. MALVANKAR, M.A., LL.B., DISTRICT JUDGE, KOLHAPUR, BOMBAY STATE.

Election Petition No. 3 of 1964

Exhibit No.

Francis Menezes, aged 51 years, Roman Catholic, residing at Altinho, Panjim—Goa. } Petitioner

Versus

1) Dataram Keshav Chopadekar, Hindu C/o Cafe Omprasad, Near Post Office, Panjim — Goa,
2) Shantaram Narayan Zantye, Hindu, at present residing at Narasiva Prasad, Altinho, Panjim,
3) Mukund Mortu Shet, Hindu, at present residing at Cumbarjua, Post Marshel, Goa,
4) Shencor Pandurang Sardesai, Fontainhas, Panjim, Goa,
5) R. K. Gupta, Returning Officer for St. Estevam Assembly Constituency.

} Respondents

Appearances. — (1) For the Petitioner — Shri J. C. Dias, Advocate, with Shri U. B. Surlikar, Advocate,

(2) For the Respondent No. 1 — Shri Nausher Bharucha, Advocate, with Shri M. P. Shinkre, Advocate,

(3) For the Respondent No. 4 — Shri G. D. Kamat, Advocate,

(4) For the Respondent No. 5 — Shri P. J. Mulgaonkar, Advocate,

(5) Respondents 2 and 3 absent.

Judgment

This is an election petition filed by one Francis Menezes of Panjim — Goa against his rival candidates — Respondents Nos. 1 to 4 — and the Returning Officer — Respondent No. 5 — Under section 81 of the Representation of the People Act, 1951, for the declarations that the nomination papers of the petitioner were improperly rejected, that the election to Legislative Assembly of the Union Territory of Goa, Daman and Diu from St. Estevam Constituency was wholly void and that the election of the first respondent as a returned candidate from the said Constituency of St. Estevam was void. It arises this way.

2. In the last General Elections, which were the first after the liberation of Goa, Daman and Diu on the 20th December 1961, the said St. Estevam Constituency of Goa was called upon to elect one member of the Goa Legislative Assembly. Petitioner and the respondents Nos. 1 to 4 were the rival

candidates contesting the elections. The Election Commission by a Notification issued under section 30 of the Representation of the People Act, appointed the following dates for the purposes mentioned against them:

11-11-1963 — Last date for making nominations.
13-11-1963 — Date of scrutiny of nomination papers.
16-11-1963 — Last date of withdrawal of candidatures.
9-12-1963 — Date of Poll.
11-12-1963 — The date before which the election was to be completed.

Accordingly, the elections were held on 9th December 1963 and on 10th December 1963 the respondent no. 1 was declared duly elected from the St. Estevam Constituency.

3. The petitioner alleged that his name was duly proposed and nominated as the candidate for the election from St. Estevam Constituency of the United Territory of Goa, Daman and Diu; the nomination paper was duly filled in the prescribed form under the Representation on the People (Conduct of Elections Rules) and was presented by the proposer Shri Cosme Pereira on the 11th November 1963 to the respondent no. 5. The petitioner, however, after handing over the nomination papers to the proposer for filling them with the Returning Officer proceeded to Bombay for some urgent work requesting the proposer to attend the office of the Returning Officer on 11th November 1963, the day fixed for accepting nominations. The Returning Officer scrutinised the nomination papers filed by the candidates seeking election from the St. Estevam Constituency, on 13th November 1963. The Returning Officer, however, rejected the nomination papers of the petitioner on the ground that he had not subscribed to and oath before the alleged time fixed for doing so. The petitioner contended that the form of oath was not provided in the application nor it was published in the Official Gazette. The Notification regarding making and subscribing to an oath was published for the first time in the Goa, Daman and Diu Government Gazette dated 2nd January 1964 long after the declaration of the election results. The petitioner also alleged that the Returning Officer sent his employee on 12th November 1963 to the residence of every candidate including the petitioner informing them that they had to subscribe to an oath before him. The petitioner being in Bombay he was immediately contacted on the telephone and was asked to come down to Goa in order to subscribe to the oath before 13th November 1963. On receipt of this message the petitioner immediately left for Goa by car as no ticket for aeroplane was available. The petitioner's car, however, which was going to Poona to fetch him, met with and accident near Poona with the result that he reached Goa on 14th November 1963 at 3-30 P. M. He immediately applied to the Returning Officer requesting him to condone the delay, but he refused to condone it. The petitioner contended that his nomination papers were properly filled in and filed inasmuch as it was not necessary according to the Election Law then published in the Official Gazette to subscribe to an oath before the date of scrutiny and that, therefore, the order passed by the Returning Officer rejecting his nomination papers was improper. According to the petitioner, there was no defect in the nomination papers and the alleged defect of not subscribing to an oath was venial and could have been cured by allowing the petitioner to sign the oath on any day before the date of election. The rejection of his nomination papers, therefore, materially affected the results of the election. He, therefore, prayed for the declarations stated above.

4. The respondent No. 1 filed his written-statement at Ex. 29. He denied that the petitioner was duly proposed and nominated as a candidate for election from the St. Estevam Constituency or that his nomination paper was duly filled in as prescribed under the Representation of the People (Conduct of Election Rules, 1961). He also denied that the nomination papers were duly presented to the respondent No. 5 on 11th November 1963. He contended that the petitioner in proceeding to Bombay, if at all he did so, before completing the legal formalities required for the presentation of a valid nomination paper voluntarily took the risk of his incomplete nomination papers being rejected. He denied that the form of oath, which the petitioner failed to subscribe to, had to be published in the Official Gazette. He alleged that the form of oath, which had to be subscribed to by every candidate, had been laid down in the First Schedule of the Government of Union Territories Act, 1963, and under section 4 of that Act a statutory duty was imposed upon every candidate to subscribe to the said oath, which statutory duty could not be neglected, waived or postponed. According to him, any nomination paper without this solemn oath remained incomplete and invalid and the defect was fatal to the candidature of the petitioner. He denied that the form of oath or the legal requirement to subscribe to it was published for the first time in the Official Gazette dated 2nd January 1964. He contended that the form of oath and the statutory duty to subscribe to it were already part of law in force at all material times in the Union Territory of Goa, Daman and Diu and the petitioner's ignorance thereof would not excuse him for not validly completing his nomination papers. The respondent No. 1 admitted that the Returning Officer, the respondent No. 5, had sent his employee on 12th November 1963 to the residence of every candidate including the petitioner to inform them that they had to subscribe to an oath before 13th November 1963, the date fixed for scrutiny. The respondent No. 5 was not bound in law to do so. He was only trying to be helpful to all candidates alike in the discharge of his official duties as a Returning Officer, especially because it was the first election ever to be held in the Territory of Goa, Daman and Diu. As regards the petitioner's allegation that immediately on his arrival, he applied to the Returning Officer for condoning the delay, the respondent No. 1 contended that there was no such provision in law empowering the Returning Officer to condone such delay. The respondent No. 1 also contended that the time-table and the various stages in the elections such as nomination, scrutiny, withdrawal, pool, etc., were laid down by law and there was no scope for any change to accommodate the defaulting candidates who had failed to comply with the provisions of law relating to submission of nomination papers. The Returning Officer, therefore, according to the respondent No. 1, rightly rejected the nomination papers of the petitioner, correctly interpreting the relevant provisions of law and properly exercising the jurisdiction vested in him. The elections, therefore, were valid and the respondent No. 1 was validly elected as a candidate for the Legislative Assembly from the St. Estevam Constituency. The respondent No. 1, therefore, prayed that the petition should be dismissed with costs.

5. The respondents Nos. 2 and 3 did not file any written-statement. The respondent No. 4 filed his written-statement at Ex. 28. His contentions were similar to those of the respondent No. 1.

6. The respondent No. 5, the Returning Officer, filed his written-statement at Ex. 37. He alleged that he was not aware that the petitioner proceeded to Bombay for some urgent work requesting the proposer to attend his office on 11th November 1963. He, however, admitted that the petitioner was not present on that day and it was his proposer who filed his nomination papers. He contended that the publication of the Notification No. 434/1/53 dated 21st November 1963 in the Goa, Daman and Diu Government Gazette dated 2nd January 1964 for general information was irrelevant for the purposes intended by the petitioner. It was not a Notification that required that a candidate should make and subscribe to an oath or affirmation. It was the Government of Union Territories Act, 1963, which declared under section 4 clause (a) that the making and subscribing an oath was one of the requisite qualifications for membership of Legislative Assembly of a Union Territory. He also contended that section 4 (a) of the Government of Union Territories Act, 1963, or any other law did not require publication that a candidate should make and subscribe to an oath or affirmation according to the form set out for the purpose in the First Schedule to that Act. However, in pursuance of section 4 (a) of the Government of Union Territories Act, 1963, the Election Commission published its Notification No. 464/ /POND/63, dated 1st July 1963, in the Government Gazette of Goa, Daman and Diu, dated 11th July 1963. By this Notification, the Election Commission authorised the Returning Officer for each of the Assembly Constituencies in a Union Territory as the person before whom the candidate for election for that constituency shall make and subscribe to an oath or affirmation according to the form set out in the First Schedule to the said Act. This respondent, therefore, contended that the petitioner laboured under a misconception when he alleged in his petition that the Notification was published for the first time in the Goa, Daman and Diu Government Gazette dated 2nd January 1964. According to him, the Notification published in the Government Gazette dated 2nd January 1964 was in supercession of the earlier Notification published in the Government Gazette dated 11th July 1963. The object of the earlier Notification was to authorise the Assistant Returning Officers also as persons before whom a candidate for election shall make and subscribe the oath or affirmation. The respondent No. 5 also contended that the petitioner had to make and subscribe the oath before the date of scrutiny of nomination papers and the petitioner having failed to do so, he was entitled to reject his nomination papers on the ground that on the date fixed for the scrutiny of nomination papers the candidate was not quali-

fied to fill the seat. He admits that he had sent his employee to the house of the petitioner on 12th November 1963 to inform him that he had to make and subscribe an oath or affirmation before him. As regards the allegation made by the petitioner in paragraphs 7 and 8 of his petition, the respondent No. 5 alleged that an application was made to him by Shri Cosme Pereira, the proposer of the petitioner, alleging that the petitioner had to go to Bombay for urgent work before filing nomination papers and, therefore, he could not take the oath. He also informed the respondent No. 5 that he had contacted the petitioner later and had told him to come down to Panjim to take the oath. The proposer, therefore, prayed for time to enable the petitioner to take oath till the evening of 13th November 1963. Accordingly, the petitioner was granted time until 21 hours on 13th November 1963. However, on 14th November 1963 till 1.30 P. M. neither the petitioner nor his proposer appeared before the respondent No. 5 and one of the rival candidates having raised an objection, the petitioner's nomination papers were rejected under section 36(2) (a) of the Representation of the People Act, 1951. The respondent No. 5, however, has denied that the petitioner made any application to him immediately after he came to Panjim for condoning the delay. He alleged that only on 16th November 1963 the petitioner made an application to the Chief Electoral Officer requesting to reconsider the rejection order and only a copy of that application was sent to the respondent No. 5. He, therefore, prayed that the petition should be dismissed with costs.

7. On these pleadings the following issues were framed (vide Ex. 34):—

1) Whether the petitioner proves that the statutory requirement that a candidate for election to the Assembly Constituency for the Union Territory of Goa, Daman and Diu shall make and subscribe an oath and the form thereof were for the first time published in the Goa Government Gazette on 2nd January 1964?
2) If yes, whether he proves that it was, therefore, not necessary to subscribe to an oath before the date of scrutiny?
3) Whether the petitioner proves that he went to Bombay on urgent business, that his car met with an accident near Poona and that, therefore, he could not reach Goa earlier than 3-30 P.M. on 14th November 1963?
4) Whether the order of the respondent No. 5 rejecting the petitioner's nomination papers is improper?
5) Whether the rejection of the petitioner's nomination paper has materially affected the results of the election?
6) Whether the election of St. Estevam Constituency is wholly void?
7) Whether the election of the respondent No. 1 is void?
8) What order?

8. My findings:

1) No.
2) Does not survive.
3) No; yes; yes.
4) No.
5) Does not survive.
6) No.
7) No.
8) As per order.

Reasons

9. Issues Nos. 1 to 3: The first contention raised by the petitioner is that the form of oath was not provided in the form of nomination paper nor was it published in the Official Gazette that a candidate for election to the Assembly Constituency for the Union Territory of Goa, Daman and Diu shall make and subscribe an oath. The Notification was first published in the Goa, Daman and Diu Gazette dated 2nd January 1964 long after the declaration of the election results. It was, therefore, not necessary according to the petitioner to subscribe an oath before the date of scrutiny under the Election Law then in force. Now, the Government of Union Territories Act 1963, being Act No.20 of 1963, which provides for Legislative Assembly and Council of Ministers for the Union Territory of Goa, Daman and Diu received the assent of the President on 10th May 1963 and was published in the Government of India Extraordinary Gazette, Part II — Section 1, page 195, dated 11th May 1963. Section 1(2) of that Act provides that the said Act shall come into force on such date as the Central Government may, by notification in the Official Gazette, appoint. Accordingly, the Central Government issued Notification GSR-814 dated 13th May 1963 [No. FO-6(21)-62/GOA] appointing the 13th May 1963 as the date on which the provisions of Part I, sections 3, 4 and 14 in Part II, Part III and sections 53, 56 an 57 in Part V of the said Act and the First and Second Schedules there to shall, so far as they are applicable, come into force in the Union Territory of Goa, Daman and Diu (vide Government of India Extraordinary Gazette, Part II, section 3 sub-section(i), dated 13th May 1963). Section 4 of this Act, so far as it is relevant here, provides that a person shall not be qualified to be chosen to fill a seat in the Legislative Assembly of a Union Territory unless he is a citizen of India and makes and subscribes before some person authorised in that behalf by the Election Commission an oath or affirmation according to the form set out for the purpose in the First Schedule. The First Schedule to the Act has provided the Form of Oath which runs thus:—

> «I, A. B., having been nominated as a candidate to fill a seat in the Legislative Assembly of .... *do swear in the name of God* that I will bear solemnly affirm true faith and allegiance to the Constitution of India as by law established and that I will uphold the sovereignty and integrity of India».

Thereafter, the Election Commission issued Notification No. 464/POND/63 dated 1st July 1963 authorising Returning Officers for each of the Assembly Constituencies in a Union Territory as the person before whom any candidate for election by that constituency shall make and subscribed an oath or affirmation according to the form set out in the First Schedule to the Government of Union Territories Act, 1963. This Notification was published in the Government Gazette, Supplement, Series I, No. 27, dated 11th July 1963. On 21st November 1963, another Notification superseding the earlier one, being Notification No. 434/1/63, was issued by the Election Commission authorising both Returning Officers and Assistant Returning Officers as the persons before whom any candidate for election shall make and subscribe the oath or affirmation. The only difference between these two Notifications is that whereas the earlier Notification authorised only the Returning Officers, the latter Notification authorised both Returning Officers as well as Assistants Returning Officers. This Notification was published in Government Gazette, no. 1, Series II dated 2nd January 1964. It would thus be seen that the contention of the petitioner that the form of oath was not published in the Official Gazette or that the Notification authorising each of the Returning Officers as the person before whom a candidate shall make and subscribe the oath or affirmation was published for the first time in Government Gazette dated 2nd January 1964 long after the declaration of election results and that, therefore, it was not necessary to subscribe an oath before the date of scrutiny, is without any foundation in fact.

10. It is true that the Government of Union Territories Act, 1963, was first published in Government Gazette, no. 51, Series I, on 30th December 1963. But it cannot be said, therefore, that the petitioner did not know that he was required to make and subscribe an oath or affirmation provided for by section 4 of that Act because the publication of the Government of Union Territories Act, 1963, in the Gazette of India was sufficient to ascribe knowledge of the provisions of section 4 of that Act to the petitioner. Moreover, the publication of Notification no. 464/POND/63 dated 1st July 1963 issued by the Election Commission and published in Government Gazette no. 27, Series I, dated 11th July 1963, put the knowledge of this requirement to the petitioner beyond any doubt. In this connection, it is necessary to notice that in neither of the applications, one made by his proposer to the Returning Officer on 13th November 1963 (vide Ex. 47) and the other by the petitioner himself on 16th November 1963 to the Chief Electoral Officer (vide Ex. 44), the petitioner stated that he did not know that he was required to make and subscribe an oath under section 4 of the Government of Union Territories Act, 1963. On the contrary, the application (Ex. 47) recites that the petitioner being called to Bombay on urgent business before the nomination papers were filed, it was impossible for him at the time of filing them to make and subscribe an oath. The attention of proposer, who made this application, was drawn to this recital in his application while he was under cross-examination and he admitted the same to be true.

11. Assuming, however, that the petitioner did not know about the requirements of making and subscribing an oath in accordance with the provisions of section 4 of the Government of Union Territories Act, 1963, the evidence on the record shows that at any rate he was informed about it on 12th November 1963, if not on 11th November 1963, the last date for filing nomination papers. The petitioner signed the nomination papers (Exs. 40 and 41) on 8th November 1963 because he had to go to Bombay on 8th November 1963. The nomi-

nation papers, therefore, were filed by his proposer one Shri Cosme Pereira with the Returning Officer on 11th November 1963. The petitioner has admitted in his evidence at Ex. 39 that his wife had received a message from the Returning Officer at about 11 a.m. on 12th November 1963 that he was required to make and subscribe an oath before his nomination papers could be accepted. It was suggested in the cross-examination of the petitioner that the message was left with his wife on 11th November 1963, but the petitioner definitely alleged in the petition that the message was sent by the Returning Officer on 12th November 1963 and the respondent No. 1 admitted this fact in paragraph No. 8 of his written-statement (Ex. 29). It is no doubt true that the order of the Returning Officer rejecting the nomination papers (vide Ex. 55) shows that all the candidates including the petitioner were informed about this requirement on 11th November 1963. But the Returning Officer, who offered himself for cross-examination, has admitted (vide Ex. 54) that he sent a message to the petitioner in the morning on 12th November 1963. It, however, appears that the petitioner being in Bombay, though this message was received by his wife, the petitioner was not informed about it till midnight on 12th November 1963. The petitioner's nephew, who is examined at Ex. 48, has said that on 12th November 1963 he was in Margaon for the whole of the day and returned to his Pharmacy in Panjim at about 6-15 P.M. Between 7 P.M. and 7-15 P.M. one Mascarenhas came to the Pharmacy and made inquiries about the petitioner. He told the petitioner's nephew that the presence of his uncle was necessary for making and subscribing an oath in connection with his candidature. The nephew then saw one Dr. Jack Sequeira, the President of United Goans, who advised him to contact the petitioner immediately and asked him to remain present in Goa on 13th November 1963. Thereafter, at about 10 P.M. the petitioner's nephew booked a trunk call at his residence and after midnight he could contact the petitioner when he told him that his presence was immediately necessary for making and subscribing an oath. The nephew has admitted in his evidence that when he went to his house after seeing Dr. Jack Sequeira, he came to know that the petitioner's wife had also booked a trunk call, but there is nothing on the record to show why the message of the Returning Officer could not be conveyed to the petitioner earlier than midnight when admittedly the petitioner's wife had received it in the morning. If the petitioner had been informed by his wife earlier, he would have been able to make and subscribe an oath before the Returning Officer in the morning on 14th November 1963 before 1-30 P.M., if not in the evening on 13th November 1963. It must be borne in mind that there was no obligation on the Returning Officer to send any message to the petitioner. He perhaps thought that this being the first General Elections in Goa after the liberation, he should remind the candidates about the requirements of section 4 of the Government of Union Territories Act, 1963. If, therefore, the petitioner for one reason or the other could not avail of that opportunity also, nobody could help him.

12. The petitioner has alleged that after handing over nomination papers to his proposer and requesting him to attend the office of the Returning Officer on 11th November 1963 he went to Bombay for some urgent work, but on the receipt of the message from his nephew on 12th November 1963 at midnight he immediately started to come to Goa by car. His own car, however, which was going to Poona to fetch him, met with an accident near Poona with the result that he reached Panjim on 14th November 1963 at 3-30 P.M. He, however, found that his nomination papers were already rejected by the Returning Officer at 1-30 P.M. The respondent No. 1 has denied any knowledge that the petitioner had to go to Bombay on any urgent business or that his car met with an accident near Poona. But once it is found that the petitioner knew about the requirement of making and subscribing an oath, before he left for Bombay, the question whether he left for Bombay on any urgent business or whether his car met with an accident near Poona, becomes immaterial. Assuming, however, that the petitioner came to know about this requirement for the first time on 12th November 1963, he had taken a risk in remaining absent on 13th November 1963, the date of scrutiny. It is true that the law does not make the presence of a candidate compulsory either on the date of filing the nomination papers or on the date of scrutiny (vide sections 33 and 36 of the Representation of the People Act of 1951). But a careful perusal of section 36 will show that it contemplates personal presence of a candidate and allows even election agents, one proposer of each candidate and some other person duly authorised in writing by each candidate to remain present at the time of scrutiny obviously because one does not know what kind of objection might be taken by a candidate to the nomination paper of his rival. If on such an occasion an objection raised by a rival candidate requires the presence of the candidate himself to rebut it and if the candidate is not present, then surely he must face the consequences. If, therefore, the petitioner remained absent on the date of scrutiny, whether on the ground of urgent business elsewhere or otherwise he took a risk and if he ultimately found that his nomination papers were rejected because he did not comply with any legal requirement, he must thank himself. In that view also, the question whether he left for Bombay on an urgent business or whether his car met with an accident, becomes immaterial. I, however, proceed to record my findings on both these questions.

13. The petitioner has said in his evidence at Ex. 39 that he had business engagements with Voltas Limited and J. L. Morrison Limited. So far as his engagement with Voltas Limited is concerned, the petitioner has relied on the letter (Ex. 43) dated 7th November 1963 received by him from the Voltas Limited, but this letter does not disclose any urgent call. On receipt of this letter, it appears that the petitioner sent a telegram which is endorsed on the letter itself. The urgency, according to the petitioner, was that Messrs Muttoo and Bhat mentioned in the letter were not available in Bombay after 11th November 1963 inasmuch as they were to proceed on leave on 11th November 1963. However, in his cross-examination he has admitted that he does not know how long these two persons were to be on leave. In fact, the petitioner admits that they might be even on short leave. The business engagement of the petitioner with these two persons was that the petitioner wanted to discuss certain alterations in the contract which he had already concluded with the Voltas Limited. It is, therefore, clear that there was no urgency regarding the business engagement the petitioner had with the Voltas Limited. In fact, the petitioner himself has admitted in his cross-examination that the business with the Voltas Limited was not urgent.

14. As regards the alleged business with J. L. Morrison Limited, the petitioner wanted to enter into an agreement with them regarding the distribution of the products of Beacham's line in Goa. The petitioner was in correspondence with this Company for about two or three months before he left for Bombay. The agreement was to be concluded with the Managing Director. The petitioner has, however, said that he apprehended that J. L. Morrison Limited may appoint some other man as sub-distributor and, therefore, he rushed to Bombay. Here again, the petitioner has admitted in his evidence that he had not received any letter from J. L. Morrison Limited until he left for Bombay. He received it after he went to Bombay. Then again he has admitted that from the correspondence which he had with the Manager of J. L. Morrison Limited in October 1963 he knew that the Manager would be available in Bombay for a week from 10th November 1963. Obviously, therefore, the Manager would have been available to the petitioner between 14th November and 17th November 1963 if he wanted to conclude any agreement with him. Further, the petitioner has admitted that he did not make any inquiries whether the Manager was available to him in the first week of November 1963. In fact, the petitioner was forced to admit in his cross-examination that he took a chance only of contacting the Manager of J. L. Morrison Limited because he happened to be in Bombay. He has also admitted that inspite of this urgency, if he had known about the making and subscribing an oath, he would not have left for Bombay without fulfilling the requirement. I am, therefore, of the opinion that the petitioner has failed to prove that he left for Bombay on 8th November 1963 on any urgent business.

15. Turning to the question whether or not the petitioner's car met with an accident near Poona, the petitioner has said in his evidence that when his nephew contacted him on the telephone, he told him that he would take his car to Poona for bringing him to Panjim within time. The petitioner also left no stone unturned for finding out means of transport which would have taken him as early as possible from Bombay to Panjim. There is no cross-examination of the petitioner on this point. The petitioner then engaged a car for taking him to Poona and left Bombay at about 5 A.M. on 13th November 1963. He reached Poona at about 9 A.M. and made inquiries at the Swar Gate in Poona where his nephew had told him that he would come with car. He, however, came to know that his nephew had not arrived. He, therefore, attempted for another conveyance to come to Panjim. He made inquiries with several taxi drivers both at Swar Gate and at the Poona Railway Station, but no taxi was available for Panjim. He waited at the Swar Gate for his nephew till 5 P.M. and when he found that his nephew had not come and there was no conveyance available to come to Panjim, he decided to come by train and caught Vasco Express which leaves Poona at about 8-30 P.M. and reaches Colem at 1 P.M.

on the next day. In the meanwhile, the petitioner's nephew, who is examined at Ex. 48, has said in his evidence that after giving the message to his uncle and informing him that he would immediately leave Panjim by car for Poona, he left at about 1 A. M. on 13th November 1963. He reached Belgaum at about 5-30 A. M. and Kolhapur at about 8-15 A. M. He passsed through Satara at about 12-30 or 1 P. M. However, after he left Satara the car started giving trouble and after some time it came to a stand-still. He then caught a truck and went to Satara to secure the services of a mechanic. He contacted one in Satara and brought him to the car. The mechanic inspected the engine and told him that the hose-pipe had burst and the same had to be replaced. The mechanic also told him that the hose pipe would be available only in Poona. He, therefore, caught another truck for Poona and reached there at about 8-30 P. M. He first went to the Swar Gate and made inquiries about his uncle where he came to know that the latter after waiting for a long time had left. He than purchased one hose pipe and came back in a taxi to the place where his car had failed down. After the hose pipe was replaced, he went to Poona and returned to Panjim on the next day. The respondent no. 1 did not cross-examine this witness on the question whether or not his car met with an accident near Poona. I, therefore, accept the evidence of the petitioner an his nephew on this point and hold that the petitioner's car met with an accident near Poona and that, therefore, he could not reach Goa earlier than 3-30 P. M. on 14th November 1963.

16. Issue no. 4: — This brings me to the question whether or not the order passed by the Returning Officer rejecting the petitioner's nomination papers is improper. The order is challenged by the petitioner on more than one ground. Fristly, it is argued that the Returning Officer was led to believe that the petitioner received his message on 11th November 1963 and that, therefore, he could have remained present in Panjim on 13th November 1963. He, however, came to Panjim at 3-30 P. M. on 14th November 1963. I have already pointed out that admittedly the Returning Officer sent a message to the house of the petitioner in the morning on 12th November 1963 and the petitioner received it in Bombay at midnight on the same day. Even the Returning Officer has admitted (vide Ex. 54) that he left the message at the petitioner's house on 12th November 1963 in the morning. The evidence, therefore, does not show that the petitioner received the message at his house in Panjim on 11th November 1963. However, it is argued relying on the order passed by the Returning Officer (vide Ex. 55) that in rejecting the petitioner's nomination papers the Returning Officer believed that the petitioner had received the message on 11th November 1963 and, therefore, he could have remained present in Panjim on 13th November 1963. It is also pointed out from the order that the Returning Officer also thought that the petitioner being a candidate put up by the United Goans and other candidates of United Goans having received message of the Returning Officer on 11th November 1963 the petitioner must have come to know about making and subscribing an oath on 11th November 1963 from his party, the United Goans. But a reference to the finding recorded by the Returning Officer in his order would at once show that he did not base his finding on the alleged fact that the petitioner had received the message on 11th November 1963 or that other candidates put up by United Goans party had received similar message from him on 11th November 1963. The finding of the Returning Officer in this connection runs thus: —

> «I have carefully considered the case and the arguments. It is clear from the record that the candidate Shri Menezes Francis must have got the information that he has to take the Oath before the Returning Officer at Panjim, latest by 12th morning and if he had left Bombay immediately on the 12th even by the ordinary means of transport he would have arrived in Panjim on 13th evening with ease».

The Returning Officer, therefore, based his finding on the admitted fact that his message was received by the petitioner in the morning on 12th November 1963. It is true that the Returning Officer sent the message to the house of the petitioner in Panjim when the petitioner was in Bombay. But the Returning Officer naturally believed that the message which he sent to the house of the petitioner and which was received by his wife was immediately communicated to the petitioner himself. The Returning Officer was never told that though he had sent the message in the morning on 12th, the petitioner actually received it at midnight. In fact, the petitioner's proposer, who made the application for adjournment (Ex. 47), led the Returning Officer to believe that the petitioner would return to Panjim late in the evening on 13th November 1963. Unfortunately for the petitioner thought his wife received the message for the Returning Officer in the morning on 12th November 1963, nothing was done by her to inform the petitioner till about 7 p. m. on that day. I, therefore, do not think that the Returning Officer committed any error in holding that the petitioner must have received the message in the morning of 12th and therefore, he could have come to Panjim by the evening of 13th November 1963 even by ordinary means of transport.

17. The second ground of attack is that the finding of the Returning Officer that the petitioner neglected to take the oath and, therefore, failed to qualify as a candidate under Article 173(a) of the Constitution is erroneous in law inasmuch as the petitioner was to qualify himself by making and subscribing an oath under section 4 of the Government of Union Territories Act, 1963. The learned counsel Shri Dias appearing on behalf of the petitioner has, therefore, argued that the order of the Returning Officer cannot be sustained. It is true that according to the finding recorded by the Returning Officer the petitioner neglected to take the oath and, therefore, failed to qualify as a candidate under Article 173(a) of the Constitution of India. The finding reads thus: —

> «I have given time to the candidate to appear and also sympathetic consideration to the case but in the above circumstances the conclusion is imperative and irresistible that the candidate has neglected to take the oath and has therefore failed to qualify as a candidate under Article 173 (a) of the Constitution of India.»

Now, Article 173, which is included in Part VI of the Constitution entitled «The State», provides for qualification for a membership of the State Legislature and not for the membership of the Legislature of a Union Territory. Sub-clause (a) of Article 173 lays down that a person shall not be qualified to be chosen to fill a seat in the Legislature of a State unless he is a citizen of India. It does not provide for making and subscribing an oath before any person authorized in that behalf by the Election Commission. For the purposes of administration the Constitution makes a distinction between the State and the Union Territories in that whereas Part VI provides for the administration of the States, Part VIII makes provision for the administration of the Union Territories. This distinction is also indicated in Article 1 clause (3) which lays down that the territory of India shall comprise — (a) the territories of the States; (b) the Union territories specified in the First Schedule; and (c) such other territories as may be acquired. Then Article 239, which is the first Article in Part VIII, providing for the administration of the Union Territories, lays down that «Save as otherwise provided by Parliament by law, every Union territory shall be administered by the President acting, to such extent as he thinks fit, through an administrator to be appointed by him with such designation as he may specify». Accordingly, until the Government of Union Territories Act, 1963, came into force, the Union Territories of Goa, Daman and Diu were administered by the President acting through an administrator appointed by him. Thereafter, the Parliament passed the Government of Union Territories Act, 1963, and section 4 of this Act provided for the qualification for membership of the Legislative Assembly of the Union Territory of Goa, Daman and Diu. The reference therefore to Article 173 (a) in the order passed by the Returning Officer at Ex. 55 is obviously incorrect. But that would not make the final order of the Returning Officer rejecting the nomination papers improper. The most that can be said in favour of the petitioner is that the Returning Officer was under the impression that the petitioner was to qualify himself as a candidate for the Legislative Assembly under Article 173 (a) of the Constitution instead of under section 4 of the Government of Union Territories Act, 1963. But that does not necessarily mean that, therefore, the final order is improper. If the order is justifiable on other grounds, inspite of the incorrect reference to Article 173 (a) of the Constitution, then the nomination papers will have to be declared to have been properly rejected by the Returning Officer.

18. Thirdly, it is argued that under section 4 of the Government of Union Territories Act, 1963, a candidate is required to make and subscribe an oath after he files his nomination papers and before the date fixed for withdrawal. I do not find any substance in this argument. Section 4 of the Government of Union Territories Act, 1963, read with section 36(2) (a) of the Representation of the People Act, 1951, makes it abundantly clear that a candidate must qualify himself by making and subscribing an oath before scrutiny of his nomination papers because section 4(a) of the Government of Union Territories Act, 1963, lays down that a person shall not be quali-

fied to be chosen to fill a seat in the Legislative Assembly of a Union Territory unless he makes and subscribes before some person authorised in that behalf by the Election Commission an oath or affirmation according to the form set out for the purpose in the First Schedule; and section 36(2)(a) of the Representation of the People Act, 1951, says that the Returning Officer may, either on objection or on his own motion, after such summary inquiry, if, any, as he thinks necessary, reject any nomination on the ground that *on the date fixed for the scrutiny of nomination* the candidate either is not qualified or is disqualified for being chosen to fill the seat under the provisions of section 4 of the Government of Union Territories Act, 1963. If, therefore, the Returning Officer is empowered to reject any nomination on the ground that the candidate on the date fixed for the scrutiny of nominations is not qualified under section 4 of the Government of Union Territories Act, 1963, then surely he must make and subscribe an oath before the date fixed for the scrutiny of nominations. The Returning Officer, therefore, in this case was right in rejecting the nomination papers when he found that on the date fixed for scrutiny the petitioner had not qualified himself for the membership of the Legislative Assembly by making and subscribing an oath as required by section 4 of the Government of Union Territories Act, 1963.

19. Fourthly, it is argued that when the proposer of the petitioner made the application (Ex. 47) for adjournment on the ground that the petitioner was in Bombay, the Returning Officer ought to have allowed time «not later than the next day but one following the date fixed for scrutiny», that is to say, till 15th November 1963. In support of this argument, the learned counsel Shri Dias appearing on behalf of the petitioner has relied on the Proviso to sub-section (5) of section 36 of the Representation of the People Act, 1951, which runs thus: —

> «Provided that in case an objection is raised by the returning officer or is made by any other person the candidate concerned may be allowed time to rebut it not later than the next day but one following the date fixed for scrutiny, and the returning officer shall record his decision on the date to which the proceedings have been adjourned».

The argument in connection with this Proviso is that according to the learned counsel the word «may» used in this Proviso must be construed to mean «shall». Now, in order to understand the meaning and implication of the Proviso to sub-section (5), section 36 of the Representation of the People Act, 1951, it is necessary to refer to the scheme of Chapter I contained in Part V which deals with conduct of elections. This Chapter provides for nomination of candidates. Section 30, which is the first section in Chapter I of Part V, provides for the appointment of dates for nominations, etc. Section 31 says that on the issue of a notification under section 30, the returning officer for the constituency shall give public notice of the intended election, inviting nominations of candidates and specifying the place at which the nomination papers are to be delivered. Section 32 deals with nomination of candidates for election and section 33 with presentation of nomination paper and requirements for a valid nomination. Sub-section (1) of section 33 provides for filing of a nomination paper on or before the date appointed under clause (a) of section 30 between the hours of eleven o'clock in the forenoon and three o'clock in the afternoon. Section 34 requires deposits to be made and sub-section (2) of section 34 says that any sum required to be deposited under sub-section (1) shall not be deemed to have been deposited under that sub-section unless at the time of delivery of the nomination paper under sub-section (1) of section 33 the candidate has either deposited or caused to be deposited that sum with the returning officer in cash or enclosed with the nomination paper a receipt showing that the said sum has been deposited by him or on his behalf in the Reserve Bank of India or in a Government Treasury. Then comes section 35 which lays down that the returning officer shall, on receiving the nomination paper under sub-section (1) of section 33, inform the person or persons delivering the same of the date, time and place fixed for the scrutiny of nominations and shall enter on the nomination paper its serial number, and shall sign thereon a certificate stating the date on which and the hour at which the nomination paper has been delivered to him; and shall, as soon as may be thereafter, cause to be affixed in some conspicuous place in his office a notice of the nomination containing descriptions similar to those contained in the nomination paper, both of the candidate and of the proposer. Section 36 provides for the scrutiny of nominations on the date fixed for that purpose under section 30 and sub-section (5) says that the returning officer shall hold the scrutiny on the date appointed in this behalf under clause (b) of section 30 and shall not allow any adjournment of the proceedings except when such proceedings are interrupted or obstructed by riot or open violence or by causes beyond his control. Section 37 provides for withdrawal of candidature before three o'clock in the afternoon on the day fixed under clause (c) of section 30. Sub-section (2) of that section says that no person who has given a notice of withdrawal of his candidature under sub-section (1) shall be allowed to cancel the notice. Section 38 provides for publication of list of contesting candidates. The Returning Officer is required to prepare this list immediately after the expiry of the period within which candidature may be withdrawn under sub-section (1) of section 37. Section 39, which is the last section in this Chapter, provides for nomination of candidates at other elections. It is, therefore, obvious that under the Law the elections are required to be completed according to the programme fixed under the Statute. Sub-section (5) of section 36 lays down in unequivocal terms that the returning officer shall not allow any adjournment of the proceedings for the scrutiny of the nomination papers except when such proceedings are interrupted or obstructed by riot or open violence or by causes beyond his control. The only exception made to this rule is contained in the Proviso which says that in case an objection is raised by the returning officer or by any other person the candidate concerned may be allowed time to rebut it not later than the next day but one following the date of scrutiny and the returning officer shall record his decision on the day to which the proceedings have been so adjourned. It seems to me, therefore, clear that this Proviso to sub-section (5) of section 36, which is an exception to the rule contained in sub-section (5), gives discretion to the returning officer to adjourn the proceedings only in the case where there is an objection raised either by the returning officer or by any other person. In no other case the returning officer is empowered to adjourn the proceedings. Even in such a case the maximum time limit fixed for adjourning the proceedings is not later than the next day but one following the date fixed for scrutiny. This is obviously because under sub-section (c) of section 30 the last date for the withdrawal of candidatures is peremptorily to be the third day after the date for the scrutiny of nomination or, if that day is a public holiday, the next succeeding day which is not a public holiday. It is, therefore, difficult to accept the argument of the learned counsel for the petitioner that the word «may» in the context in which it occurs in the Proviso to sub-section (5) of section 36 means «shall».

20. In support of his argument he has, however, relied on the rulings A.I.R. 1958 Supreme Court 956 at page 975 *(In re Keral Education Bill, 1957)*, A.I.R. 1963 Supreme Court 1618 *(State of Uttar Pradesh v. Jogendra Singh)*, A.R.R. 1948 Bombay 254 *(The Chief Controlling Revenue Authority, Bombay v. Maharashtra Sugar Mills, Ltd.)*, I.L.R. 51 Bombay 492 *(Tulsi v. Onkar Huna)* and 1879-80 Appeal Cases, Volume V, page 214 *(Frederic Guilder Julius v. The Right Rev. The Lord Bishop of Oxford)*. The proposition of law laid down in all these rulings can be stated thus: The word «may» generally does not mean «must» or «shall». But it is capable of meaning «must» or «shall» in the light of the context. Where a discretion is conferred upon a public authority coupled with an obligation, the word «may» which denotes discretion should be construed to mean a command. The well known rule of construction of statutes is that if the existence of the purpose is established and the conditions of the exercise of the discretion are fulfilled, the authority to whom the discretion is granted will be under an obligation to exercise its discretion in furtherance of such purpose. In order to decide whether the word «may» is potential or imperative, discretionary or carries with it an element of compulsion, whether it is permissive and enabling or obligatory, one must look at the object of the statute which vests this particular discretion and the intention of the Legislature to find out whether the discretion was coupled with a duty to be exercised in favour of a particular party. If the object for which the power is conferred is in order to give a right, then there would be a duty cast on the person to whom the power is given to exercise it for the benefit of the party to whom the right is given when required on his behalf. The question, however, in the instant case is whether the discretion given to the returning officer under the Proviso to sub-section (5), section 36 of the Representation of the People Act, 1951, is coupled with a duty to be exercised in favour of a particular party. If the object for which the discretionary power is conferred on the Returning Officer is in order to give a right, then there would be a duty cast on the Returning Officer to whom the power is given to exercise it for the benefit of such a party to whom the right is given. But in my opinion in view of the scheme of the Chapter I, Part V, of the Representation of the People Act, 1951, which I have explained above, it is difficult to hold that the object of the

statute and the intention of the Legislature were to give a right to the party required to rebut the objection contemplated under the Proviso to sub-section (5) of section 36 of the Representation of the People Act, 1951. If the election officers including the Returning Officer are to adhere to the programme of the elections strictly as required under the provisions of the Representation of the People Act, 1951, to which I have already made a reference, and if the Returning Officer is to hold the scrutiny on the date appointed in that behalf under clause (b) of section 30 and he is not to allow any adjournment of the proceedings except when such proceedings are interrupted or obstructed by riot or open violence or by causes beyond his control, then it necessarily means that while granting or refusing to grant an adjournment under the Proviso, the Returning Officer, the donee of the power, must consult his own interest or convenience. If that is so, the word «may» would be plainly permissive and what is conferred on him is a mere privilege or licence which he may exercise or not at pleasure. If in such a context, the word «may» is to be interpreted as «shall», it would mean that even if the nomination paper is invalid on the face of it for violation of a statutory requirement or the objection raised is a frivolous one, the Returning Officer is obliged to grant an adjournment even when it is unnecessary to do so. The cases relied upon by the learned counsel can be distinguished on their own facts. In each of these cases, there was a right conferred on the third party and a corresponding duty was imposed on the donee of the discretionary power. In each case, therefore, the discretion conferred on the authority was coupled with an obligation of one kind or the other corresponding to the right granted in favour of the third party. But in the instant case if one looks at the object of the statute which vests this particular discretion in the Returning Officer under the Proviso and also the intention of the Legislature, I do not think that it would be correct to say that a right is created in favour of a candidate concerned who is required to rebut the objection and, therefore, corresponding to that right there is a duty imposed on the Returning Officer to grant an adjournment to him to rebut the objection. I, therefore, do not think that the word «may» used in the Proviso to sub-section (5) of section 36 of the Representation of the People Act, 1951, can be interpreted to mean «shall».

21. It is possible to argue that when a public officer is empowered to do something for a third person the law requires that it shall be done when the exercise of such power is in public interest because in such an event the power is given to the public officers not for their benefit but for the benefit of a third person. In the instant case, therefore, the power conferred on the returning officers to adjourn the inquiry when objection is raised is to enable the candidate concerned to rebut the objection. The power is, therefore, for the benefit of the candidate concerned and not for the benefit of the Returning Officer himself. The only condition, which must be fulfilled before the power can be exercised, is that there must be an objection raised and if that condition is fulfilled, the purpose of the Proviso being to enable the candidate concerned to meet the objection, it will be the duty of the Returning Officer to adjourn the inquiry. If such an argument is accepted, then the word «may» would mean «shall». But even then it would not be obligatory on the returning officer to adjourn the proceedings not later than the next day but one following the day fixed for scrutiny. The words «not later than» fix the outer limit up to which an adjournment can be granted and, therefore, show that there is no compulsion on the returning officer to postpone the inquiry till the third day from the date of scrutiny. But he has still the discretion to adjourn the inquiry to any date not later than the next day but one following the date fixed for scrutiny. In other words, the obligation imposed is only to allow the adjournment where an objection is raised to enable the candidate concerned to rebut it. There is no obligation to adjourn the inquiry till the next day but one following the day fixed for scrutiny. After the Returning Officer grants an adjournment which he must, if the word «may» is to be interpreted as «shall», there is no compulsion on him to fix the inquiry on the next day but one following the day fixed for scrutiny. In that view of the matter, even if the word «may» is to be interpreted as «shall», still the petitioner cannot successfully contend that it is obligatory on the Returning Officer once he grants the adjournment to fix the inquiry on the next day but one following the date fixed for scrutiny. The Returning Officer, therefore, in this case was right in granting the adjournment to the petitioner asked for by the proposer and to fix the inquiry for decision on the next day, that is to say, 14th November 1963 till 1-30 P. M., for decision.

22. Fifthly, it is argued that at any rate the returning officer did not exercise his discretion vested in him in a proper manner when he granted an adjournment to the petitioner till 21 hours only and fixed the inquiry for decision on the next day. The arguments is that in the circumstances of this case he ought to have granted longer adjournment. In order to understand whether or not there has been proper exercise of discretion vested in him by the Returning Officer, a reference to a few facts would be necessary. On 13th November 1963, the date fixed for scrutiny, the proposer of the petitioner, who was present, made an application (vide Ex. 47) for adjournment in which he prayed for time till 21 hours only or the next morning. This application was granted by the Returning Officer and the inquiry was fixed for decision till the next day. The petitioner, however, could not remain present either on 13th, the very day, or on the next day, that is to say, on 14th. In fact, on 14th November 1963 even the proposer did not remain present. There was, therefore no application for further extension of time. The returning officer, therefore, held that no oath was made and subscribed by the petitioner and, therefore, the nomination paper was invalid. He, therefore, naturally rejected it at about 1-30 p. m. on that day. The petitioner, however, reached Panjim on the very day at about 3-30 p. m. He has deposed (vide Ex. 39) that after he came to Panjim at about 3-30 p. m. on 14th November 1963 he straight went to the office of the Administrator and saw the Returning Officer at about 3-45 p. m. The Returning Officer told him that he was late and, therefore, nothing could be done for him. The Returning Officer also suggested to him that he should see the Chief Electoral Officer. The Returning Officer has, however, denied in his evidence at Ex. 54 that the petitioner had approached him at any time on 14th November 1963 and I do not see any reason to disbelieve him. The petitioner has said in his evidence that when he went to the Returning Officer at about 3-45 p. m. one Cristovam Furtado and Vyankatesh Lavande were with him, but he has not examined either of them in support of his allegation that on arrival at Panjim on 14th November 1963 at about 3-30 p. m. he straight went to the office of the Returning Officer and met him at about 3-45 p. m. The petitioner has also said in his evidence that thereafter he saw the Chief Electoral Officer, but he also told him that he could do nothing for him. The petitioner, therefore, saw the Chief Election Commissioner, who happened to be in Panjim on 15th, and gave an application to him. The application, however, is not on the record. On 16th, which was the last date for withdrawal, the petitioner made one application (vide Ex. 44) to the Chief Electoral Officer, but the latter only filed it. It would thus be seen that except the application (Ex. 47) made by the proposer to the Returning Officer on 13th November 1963, no other application for extension of time was made by or on behalf of the petitioner to the Returning Officer at any time and whatever extension of time was asked for in Ex. 47 was granted to him. In view of these facts, I am unable to see how the Returning Officer can be said not to have exercised his discretion in a proper manner in not granting a longer adjournment.

23. The learned counsel for the petitioner then argued that on 14th November 1963 even though neither the petitioner nor any person on his behalf was present the Returning Officer ought to have adjourned the hearing of the objection till the next day or at any rate till the evening on the very day. In support of this contention, he has placed reliance on *Parmeshwar Kumar v. Lahtan Chaudhary* A. I. R. 1959 Patna 85 and *Ramkishun Singh v. Tribeni Prasad* A. I. R. 1959 Patna 356. But in my opinion neither of these cases helps the petitioner. In the first case the objection taken by a party to the nomination paper was based on facts. In that it was alleged that the nomination paper did not bear any genuine signatures of the proposers. The returning officer adjourned the inquiry *suo motu* and decided it *ex parte* when the candidate concerned against whose nomination paper objection was raised, was absent. In the second case also the objection was founded on facts in that there was a difference in the name between nomination paper and the electoral roll and the returning officer did not grant time to rebut the objection. The Patna High Court, therefore, held in the first case that under Proviso to section 36(5), the returning officer could have allowed time to the candidate concerned to rebut the objections raised by or on behalf of the respondents to the nomination papers, even though time was not asked for as nobody was present on behalf of the petitioner at the time of the scrutiny and at the time the objections were raised. The High Court has observed that where objections are raised to the nomination paper which requires an investigation or a summary inquiry of certain facts, it would be proper for the returning officer to adjourn the hearing of the objections for some time or for a day. Similarly, in the second case, the High Court held that under Proviso to sub-section (5) returning officer may allow time to the candidate concerned to rebut the objection by a day not later

than the next day but one following the date fixed for scrutiny. The returning officer must exercise the discretion vested in him by the section in a proper manner so that no one is prejudiced by his order. He cannot act arbitrarily. But in the instant case the objection raised to the nomination paper of the petitioner had nothing to do with any facts alleged by the person raising the objection. It was an objection regarding the non-fulfillment of the statutory requirement of making and subscribing an oath as required by section 4 of the Government of Union Territories Act, 1963. Here was, therefore, a case where the nomination paper was on the face of it invalid for violation of a statutory provision and both the rulings relied upon by the learned counsel also show that in such a case it is not necessary for the returning officer *suo motu* or even otherwise to adjourn the inquiry because no rebuttal of the objection can be reasonably expected. I, therefore, do not think, looking to the nature of the objection, that it was necessary for the returning officer to grant further adjournment on 14th November 1963 for the rebuttal of the objection even though neither the petitioner nor his proposer was present before him.

24. There is one more aspect of the power conferred on the returning officers under the Proviso to sub-section (5), section 36 of the Representation of the People Act. The Proviso says that in case an ibjection is raised by the returning officer or is made by any other person, the candidate concerned may be allowed time to *rebut* it. He his, therefore, not empowered to allow time to remedy the defect after the date of scrutiny. In other words, the jurisdiction of the returning officer under the Proviso is to see whether nomination is in order and to hear objections and to decide them and not to allow time to remedy the defects. If, therefore, on the date of scrutiny the Returning Officer finds that a candidate is not qualified for being chosen to fill a seat under section 4 of the Government of Union Territories Act, 1963, he has the power under section 36(2) of the Representation of the People Act, 1951, to reject such a nomination paper on the ground that there has been a failure to comply with the provisions of section 4 of Government of Union Territories Act, 1963. Now, in the instant case, the argument of the learned counsel for the petitioner substantially is that the Returning Officer should have allowed further extension of time to the petitioner to enable him to make and subscribe an oath and not to rebut the objection unless the objection raised is said to be required to be rebutted only by making and subscribing an oath. In other words, the petitioner in this case wanted an extension of time not to rebut the objection but to remedy the defect for which the Returning Officer has no power to grant an adjournment under the Proviso. In this connection, I may refer do *Dahu Sao v. Ranglal Chaudhary* A. I. R. 1960 Patna 371 in which case a nomination paper omitted to mention the name of constituency and was handed over to the returning officer. He did not follow the procedure laid down in section 33(4) and to detect the error at that stage. Thus this was a case where there was a failure to comply with the provisions of section 33(1) on the part of the candidate in not filing a nomination paper completed in the prescribed form. The Patna High Court held that the said defect could not be allowed to be remedied at the time of scrutiny at which the only jurisdiction of the Returning Officer was to see whether the nominations were in order and to hear and decide objections. The returning officer in such a situation, the High Court held, had the power under section 36(2) to reject a nomination because there had been a failure to comply with the provisions of section 33(1) of the Act if the defect was of a substantial character. Even if, therefore, the Returning Officer in this case had granted sufficient adjournment to the petitioner with a view to enable the petitioner to make and subscribe an oath, it could have been successfully contended that the Returning Officer had no jurisdiction to grant an adjournment inasmuch as he has jurisdiction to do so only to *rebut* an objection and not to enable the candidate concerned to remedy the defect. In my opinion, therefore, in this case the Returning Officer was right in not adjourning the inquiry further *suo motu* on 14th November 1963.

25. Lastly, the learned counsel for the petitioner has argued that at any rate the Returning Officer should have reviewed his order on the application of the petitioner. I have already pointed out that no application was made by the petitioner to the Returning Officer after he arrived at Panjim at 3.30 p. m. on 14th November 1963. The only application he made was the one at Ex. 44 and that too, to the Chief Electoral Officer forwarding only a copy of it to the Returning Officer. There was, therefore, no application made to the Returning Officer for review of his order. As regards the Returning Officer's power to review his order, it is laid down by the Madhya Pradesh High Court in *Ramakant Kesheorao V. Bhikulal Laximichand*, 15 Election Law Reports 467 that until the question of acceptance or rejection of a nomination was decided judicially in accordance with the procedure laid down in section 36 of the Representation of the People Act, the returning officer has the power to reject the nomination till such a time as the list of validly nominated candidates has not been made and affixed to his notice board under sub-section (8) thereof. In that case, the respondent filed nominations for a Parliamentary constituency and a State Assembly constituency. The returning officer accepted the nomination for the Parliamentary constituency as no objection was raised by any one to it. On the scrutiny of the nomination for the Assembly constituency, an objection was raised that he was disqualified under section 7 (e) of the Representation of the People Act. This objection was upheld by the returning officer and he thereupon rejected his nomination for the Parliamentary constituency also. It was contended that the rejection of the nomination for the Parliamentary constituency was improper as the returning officer had no power to review his order. The High Court held that in the circumstances of the case the order of the returning officer rejecting the nomination was proper. Now, in the instant case the question of acceptance or rejection of the nomination of the petitioner was decided by the Returning Officer judicially in accordance with the procedure laid down in section 36, at 1.30 a. m. on 14th November 1963. The Returning Officer had the power either to accept or to reject the nomination till such time as the list of validly nominated candidates had not been affixed to his notice board under sub-section (8) of section 36. In the instant case, we have no evidence on the record to show when the list was affixed to the notice board. Sub-section (8) of section 36 requires the returning officer to prepare a list of validly nominated candidates, that is to say, of the candidates, whose nominations have been found valid, and affix it to his notice board, immediately after all the nomination papers have been scrutinised and decisions accepting or rejecting the same have been recorded. Presumably, therefore, the Returning Officer must have prepared a list of the validly nominated candidates and affixed it to his notice board on 14th November 1963 only. If that is so, he could have no power to review his order thereafter. I, therefore, do not find any force in this argument also.

26. On consideration, therefore, of the facts and circumstances of this case, I hold that the petitioner has failed to prove that the order of the Returning Officer rejecting his nomination papers is improper.

27. *Issues Nos. 5 and 6:* In view my findings recorded above, these issues do not survive. It is, however needless to say that if rejection is held improper, then surely it will have to be held that the results of the election were materially affected and the election in the St. Estevam Constituency in that event would be void.

28. *Issue No. 7:* In view of my findings recorded above, the election of the respondent No. 1 is perfectly valid in law and not void.

29. This would have been ordinarily sufficient to dispose of the present petition. But the learned counsel Shri Dias appearing on behalf of the petitioner has raised a novel point. He argued that the Government of Union Territories Act, 1963, being published in the Official Gazette of Goa for the first time on 30th December 1963 (vide Goa Government Gazette, Series I No. 51, dated 30th December 1963), it came into force in the Union Territories of Goa, Daman and Diu on that day only and, therefore, the elections which took place on 9th December 1963 are wholly void. He has developed his argument in this way.

30. The Territories of Goa, Daman and Diu were liberated on 20th December 1961. The Constitution (12th Amendment) Act, 1962, which was assented to by the President on 27th March 1962, came into force with retrospective effect from 20th December 1961. The Territories of Goa, Daman and Diu, therefore, became part of India on 20th December 1961. Thereafter, Goa, Daman and Diu (Administration) Ordinance being No. 2 of 1962, was issued by the President. It came into force on 5th March 1962 (vide The Gazette of India Extraordinary Part II — Section 1 dated 5th March 1962 at page 11). The Ordinance became the Goa, Daman and Diu (Administration) Act, 1962, on 27th March 1962, and the Act came into force retrospectively with effect from 5th March 1962 (vide The Gazette of India Extraordinary, Part II, Section 1, dated 28th March 1962 at page 15). Section 5(1) of this Act provides that all laws in force immediately before the appointed day in Goa, Daman and Diu or any part thereof shall continue to be in force therein until amended or repealed by a competent Legislature or other competent authority. Section

2(b) of the Act defines the expression «appointed day» as meaning the twentieth day of December, 1961. Now, one of the laws in force before the appointed day, that is to say, 20th December 1961, was Overseas Organic Law (Lei Organica do Ultramar). Basis LXXXVIII, LXXXIX, LXXXX and LXXXXI of this Law provide for the procedure for enforcement of certain Legislative measures in Overseas Provinces. Basis LXXXVIII and clauses II and III of Basis LXXXIX refer to the procedure to be followed in regard to the legislative measures passed in Portugal and published in the Official Gazette of Portugal (Diario do Governo), while clause I of Basis LXXXIX and Basis LXXXXI refer generally to the legislative measures put in force in the Overseas Provinces, whether such a legislative measure is passed in Portugal for being enforced in Overseas Provinces or whether it is passed by the Overseas Provinces themselves. Clause I of Basis LXXXIX and Basis LXXXXI, the translation of which is supplied to me by the counsel Shri Mulgaonkar appearing on behalf of the respondent No. 5, read thus:

«BASIS LXXXIX

I. In every Overseas Province there shall be published as a rule every week a Boletim Oficial. All legislative measures which are meant to be in force in the province shall be published in it (Boletim Oficial). It shall have a set-up identical to the «Diario do Governo», and shall have as its frontispiece the National Escudo.

BASIS LXXXXI

The laws and other legislative measures shall come in force in the Overseas Provinces, unless there is special declaration, within 5 days from the date of publication of the respective Boletim Oficial, This time limit is applicable to the capital of the province and in the area of its district. For the remaining territory the statute of each province may establish longer time limit according to the distances and means of communication».

Relying on these provisions, which are as I have already said continued in force by virtue of section 5 of the Goa, Daman and Diu (Administration) Act, 1962, the learned counsel has argued that unless the Government of Union Territories Act, 1963, was published in the Goa, Daman and Diu Gazette (Boletim Oficial), it could not come in force in Goa, Daman and Diu and it being published for the first time on 30th December 1963, elections held for the purpose of that Act under the Representation of the People Act, 1951, which also came into force on the said day by virtue of section 57 of the Government of Union Territories Act are void.

31. The learned counsel Shri Bharucha appearing on behalf of the respondent No. 1 has argued that the point raised by the learned counsel for the petitioner being such as challenges the very existence of this Tribunal to which he has already submitted, he cannot be allowed to raise such a point. Secondly, he has also argued that the Overseas Organic Law is a colonial law repugnant to our Constitution and, therefore, it cannot remain in force after 20th December 1961 when the territories of Goa, Daman and Diu became part of India and, therefore, governed by our Constitution. The question for consideration, therefore, is whether the Government of Union Territories Act, 1963, required to be published in the Government Gazette (Boletim Official) before it could be enforced in this Union Territory. However, before I proceed to discuss this point, it would be necessary to consider the objection raised on behalf of the respondent No. 1 to this point.

32. It is argued on behalf of the respondent No. 1 that if according to the petitioner the Government of Union Territories Act, 1963, and, therefore, the Representation of the People Act, 1951, were not in force on 9th December 1963 when the elections were held, then not only the elections would be void but even the Tribunal could not be said to have been validly constituted. But the petitioner having submitted to the jurisdiction of the Tribunal, he cannot be allowed to raise such a point. In this connection, it must be remembered that even according to the petitioner the Government of Union Territories Act, 1963, and, therefore, the Representation of the People Act, 1951, came into force in these territories on 30th December 1963 when the Act was first published in the Goa Government Gazette (vide Goa Government Gazette No. 51, Series I dated 30th December 1963). The Tribunal was appointed by the Election Commission under section 86 in May 1964. Surely, therefore, even according to the petitioner the Government of Union Territories Act, 1963, by virtue of the provisions of section 57 of which, the Representation of the People Act, 1951, also came into force on the very day, was in force on the day on which the Election Commission appointed this Tribunal to try the petition. The point raised by the petitioner, therefore, does not affect the admitted fact that the Tribunal was validly constituted under the Representation of the People Act, 1951, which came into force in these territories even according to the petitioner on 30th December 1963. The learned counsel Shri Bharucha also pointed out that at any rate the petitioner has come before the Tribunal for certain reliefs and the point raised by him, if accepted, would obviously result into a dismissal of his petition. That is so. But what the petitioner wants is a finding that the elections were void, if the point raised by him is accepted, and in such an event it seems that he is prepared to have his petition dismissed. It is rather strange that the petitioner should have raised such a point which if accepted would require his petition to be thrown out. But nevertheless I think he is entitled to raise such a point whatever may be the result and the Tribunal being validly constituted even according to the petitioner, I do not see any difficulty in allowing the petitioner to raise the point.

33. As regards the argument that the Overseas Organic Law is a colonial law repugnant to our Constitution and, therefore, cannot remain in force after 20th December 1961 when the territories of Goa, Daman and Diu became part of India and, therefore, governed by our Constitution, it is no doubt true that a colonial law would be repugnant to our Constitution. But when the Parliament enacted in section 5(1) of the Goa, Daman and Diu (Administration) Act, 1962, that all laws in force immediately before the appointed day in Goa, Daman and Diu or any part thereof shall continue to be in force therein until amended or repealed by a competent Legislature or other competent authority, those laws, most of which were obviously colonial inasmuch as they were passed in Portugal for the Overseas Provinces, being allowed to continue in force after the appointed day by the Parliament, they ceased to be the colonial laws as such. The Parliament was aware as sub-section (1) of section 5 of the Goa, Daman and Diu (Administration) Act, 1962, shows that there would be difficulties in applying those laws to the Union Territories and, therefore, sub-section (2), section 5 and sections 8 and 10 were incorporated in that Act. The most, therefore, that can be said in favour of the respondent No. 1 on this point is that the provisions of those laws, which are inconsistent with or repugnant to our Constitution, cannot be enforced. But it cannot be said that all the laws because they are colonial in the sense that they were passed in Portugal for Overseas Provinces are inconsistent with or repugnant to our Constitution.

34. Reverting to the question whether the Government of Union Territories Act, 1963, required to be published in the Goa Government Gazette (Boletim Oficial) before it could be enforced in this Union Territory, the relevant provisions regarding the publication of legislative measures in Goa Gazette (Boletim Oficial) with which we are concerned here are contained in Basis LXXXVIII, LXXXIX, LXXXX and LXXXXI of Lei Organica do Ultramar which is in Portuguese language. The English translation of these provisions which is supplied to me by the counsel Shri Mulgaonkar appearing on behalf of the respondent No. 5 reads thus:

«BASIS LXXXVIII

I. The publication of legislative measures which are to be extended to the Overseas Provinces is within the powers of the Overseas Minister or the respective Governors, respectively as if they are of the attribution of the National Assembly and of the Central Government or of the Local Governors.

II. All the legislative measures emanated from the Metropolitan organs to be in force in Overseas Provinces are required to have a proviso by the Overseas Minister that they should be published in the «Boletim Oficial» of the province or provinces where they are executed. The proviso shall be written on the original of the legislative act and subscribed by the Overseas Minister.

III. The introduction in the Overseas Provinces of a legislative measure already in force in Portugal depends on the notification of the Overseas Minister wherein the alterations, amendments, additions and any special clauses called for by the juridical order or peculiar structure of the province wherein the legislative measure is meant to be enforced.

IV. The publication in Boletim Oficial of any provisions reproduced from the «Diario do Governo» (Oficial Gazette of Lisbon), without observing the prescription of this Basis will have no juridical effect.

BASIS LXXXIX

I. In every Overseas Province there shall be published as a rule every week a Boletim Oficial. All legislative

measures which are meant to be in force in the province shall be published in it (Boletim Official). It shall have a set-up identical to the «Diario do Governo», and shall have as its frontispiece the National Escudo.

II. The Legislative measures published in the «Diario do Governo» to be in force in the Overseas Provinces, shall come in force in the same provinces only after they are reproduced in the respective Boletim Oficial. The reproduction shall compulsorily be made in the first issue of the Boletim Oficial which is published after the arrival of the «Diario do Governo». The said legislative measures shall come into force in the Overseas Provinces before their publication in the Boletim Oficial when it is stated therein that they are in force immediately. In this case the proviso appended shall be implemented, and shall be reproduced afterwards in the Boletim Official.

In such, as well as in other urgent cases the legislative measures published in the «Diario do Governo» shall be transmitted telegraphically and its text shall be reproduced in the Boletim Official or in its supplement.

III. Save the stated about the «Diario do Governo» the compulsory observance of legislative measures published in the Boletim Official of Overseas Provinces shall never depend on their insertion in any other publication.

BASIS LXXXX

The legislative measures emanated from Portugal shall maintain their date of publication in «Diario do Governo» when they are published in Overseas Provinces. Those, the publication of which is made in the Boletim Official of Overseas Provinces shall have the date of the issue where they are inserted.

BASIS LXXXXI

The laws and other legislative measures shall come in force in the Overseas Provinces, unless there is a special declaration, within 5 days from the date of publication of the respective Boletim Official. This time limit is applicable to the capital of the province and in the area of its district. For the remaining territory the statute of each province may establish long time limit according to the distances and means of communication».

35. Now, in the first place, the legislative measures contemplated under Clause I of Basis LXXXIX or under Basis LXXXXI were the legislative measures either passed in Portugal and meant to be in force in the Overseas Provinces of Goa, Daman and Diu or the legislative measures passed by the local Governments of the Overseas Provinces, if there were such local Governments with legislative powers, and secondly the Boletim Official (Goa Government Gazette) in which such legislative measures were required to be published before they could be brought in force in these provinces had a set-up identical with the Portugal Government Gazette (Diario do Governo) and had as its frontispiece the National Escudo. All the legislative measures which were meant to be in force in the Overseas Provinces were required to be published in this kind of Official Gazette. The Government of Union Territories Act, 1963, is not a legislative measure contemplated in the aforesaid provisions of the Overseas Organic Law, nor the Official Gazette which is published in Goa is the Boletim Official» having as its frontispiece the National Escudo contemplated under Clause I of Basis LXXXIX. Admittedly, since the liberation of Goa, Daman and Diu, which took place on 20th December 1961, no Boletim Official having a set-up identical with (Diario do Governo) having as its frontispiece the National Escudo is published in this Territory. Instead these Territories have an Official Gazette having its set-up identical with the Official Gazette of any other State in India and has its frontispiece our National emblem of Ashok Chakra with three Lions, fourth being hidden from the view with the words «Satyameva Jayate» adopted by Government of India on 26th January 1950. That being the position, the provisions of the Overseas Organic Law (Lei Organica do Ultramar) cannot have any application to the enforcement of the Government of Union Territories Act, 1963 in the territories of Goa, Daman and Diu. As regards the provisions contained in the Basis LXXXVIII, clauses II and III of Basis LXXXIX and Basis LXXXX, they clearly contemplated the legislative measures passed in Portugal and to be brought in force in the Overseas Provinces. These provisions, therefore, certainly do not apply to the enforcement of the Government of Union Territories Act, 1963.

36. Secondly, after the Constitution was amended by the Constitution (12th Amendment) Act, 1962, which came into force with retrospective effect from 20th December 1961 and by virtue of which the territories of Goa, Daman and Diu became part of India, the President in exercise of the powers conferred on him by article 240 of the Constitution, promulgated Regulation No. 12 of 1962 being the Goa, Daman and Diu (Laws) Regulation. It came into force on 22nd November 1962. Section 3 of this Regulation runs thus: —

> «Section 3. (1) The Acts as they are generally in force in the territories to which they extend, shall extend to Goa, Daman and Diu, subject to the modifications, if any, specified in the Schedule.
>
> (2) Notwithstanding anything contained in sub-section (1) or in the relevant provision, if any, of each such Act for the commencement thereof, the provisions of each such Act shall come into force in Goa, Daman and Diu on such date as the Lieutenant-Governor may, by notification in the Goa, Daman and Diu Gazette, appoint.
>
> Provided that different dates may be appointed for different provisions of any Act and for different areas and any reference in any such provision to the commencement of the Act shall be construed as a reference to the coming into force of that provision in the area where it has been brought into force».

Section 2(a) defines «Act» as meaning an Act or the Ordinance specified in the Schedule. The Schedule specifies number of Acts intended to be brought into force in these territories and one of such Acts is the General Clauses Act, 1897. Sub-section (1) of section 4 of this Regulation provides that any law in force in Goa, Daman and Diu or any area thereof corresponding to any Act referred to in section 3 or any part thereof shall stand repealed as from the coming into force of such Act or part in Goa, Daman and Diu or such areas, as the case may be. It is common ground that the General Clauses Act, 1897 was brought into force in Goa, Daman and Diu by virtue of a Notification dated 22nd January 1963 issued by the Administrator, that is to say, the Lieutenant-Governor, on 30th January 1963. If, therefore, the provisions of the Overseas Organic Law, which required publication of any legislative measure in the Boletim Official (Goa Government Gazette) before such a legislative measure can be enforced, correspond to any provisions of the General Clauses Act regarding the enforcement of a statute passed by the Central Government, then surely such provisions of the Overseas Organic Law shall stand repealed. Now, section 5 of the General Clauses Act, 1897 reads thus:

> «Section 5. (1) Where any Central Act is not expressed to come into operation on a particular day, then it shall come into operation on the day on which it receives the assent, —
>
> (a) ...., and
>
> (b) in the case of an Act of Parliament, of the President.
>
> (2) ....
>
> (3) Unless the contrary is expressed, a Central Act or Regulation shall be construed as coming into operation immediately on the expiration of the day preceding its commencement».

These provisions make it clear that a Central Act when it is not expressed to come into operation on a particular day, then it shall come into operation on the day on which it receives the assent of the President. This necessarily implies that if a Central Act is expressed to come into operation on a particular day, then it shall come into operation on that day and unless the contrary is expressed, a Central Act is to be construed as coming into operation immediately on the expiry of the day preceding its commencement. Section 5 of the General Clauses Act, therefore, provides for coming into operation of Central Acts. We have here, therefore, a case where the provisions relied upon by the learned counsel for the petitioner from the Overseas Organic Law (Lei Orgânica do Ultramar) which were continued in force after 20th December 1961 lay down that legislative measures are to come into operation in the territories of Goa, Daman and Diu only after publication in the Official Gazette; but the law corresponding to these provisions contained in section 5 of the General Clauses Act provides that a legislative measure of the Central Government shall come into force on the day it is expressed to come into operation or in the absence on the day on which the President gives his assent to it and such a legislative measure shall be construed to mean to come into operation immediately on the expiration of the day preceding its commencement. If that is so, then by virtue of the provisions of section 4, sub-section (1) of the Goa, Daman and Diu (Laws) Regulation No. 12 of 1962, the corresponding provisions of the Overseas Organic Law (Lei Or-

gânica do Ultramar) shall stand repealed and, therefore, they were no longer in force after 22nd November 1962. I have already pointed out that sub-section (2) of section 1 of the Government of Union Territories Act, 1963, provides that the Act shall come into force on such date as the Central Government may, by notification in the Official Gazette, appoint, and the Notification G. S. R. 814 No. F. 6(2)/62-Goa issued by the Central Government on 13th May 1963 appointed the 13th day of May 1963 as the date on which the provisions of Part I, sections 3, 4 and 14 in Part II, Part III and sections 53, 56 and 57 in Part V of the said Act and the First and Second Schedules thereto shall come into force in the Union Territory of Goa, Daman and Diu. I am, therefore, of the opinion that the Government of Union Territories Act, 1963, came into force on the 13th May 1963 in the Union Territory of Goa, Daman and Diu by virtue of the provisions of section 5 of the General Clauses Act.

37. Thirdly, Article 239(1) of the Constitution of India empowers Parliament to provide for the administration of Union Territories by law inasmuch as it says that save as otherwise provided by Parliament by law, every Union territory shall be administered by the President acting, to such extent as he thinks fit, through an administrator to be appointed by him with such designation as he may specify. This Constitutional power to provide by law for the administration of the Union territory obviously includes the power to provide for the date on which the law providing for administration shall come into force. Accordingly, sub-section (2) of section 1 of the Union Territories Act, 1963, provided that the Act shall come into force on such day as the Central Government may, by notification in the Official Gazette, appoint. 13th May 1963 was such day appointed by the Central Government by a Notification issue in the Official Gazette. The provisions of the Overseas Organic Law (Lei Organica do Ultramar) on which reliance is placed on behalf of the petitioner and which provided for the mode of enforcing any legislative measures are, therefore, obviously inconsistent with the Constitutional power conferred on the Parliament under Article 239. If that is so, these provisions to the extent to which they are inconsistent with the Constitutional power of the Parliament, they shall be rendered ineffective and, therefore, cannot apply to the enforcement of the Government of Union Territories Act passed by the Parliament providing for the administration of the Union territories of Goa, Daman and Diu.

38. Fourthly, section 8 of the Goa, Daman and Diu (Administration) Ordinance, 1962, being No. 2 of 1962, section 4 (1) of which continued existing laws in force, provides for power to remove difficulties in the application of such laws. It runs thus:—

«Section 8. (1) If any difficulty arises in giving effect to the provisions of this Ordinance or in connection with the administration of Goa, Daman and Diu, the Central Government may, by order, make such further provision as appears to it to be necessary or expedient for removing the difficulty:

Provided that no such power shall be exercised after the expiry of two years from the appointed day.

(2) Any order under sub-section (1) may be made so as to be retrospective to any date not earlier than the appointed day»

Accordingly, in exercise of the powers conferred by section 8 of the Goa, Daman and Diu (Administration) Ordinance, 1962 (2 of 1962), the Central Government passed an order called the Goa, Daman and Diu (Administration) Removal of Difficulties Order, 1962. It came into force with retrospective effect on 20th December 1961. This Order continued in force by virtue of the provisions of section 11 of the Goa, Daman and Diu (Administration) Act, 1862, even after the repeal of the Ordinance. Section 2 of this Order provides —

«Section 2. For the period during which any law in force immediately before the twentieth day of December, 1961, in Goa, Daman and Diu or any part thereof is not adapted under sub-section (2) of section 4 of the Goa, Daman and Diu (Administration) Ordinance, 1962, the powers conferred and duties imposed by or under any provision of such law on any functionary specified in column I of the Table below shall, unless such provision is inconsistent with, or repugnant to, the provisions of the constitution, be exercisable and performed, subject to such directions as the Central Government may give, by the functionary specified in column II thereof opposite to the functionary.

TABLE

I	II
President of Portugal Overseas Minister (Minister Ultra Marino) Governor General of the State of India	Administrator
Secretary General of the State of India	Chief Civil Administrator, Goa.
Police Commandant Comandante Policia de Geral)	Senior Superintendent of Police, Goa

In exercise of these powers the Lieutenant Governor issued an Order GAD/74/62/2221 dated 28th January, 1963 published in the Goa Government Gazette, Series I No. 5 dated 31st January, 1963 at page 30. This Order reads thus:

«In exercise of the powers conferred by the Goa, Daman and Diu (Administration) Removal of Difficulties Order, 1962 and notwithstanding anything to the contrary contained in Art. 71 of the Estatuto do Estado da India approved by Decree No. 40 216 dated the 1st July, 1955 and «Base XLXXXVIII» of the «Lei Organica do Ultramar» or any other law for the time being in force in this Territory I hereby order that any law made by the Central Government and applicable to the Union Territory of Goa, Daman and Diu shall come into force in the Territory as may be provided in the Law.

This Order shall be deemed to have come into force on the 19th December, 1962».

If at all, therefore, there was any difficulty in enforcing the Government of Union Territories Act, 1963, in the Union Territories of Goa, Daman and Diu, it was removed by this Order with the result that that Act came into force in these Territories on 13th May 1963 as notified.

39. This Order, however, is attacked by the learned counsel Shri Dias appearing on behalf of the petitioner on two grounds. Firstly, he has argued that the Order GAD/74/62/2221 dated 28th January 1963 issued by the Lieutenant Governor is ultra vires the Lieutenant Governor inasmuch as by issuing such an order he has made a Legislation. Now, the Goa, Daman and Diu (Administration) Removal of Difficulties Order, 1962, passed by the Central Government in exercise of the powers conferred on it by section 8 of the Goa, Daman and Diu (Administration) Ordinance, 1962, confers powers and imposes duties on the Lieutenant Governor which powers were exercised and duties performed by the corresponding functionaries such as President of Portugal, Overseas Minister and the Governor General of the State of India. If, therefore, these powers and duties included the power and duty to provide for the mode in which any enactment should be brought into force in the territories of Goa, Daman and Diu and if these powers and duties are not inconsistent with or repugnant to the provisions of our Constitution, then there is noting to prevent the Lieutenant Governor to exercise this power and to perform this duty. The learned counsel for the petitioner has not been able to point out to me that the powers exercised and duties performed by the President of Portugal or Overseas Minister or the Governor General of the State of India under the Overseas Organic Law (Lei Organica do Ultramar) did not include the power or the duty to provide for the mode of enforcement of any legislative measure, nor has he been able to show that such a power if exercised or duty performed by the Lieutenant Governor, it would be inconsistent with or repugnant to the provisions of our Constitution. If such a power could be exercised or duty performed by the President of Portugal or the Overseas Minister or the Governor General of the State of India under the Overseas Organic Law and if that power or duty is not inconsistent with or repugnant to our Constitution, then whether it is called legislative or executive power or duty, it would not prevent the Lieutenant Governor form passing the Order and providing that any law made by the Central Government and applicable to the Union Territory of Goa, Daman and Diu shall come into force into the territory as may be provided in the law.

40. In fact, this Order cannot be said to be a legislation made by the Lieutenant Governor. There can be no dispute over the proposition that though expressed prohibition is

not embodied in our Constitution against delegation of powers by the Legislative to the Executive or any subordinate body, our Supreme Court has held that the Legislature under our Constitution cannot delegate its essential functions which have been entrusted to it by the Constitution. But the essential legislative functions are the determination of the legislative policy and its formulation as a rule of conduct. In other words, the Legislature cannot delegate to another agency the exercise of its judgment on the question as to what the law should be. The power to modify an Act in its essential particulars so as to involve a change of policy or to alter the essential character of an Act or to change it in material particulars or the power to modify an Act without any limitation on the power to modify, will be an essential legislative function. But the delegation of a power to modify would not be unconstitutional if it relates not to the legislative policy but to matters of detail which may be considered as not essential to the legislative function. In the instant case, section 8 of the Goa, Daman and Diu (Administration) Ordinance, 1962 (2 of 1962), under which the Goa, Daman and Diu (Administration) Removal of Difficulties Order, 1962, is passed by the Central Government and which in its turn confers powers and imposes duties exercised and performed by the corresponding functionaries, on the Administrator, empowers the Central Government to remove difficulties in the application of the Laws continued in force after 20th December 1961 by making an Order. Similarly, the Goa, Daman and Diu (Administration) Removal of Difficulties Order, 1962, empowers the Administrator to exercise those powers and perform those duties which were exercised and performed by the corresponding functionaries before 20th December 1961 provided such exercise or such performance is not inconsistent with or repugnant to our Constitution. Surely, therefore, neither section 8 of the Goa, Daman and Diu (Administration) Ordinance, 1962, nor the Goa, Daman and Diu (Administration) Removal of Difficulties Order, 1962, delegates any legislative power to the Central Government or to the Administrator respectively. Section 8 of the Goa, Daman and Diu (Administration) Ordinance, 1962, empowers the Central Government only to modify old laws in respect of matters of detail for the purposes of removing difficulties in their application and it does not relate to any Legislative policy. Surely such matters of detail cannot be considered to be essential to the legislative functions. The provisions of section 8 relate to the enforcement of the policy which the Legislature itself has laid down. The law was full and complete when it left the legislative chamber permitting the Central Government to make orders necessary for removing the difficulties in the application of the old laws. The power of introducing necessary modifications in the provisions of the old Law in order to facilitate their application to the Union Territories is only incidental to the power to apply the old laws or to adapt them. The modifications for removing the difficulties are to be made within the framework of the Act. Surely, they cannot be such as to affect its identity or structure of the essential purpose. The power to modify certainly involves a discretion to make suitable changes. It would be useless to give an authority to remove difficulties in the application of the old laws without giving it the power to make suitable changes. The legislature must normally discharge its primary legislative function itself and not through others. Once it is established that it has sovereign powers within a certain sphere, it must follow as a corollary that it is free to legislate within that sphere in any way which appears to be the best way to give effect to its intention and policy in making a particular law, and it may utilise any outside agency to any extent it finds necessary for doing things which it is unable to do itself or finds it inconvenient to do. In other words, it can do everthing which is ancillary to and necessary for the full and effective exercise of its power of legislation. It cannot abdicate its legislative functions, and therefore while entrusting power to an outside agency, it must see that such agency acts as a subordinate authority and does not become a parallel legislature. The true test in respect of «abdication» or «effacement» appears to be whether in conferring the power to the delegate, the legislature, in the words used to confer the power, retained its control. Does the decision of the delegate derive sanction from the act of delegate or has it got the sanction from what the legislature has enacted or decided? (A. I. R. 1951 S. C. 69 and A. I. R. 1951 S. C. 332). In the instant case a reference to section 8 would make it at once clear that the Central Government in passing the Goa, Daman and Diu (Administration) Removal of Difficulties Order, 1962, derives sanction from the Goa, Daman and Diu (Administration) Ordiance, 1962, and not from its own Order. That being the position, I do not see any difficulty in holding that there is no question of unconstitutional delegation of legislative power by the Parliament to the Central Government under section 8 of the Goa, Daman and Diu (Administration) Ordinance, 1962. Likewise the Goa, Daman and Diu (Administration) Removal of Difficulties Order, 1962, also empowers the Administrator to exercise the powers and perform the duties of the corresponding functionaries not inconsistent with or repugnant to our Constitution for the purpose of removing the difficulties in the application of the old laws which were allowed to be continued in force after 20th December 1961. In other words, it enables the Administrator to modify such old laws in regard to the matters of detail not essential to the legislative function. The Order does not relate to any legislative policy as such. At any rate, the Order passed by the Administrator (Lieutenant Governor) which provided that any law made by the Central Government and applicable to the Union Territory of Goa, Daman and Diu shall come into force in the territory as may be provided in the law, cannot be considered to be an Order passed in pursuance of any essential legislative function. It does not relate to any legislative policy. It only relates to the modifications in the provisions incidental to the power to apply the old laws to the Union Territories after they became part of India under our Constitution. This power does not affect in any way the identity or structure or even the essential purpose served by the Goa, Daman and Diu (Administration) Ordinance, 1962, under which it is issued. I am, therefore, of the opinion that the Order issued by the Lieutenant Governor in pursuance of the powers conferred on him by the Goa, Daman and Diu (Administration) Removal of Difficulties Order, 1962, is not a piece of legislation made by the Lieutenant Governor, nor the Central Government can be said to have legislated in passing the Goa, Daman and Diu (Administration) Removal of Difficulties Order, 1962. Even assuming that the Order seeks to legislate inasmuch as it refers to the day of enforcement of any law applicable to the Union Territory of Goa, Daman and Diu, even then what is done by the Order not being essential to the legislative function, I am inclined to think that the delegation in this case cannot be said to be unconstitutional. I am, therefore, of the opinion that the Order passed by the Lieutenant Governor is perfectly intra vires and, therefore, valid in law.

41. Another ground on which this Order was assailed by the learned counsel is the inaccurate reference to the Base LXXXVIII of the Overseas Organic Law (Lei Organica do Ultramar) and omission to refer to the Base No. LXXXIX. It is true that the reference to the Base No. LXXXVIII is incorrect in as much as it is printed as XLXXXVIII. But this is merely an accidental slip. Then again I have already said that Base No. LXXXVIII refers to the legislative measures passed in Portugal and intended to be extended to the Overseas Provinces. It is only clause I of Base No. LXXXIX which refers to every legislative measure meant to be in force in the Overseas Provinces whether it is passed in Portugal or in the Overseas Province itself. A reference to the Base No. LXXXIX in this Order, therefore, would have been more appropriate. But at the same time the Order refers to Article No. 71 of the Estatuto do Estado da India approved by Decree No. 40 216 dated the 1st July, 1955. That Article says that save as otherwise expressly provided, all laws and other enactments shall come into force within the following time limits, counted from the publication in the Government Gazette: 1) five days in the district of Goa, 2) thirty days in the districts of Daman and Diu. This provision appears to have been made in Article 71 of the statute of the State of India (Estatuto do Estado da India) in pursuance of Base No. LXXXXI of the Overseas Organic Law (Lei Organica do Ultramar). Base No. LXXXVIII also requires legislative measures to be published in the Official Gazette (Boletim Oficial). The pith and substance of the Order, therefore, is that notwithstanding anything to the contrary contained in any law in force in these territories any law made by the Central Government and applicable to the Union Territories of Goa, Daman and Diu is to come into force in the Territory as may be provided in the Law. The inaccuracy, therefore, in the figure «LXXXVIII» and the omission to refer to the Base No. LXXXIX in no way affects the substance of the Order and, therefore, there is no difficulty in giving full effect to it.

42. I, therefore, hold that it was not necessary to publish the Government of Union Territories Act, 1963, in the Goa Government Gazette before it could be enforced in pursuance of section 1, sub-section (2) of the said Act. The Act, therefore, came into force on 13th May, 1963 in accordance with the Notification issued under sub-section (2) of section 1 of that Act.

43. Lastly, the learned counsel has drawn my attention to the provisions of section 3(8)(b)(iii) of the General

Clauses Act, 1897, which says that the expression «Central Government» shall mean in relation to the administration of a union territory, the administrator thereof acting within the scope of the authority given to him under Article 239 of the Constitution, and has argued that according to this definition the expression «Central Government» used in section 1(2) of the Union Territories Act, 1963 means the administrator and, therefore, only the Lieutenant Governor of the Union Territories of Goa, Daman and Diu could issue Notification in the Official Gazette appointing the date on which the Act should come into force and inasmuch as no such Notification is issued by the Lieutenant Governor, the Act cannot be said to be in force in these territories. I do not see any substance in this argument. The provision of section 3(8)(b)(iii) of the General Clauses Act makes it quite clear that the administrator acting within the scope of the authority given to him under Article 239 of the Constitution is the Central Government in relation to the administration of a Union Territory. Article 239 of the Constitution says that save as otherwise provided by Parliament by law, every Union territory shall be administered by the President acting, to such extent as he thinks fit, through the administrator to be appointed by him with such designation as he may specify. It is, therefore, obvious that when there is no law provided by Parliament for the administration of the Union territory and such a territory is administered by the President acting through the administrator, the expression «Central Government» would mean the administrator, but when the Parliament has passed law providing for the administration of the Union territory as we have in this case the Government of Union Territories Act, 1963, the expression «Central Government» would not mean the administrator. I am, therefore, of the opinion that in the instant case the Lieutenant Governor could not have issued Notification appointing the date for the enforcement of the Government of Union Territories Act.

44. In the result, the petition fails and it deserves to be dismissed. As regards costs, the hearing of this petition occupied six days and, therefore, I assess the costs as below:—

	Petitioner	Respondent No. 1	Respondent No. 4	Respondent No. 5
Pleader's fees	Rs. 300/-	Rs. 300/-	Rs. 300/-	Rs. 300/-
Other costs	Rs. 12/-	Rs. 2/-	Rs. 2/-	Rs. 2/-
Total	Rs. 312/-	Rs. 302/-	Rs. 302/-	Rs. 302/-

However, in my opinion, in this petition only the respondents Nos. 1 and 5 will be entitled to their costs in separate sets. It is true that the respondent No. 4 has filed his written-statement through a counsel. But he being a formal party and the petitioner having made it clear at the commencement of the trial (vide Pursis Ex. 33) that he did not claim any relief against him, that he was impleaded as a formal party only and that, therefore, he might contest the petition at his own costs, I do not think that he should be awarded his costs. In fact, the respondent No. 4 beyond filing his written-statement supporting the respondent No. 1 did not take any active part in the hearing of the petition. I am, therefore, of the opinion that only the respondents Nos. 1 and 5 would be entitled to their costs in separate sets from the petitioner.

Order

The petition is dismissed. The petitioner shall pay Rs. 302/- to each of the respondents Nos. 1 and 5 as costs of this petition in separate sets and bear his own. The respondents Nos. 2, 3 and 4 shall bear their own costs.

Panjim, 21st August, 1964. P. S. MALVANKAR

Member of the Election Tribunal, Panjim - Goa.

By order,

PRAKASH NARAIN

Secretary to the Election Commission.

Notification

Following notification no. 82/2/64 dated 31st August, 1964, issued by the Election Commission, India, is hereby published for general information.

A. F. Couto, Chief Electoral Officer.

Panjim, 4th September, 1964.

ELECTION COMMISSION, INDIA

New Delhi — 1, dated 31st August, 1964
Bhadra 9, 1886 (SAKA)

Notification

No. 82/2/64. — In pursuance of section 106 of the Representation of the People Act, 1951, the Election Commission hereby publishes the order pronounced on the 21st August, 1964 by the Election Tribunal, Panjim.

Before the ELECTION TRIBUNAL, PANJIM — GOA.

PRESIDED OVER BY SHRI P. S. MALVANKAR, M.A., LL.B.,

DISTRICT PETITION No. 2 OF 1964.

Election Petition No. 2 of 1964

Exhibit No.

Cristovam Furtado, Roman Catholic at present residing at Rua de Ourem, Panjim — Goa. } Petitioner

Versus

1) Sebastião Fernandes alias Tonny Fernandes, Roman Catholic, at present residing at Panjim,
2) Chandrakant Kakodkar, Hindu, at present residing at Cacora Curchorem—Goa,
3) Babal Sanvlo Tari, Hindu, at present residing at Sanguem, Goa,
4) Mucund Ganesh Panchwadkar, Hindu, at present residing at Kurdi, Sanguem — Goa,
5) Laxmikant Venkatesh Prabhu Bhembre, Hindu, at present residing at Zambauli, Rivona, Sanguem — Goa.

} Respondents

Appearances. — (1) For the Petitioner — Shri J. C. Dias, Advocate, with Shri U. B. Surlikar, Advocate,
(2) For the Respondent No. 1 — Shri Nausher Bharucha, Advocate, with Shri G. D. Kamat, Advocate,
(3) Respondents Nos. 2 to 5 absent.

Judgment

This is an election petition filed by one Cristovam Furtado of Panjim, Goa, against his rival candidates, the respondents nos. 1 to 5, under section 81 of the Representation of the People Act, 1951 hereinafter called the Act, for the declaration that the election of respondent no. 1 is void and that the petitioner has been duly elected under clause (c) of section 98 of the Act.

2. In the last General Elections, which were the first after the liberation of Goa, Daman and Diu on 20th December 1961, the Sanguem Constituency of Goa was called upon to elect one member of the Goa Legislative Assembly. The petitioner and the respondents Nos. 1 to 5 were the rival candidates contesting the elections. The elections were held on 9th December 1963. The petitioner was a candidate of the United Goans and the respondent no. 1, of the Maharashtrawadi Gomantak. The results were declared on 11th December 1963 and the respondent no. 1 was declared duly elected having obtained 4581 votes, the largest number. The petitioner and the respondents nos. 2 to 5 obtained 1683, 173, 58, 98 and 1354 votes respectively.

3. The petitioner alleged that during the campaign, preceding the election, the Maharasthrawadi Gomantak Sanghatana had published a leaflet in Konkani Language with a Tomb of St. Francis Xavier on the cover page requesting the voters to vote for Maharasthrawadi Gomantak Sanghatana thereby arousing the religious feelings of people and inducing them to vote for the said Sanghatana. The pamphlets were distributed by the respondent no. 1 in Sanguem. The petitioner also alleged that the respondent no. 1 had also committed other corrupt practices in that firstly on the day of election, that is to say, on 9th December 1963, he himself carried in his jeep voters and brought them to the Polls, made them to stand in a queue, gave them Identify cards with the symbol of Lion and asked them to mark stamp on Lion. The respondent no. 5 had immediately objected to this practice of the respondent no. 1 and had also lodged a protest with the Presiding Officer Vencatexa Poi Palandikar at

Sanguem Polling Station. Secondly, the respondent no. 1 and his wife distributed sarees and cloth pieces in various villages and asked the recipients to vote for the Lion so that the Lion might make them rich and prosperous. Thirdly, he also treated the electorate on a very extensive scale far exceeding the customary form of entertainment prevailing in the locality for the purposes of influencing them for securing their good will. Fourthly, he distributed money amongst the voters in the Constituency. Fifthly, he had taken oaths from the voters and in some cases he had asked Hindu voters to swear by cocoanut that they would vote for him. Sixthly, he promised to pay Rs. 2000/- to one Sar-panch from his Constituency and asked him to induce persons in his locality to vote for him. And lastly, he promised to distribute all the property belonging to Bhatkaris (land-owners) amongst the persons who had no property. The petitioner also alleged that at the Polling Station at Bati of Sanguem, the Presiding Officer Shri Kalian Salelkar was seen constantly going into the voting compartments and requesting the voters to vote for the symbol of his choice. One Anthony Sergio Furtado, the Polling Agent of the petitioner, strongly protested against the conduct of the Presiding Officer, but the latter did not take any notice of it. The petitioner, therefore, contended that the result of the election so far as the respondent no. 1 was concerned was materially affected on account of the corrupt practices committed by him and the illegality committed by the Presiding Officer. He, therefore, filed the present petition for the reliefs stated above.

4. Before filing the written-statement, the respondent no. 1 made the application (Ex. 25) demanding full particulars of the corrupt practices alleged by the petitioner. Accordingly, the petitioner filed the affidavit (Ex. 43) giving some particulars of some of the alleged corrupt practices. The respondent no. 1 then filed his written-statement at Ex. 44, but he made a grievance that the petitioner had not supplied full particulars of all the corrupt practices alleged by him.

5. The respondent no. 1 in his written-statement (vide Ex. 44) substantially admitted the contents of the paragraphs nos. 1 to 3 of the petition. As regards paragraph 4 of the petition, he contended that it did not disclose the whole truth. He alleged that the contested election on the ticket of Maharashtrawadi Gomantak and not on the ticket of Maharashtrawadi Gomantak Sanghatana. He further alleged that he had been a member of the Congress Party till 11th November 1963, the last date for filing nomination papers, and belonged to that organisation in which he worked in the capacity of a President of the District Congress Committee, Sanguem. Thereafter, on account of the differences between him and the Congress Party, he resigned from the Congress Party along with a vast multitude of his followers and joined the Maharasthrawadi Gomantak. Regarding the allegations in paragraph 5 of the petition, he denied that during the campaign, preceding the date of poll or at any other time, he had distributed or caused to be distributed the pamphlet referred to in paragraph 5 of the petition or used this pamphlet in any manner at any time or permitted it to be used for furtherance of the prospects of his election or for prejudicially affecting the election of the petitioner or of any other candidate. He also denied that the pamphlet was published either by Maharasthrawadi Gomantak or under its auspices or authority. He alleged that the pamphlet was circulated by some unknown persons neither connected with the Congress Party of which the respondent no. 1 was a member till 11th November 1963 or with the Maharasthrawadi Gomantak of which he became a member on 11th November 1963. He also alleged that the pamphlet was in fact circulated in Bardez and Salshet, part of Goa, and that he was not aware whether it was distributed in Sanguem Constituency. He also denied that there was any appeal in the pamphlet to voters to vote for him. He further denied that the pamphlet merely by the reason of the illustration of the tomb of St. Francis Xavier thereon could arouse the «religious feelings of the people» or that it could induce them to vote for the Maharasthrawadi Gomantak. The respondent no. 1 also denied that he or his agents were responsible for distribution of the pamphlet for a period of 10 to 12 days before 8th December 1963 as alleged by the petitioner in paragraph 1 of the further particulars supplied by him in Ex. 43 or that he or his agents distributed the pamphlet amongst several predominantly Christian areas in Sanguem town and in the villages of Kurdi and Rivona and that he or his agents requested any voters to vote for him. He contended that the pamphlet was free from any bitterness or religious bias and made a sensible appeal to people to exercise their franchise according to their honest convictions and best interest of Goa and the poor masses. According to him, far from arousing religious passions or feelings, the pamphlet warned the electorate generally, whether of Hindu or Christian faith, against deciding issues on religious grounds. Regarding the allegations made in paragraph no. 6 of the petition, the respondent no. 1 denied that he carried any voters of Sanguem town areas to the Polling booths or that he made them to stand in queue or gave them Identity cards with the symbol of Lion. He alleged that on that day he had to visit all the Polling Stations in his Constituency to see that the Polling Agents were properly performing the task assigned to them and the voters were given proper facilities according to law for the exercise of their franchise. He contended that it was frivolous to suggest that he carried persons in his jeep so many voters materially affecting the results of the election when he hadsecured 4581 votes as against 1683 obtained by the petitioner. He neither admitted nor denied that respondent no. 5 had lodged a protest with the Presiding Officer Venctexa Pol Palandikar at the Sanguem Polling Station inasmuch as he was not aware of any such complaint. He denied that he or his wife or both of them distributed sarees and cloth pieces amongst several voters in the villages of Netorlim, Vissunderem and Colomba and induced the voters to vote for him. He made a grievance that the petitioner had not given full particulars of this alleged corrupt practice. He also denied that he had entertained voters lavishly and in a measure far exceeding the customary form of entertainment prevailing in the locality with the object of inducing the voters to vote for him. He contended that even with regard to this alleged corrupt practice, the petitioner had not supplied full particulars. Similarly, he denied having distributed any money and pointed out in his written-statement that the petitioner was silent regarding the particulars of this corrupt practice. He further denied having taken oath from the voters or having asked Hindu voters to swear by cocoanut. He contended that the petitioner had not disclosed either the form of oath, the dates on which this corrupt practice was committed by the respondent no. 1 or even the names of persons from whom such oath was taken. As regards the allegation of promise to pay Rs. 2000/- to the Sar-panch, the respondent no. 1 denied to have promised any Sar-panch any amount or having asked him to induce any persons in his locality to vote for him. Here again, he pointed out that the petitioner not only did not give even the name of the Sar-panch but did not even specify the date or the place of the alleged corrupt practice. He alleged that in the Sanguem Constituency and the Constituencies surrounding it only Maharasthrawadi Gomantak candidates were elected by an overwhelming majority and that, therefore, it was not necessary for him to purchase support of any Sar-panch at such a fantastic price. Lastly, with reference to paragraph no. 6 of the petition, he denied having promised distribution of property belonging to land-owners amongst the land-less. He also contended that a promise of distribution of lands amongst the land-less did not amount to corrupt practice in law inasmuch as it was only a part of the land reform which was already introduced in Maharasthra and other States of India. As regards the illegality alleged by the petitioner in paragraph 7 of his petition, he denied that the Presiding Officer Kalian Salelkar at Bati was «constantly going» to the voting compartments for the alleged purpose of influencing the voters. In fact, the respondent no. 1 alleged that when he heard about this allegation, he had lodged a protest with the Presiding Officer, but later on he was satisfied that the entry of the Presiding Officer in the booth was to help a blind person. He denied any knowledge of the alleged protest by Shri A. S. Furtado, the Polling Agent of the petitioner. He, therefore, contended that neither any corrupt practice as alleged by the petitioner was committed by him or by any person on his behalf nor any illegalities were committed by the Presiding Officer. The question of the results of the election, therefore, being materially affected or otherwise did not arise. Lastly, he contended that his election was perfectly valid and that, therefore, the petitioner could not be declared to have been duly elected.

6. In view of the grievance made by the respondent no. 1 in his written-statement that full particulars of all the corrupt practices alleged by the petitioner were not given, an order was passed at Ex. 47 calling upon the petitioner to supply full particulars as stated in the order (vide Ex. 47). The petitioner then supplied further particulars at Ex. 51, but even then he did not give full particulars regarding the alleged corrupt practice of promise to pay Rs. 2000/- to a Sar-panch. He supplied these particulars on the next date at Ex. 56.

7. The respondents nos. 3 and 4 did not file any written-statement (vide Exs. 45 and 46). The respondents 2 and 5 remained absent though duly served. The petition, therefore, was proceeded ex parte against them. On the pleadings of the petitioner and the respondent no. 1 and the further par-

ticulars supplied by the petitioner at Exs. 43, 51 and 56, the following issues were framed at Ex. 57:

1) Whether the petitioner proves that respondent no. 1 was a member of the Maharasthrawadi Gomantak Sanghatana or in any way connected with it?
2) Whether he proves that the respondent no. 1 and/or his party-men distributed the pamphlet in Sanguem, Kurdi and Rivona for a period of 10 to 12 days before 8th December 1963?
3) Whether the distribution amounts to appeal to vote or refrain from voting on the ground of religion or appeal to or use of religious symbol for the furtherance of prospects of the election of respondent no. 1?
4) Whether he proves that on 9th December 1963 the respondent no. 1 himself carried in his jeep electors to four polling stations in Sanguem as alleged?
5) Whether he proves that respondent no. 1 with his wife distributed sarees and cloth pieces to Jaiu Chondru Velipo, Pitol Chondru Velipo, Sonum Naraian Velipo, Sanguinim Velipo, Abolem Sangtu Gauncar, Kosturem Pantu Gauncar and others between 25th November 1963 and 30th November 1963?
6) Whether he proves that respondent no. 1 distributed money to Xaba Fochodu Gauncar, Vital Xiva Naique, Mosso Xaba Gunali and others in the villages of Netorlim and Colomba between 20th November and 30th November 1963, with the object, directly, of inducing electors to vote?
7) Whether he proves that respondent No. 1 took oath from the electors as alleged and thus interfered or attempted to interfere with the free exercise of their electoral right?
8) Whether he proves that he made Madeo Gauncar, Golu Danu Gauncar, Baboi Ladu Gauncar and others of Kurpem and Netorlim to swear by cocoanut between 1st December and 5th December 1963 that they would vote for Lion, the symbol of the respondent's choice, and thus interfered or attempted to interfere with free exercise of their electoral right?
9) Whether he proves that the respondent No. 1 promised to pay Rs. 2 000/- to the Sar-panch of Vissundrem from his Constituency with the object, directly or indirectly, of inducing electors to vote for him?
10) Whether he proves that the respondent No. 1 promised to distribute all the property belonging to Bhatkaris (land-owners) to the persons owning no property?
11) If yes, does it amount to any corrupt practice as defined in section 123 of the Representation of People Act, 1951?
12) Whether he proves that at the Polling Station at Bati of Sanguem, the Presiding Officer Kalian Salelkar was seen constantly going to the voting compartments and requesting the voters to vote on the symbol of his choice?
13) Whether he proves that his Polling Agent Shri Anthony Sergio Furtado had protested against the conduct of the Presiding Officer?
14) Whether the conduct of the Presiding Officer amounts to an illegality?
15) Whether the result of the election has been materially affected on account of any of the alleged corrupt pratices or illegalities?
16) Whether the election of the respondent No. 1 is void?
17) Whether the petitioner can be declared to have been duly elected under clause (c), section 98, Representation of People Act, 1951?
18) What order?

8. My findings:

1) No.
2) No.
3) No.
4) No.
5) No.
6) No.
7) No.
8) No.
9) No.
10) No.
11) Does not survive.
12) No.
13) No.
14) Does not survive.
15) Does not survive.
16) No.
17) No.
18) As per order.

9. **Issue No.1:** The petitioner's case is that Maharasthrawadi Gomantak Sanghatana published the pamphlet Ex. A requesting the voters to vote for the Sanghatana and that the respondent No. 1 distributed this pamphlet in Sanguem. The respondent No. 1 has denied that he contested the election on the ticket of the Maharasthrawadi Gomantak Sanghatana. His case is that he constested the election on the ticket of Maharastrawadi Gomantak of which he became a member on 11th November 1963 for the first time. Till 11th November 1963 he was a member of the Congress Party, on which day he resigned from the Party and joined Maharasthrawadi Gomantak on the very day. Surely, therefore, if the petitioner is not able to prove that the Maharasthrawadi Gomantak Sanghatana which had admittedly published the pamphlet Ex. A and Maharasthrawadi Gomantak on whose ticket the respondent No. 1 contested the election are one and the same organisation, it would be difficult to hold the respondent No. 1 responsible for the distribution of this pamphlet. The first question, therefore, that falls for consideration is whether the respondent No. 1 was a member of the Maharasthrawadi Gomantak Sanghatana or in any way connected with it.

10. The petitioner, who has examined himself at Ex. 61, has admitted that the respondent No. 1 was a member of Azad Gomantak Dal. The Dal was dissolved after liberation of Goa, Daman and Diu on 20th December, 1961. He has also admitted that the respondent No. 1 joined the Congress Party some time in 1962 or 1963. According to him, he resigned from the Congress Party because the Party refused to issue a ticket to him for contesting the election. However, the petitioner admits that he has no personal knowledge when the respondent No. 1 resigned the Congress. He has stated that a news item regarding the respondent's resignation from the Congress Party appeared in the issues of the newspapers *O Heraldo* and *A Vida* dated 6th November, 1963, but he has not produced the issues of these newspapers, much less he has adduced any evidence to prove that the respondent No. 1 had resigned from the Congress before 6th November 1963. In fact, he has admitted in his cross-examination that the respondent No. 1 was a member of the Congress Party in October 1963 and thereafter till 4th or 6th November 1963. The evidence of the petitioner, therefore, shows that he has no personal knowledge when the respondent No. 1 resigned from the Congress, though he admits that he continued to be a member of any rate till 4th or 6th November 1963. It is necessary to remember here that according to the petitioner, the respondent No. 1 and his party-men went to several predominantly Christian areas in Sanguem town and also in the villages of Kurdi and Rivona and distributed the pamphlet for a period of 10 to 12 days before 8th December 1963. If according to the petitioner, the respondent No. 1 was a member of the Congress Party till 4th or 6th November 1963, it is difficult to see how he or his party-men could have distributed this pamphlet for about 10 or 12 days prior to 8th December 1963. It is in evidence that it was the declared policy of the Congress Party at the time of the General Elections in Goa, Daman and Diu that these Union Territories should remain as a separate entity and that they should not be integrated with the adjoining States. In fact, it is not disputed before me that such a pamphlet as Ex. A could never have been distributed in Goa for and on behalf of the Congress Party. It is, therefore, obvious that even according to the petitioner if at all this pamphlet came to be distributed for and on behalf of Maharasthrawadi Gomantak Sanghatana, it must have been distributed after 4th or 6th November 1963 and before 8th November 1963. The question then arises whether the respondent No. 1 was a member of the Maharasthrawadi Gomantak Sanghatana or in any way connected with it even after 4th or 6th November 1963 and before 8th November 1963.

11. The respondent No. 1 has said in his evidence (vide Ex. 83) that one of the important issues on which the last General Elections in the Union Territories of Goa, Daman and Diu were fought was regarding the future status of these territories. The issue was whether Goa should be integrated with Maharashtra State or whether it should remain a Union Territory. The official policy of the Congress on this issue was that Goa, Daman and Diu should remain Union Territories, while the official policy of the Maharashtrawadi Gomantak, which was a rival political organisation, was that Goa should be integrated with Maharashtra State. The official policy of the United Goans, the third rival political organisation which contested the elections, was that Goa should be a fullfledged separate State like Maharashtra and other States of India. At the time of issuing tickets, the respondent No. 1 says, the Congress High Command laid down that the Congress

should issue tickets to those only who supported their official policy of keeping Goa, Daman and Diu as Union Territories. The result was that the respondent No. 1 being in favour of the view that Goa should be integrated with Maharashtra State, the Congress Party refused to issue ticket to him. There were others also in favour of the integration of Goa with Maharashtra State and, therefore, they were refused tickets by the Congress. Some of these men who resigned from the Congress, joined Maharashtrawadi Gomantak. The respondent No. 1, however, did not join Maharashtrawadi Gomantak immediately. He resigned from the Congress on 11th November 1963 and joined the Maharashtrawadi Gomantak on the very day. He has, however, admitted that he was offered ticket by the Maharashtrawadi Gomantak even before he resigned from the Congress. The statement of the respondent No. 1 that he resigned from the Congress Party on 11th November 1963 and joined the Maharashtrawadi Gomantak on the very day because there was a difference of opinion between him and the Congress Party over the future status of the Union Territories of Goa, Daman and Diu, is challenged by the petitioner on more than one ground. Firstly, it is pointed out in the cross- examination of the respondent No. 1 that some persons, whose names are given by the respondent No. 1 himself, were given tickets by the Congress Party even though they were in favour of the integration of Goa with Maharashtra State. But the respondent No. 1 has said in his evidence that these persons had resigned first and they were given tickets after they rejoined the Congress. We do not know whether these persons to whom the Congress Party issued tickets, changed their views regarding the future status of Union Territories and rejoined the Congress or whether even though they were against the declared policy of the Congress Party regarding the future status of these Territories, they were issued tickets. It is, therefore, not possible to hold that these persons were given tickets by the Congress Party even though they were in favour of the integration of Goa with Maharashtra State. Secondly, an attempt was made to suggest that the respondent No. 1 was the only person who resigned on 11th November 1963, the last date for filing nomination papers. But the respondent No. 1 has definitely denied this suggestion and has said that Sarvashri M. S. Prabhu, Devidas Kurchadkar, Vijay Kamulkar and others had also resigned along with him on 11th November 1963. He has also told us that those who had resigned and had again joined the Congress Party had resigned on 6th November 1963 and had rejoined the Congress on 11th November 1963. It is, therefore, difficult to hold that the respondent No. 1 was the only person who resigned on 11th November 1963, nor there is anything unusual if the respondent No. 1 resigned from the Congress on 11th November 1963 and joined the Maharashtrawadi Gomantak on the very day. A question was asked whether or not news regarding the resignation of the respondent No. 1 from the Congress appeared in the issue of *A Vida* dated 8th November 1963 suggesting thereby that the respondent No. 1 must have resigned from the Congress before 8th November 1963 and not on 11th November 1963. But apart from the fact that the petitioner has not produced this issue of *A Vida* dated 8th November 1963, much less he has proved, that such a news item had appeared in the newspaper on 8th November 1963, the respondent No. 1 has denied any knowledge regarding this news item published in *A Vida* on 8th November 1963. Thirdly, it is brought out in the cross-examination of the respondent No. 1 that Maharashtrawadi Gomantak included his name in the list of candidates who were given tickets and published three days before 11th November 1963. He has also admitted that the Maharashtrawadi Gomantak finalised their list of candidates long before the respondent No. 1 resigned from the Congress. In fact, he has admitted that his name was included in the list of Maharashtrawadi Gomantak before the Congress Party published their revised list, but he did not object to his name being included in the list of Maharashtrawadi Gomantak and kept quiet. It is, therefore, argued relying on these admissions that inasmuch as the name of the respondent No. 1 was included in the list of candidates published by the Maharashtrawadi Gomantak three days before 11th November 1963, the respondent No. 1 must have been a member of that party since before 11th November 1963, but the respondent No. 1 has said in his evidence that his name was included by the Maharashtrawadi Gomantak in the list of candidates who were issued tickets without his consent. He gave his consent for the first time on 11th November 1963. Ordinarily, it is true that the Maharashtrawadi Gomantak would not have included the name of a person who was not a member of the organisation in the list of candidates published by them. But on that ground alone it would be difficult to hold that, therefore, the respondent No. 1 was a member of the Maharashtrawadi Gomantak since before 11th November 1963. It is not unlikely that the respondent No. 1 being in favour of the integration of Goa with Maharashtra State, which was the official policy of the Maharashtrawadi Gomantak, when the Congress refused a ticket to him, the Maharashtrawadi Gomantak may have decided to accept the respondent No. 1 as their official candidate. The best evidence on this point would have been the documentary evidence from the office of the Congress Party in Goa which would have definitely shown on which day the respondent No. 1 resigned from the Congress Party. But the petitioner has not cared to produce this evidence. Fourthly, it was suggested that if the Maharashtrawadi Gomantak had decided to issue a ticket to the respondent No. 1 even when he was not a member of that organisation, the organisation must have made an alternative arrangement if the respondent No. 1 refused to accept the ticket and inasmuch as no such arrangement was made, the explanation of the respondent No. 1 that his name was included in the official list of the organisation without his consent cannot be accepted. But the respondent No. 1 has said in his evidence that one Muralidhar Rane was the alternative candidate of the Maharashtrawadi Gomantak if the respondent No. 1 had refused to accept their ticket. It is true that the respondent No. 1 has also admitted that he was a dummy candidate and that he does not know who was to be a dummy candidate if Murlidhar Rane was to contest the election. I, however, do not think that it was absolutely necessary that the Maharashtrawadi Gomantak should have also named a dummy candidate for Murlidhar Rane at the time they published their list in case the respondent No. 1 had refused to accept their ticket. Such a dummy candidate could have been proposed by them even later on. Fifthly, it was pointed out that according to the respondent No. 1 he wanted an assurance from the Congress Party regarding the integration of Goa with Maharashtra State and when he found that that assurance was not forthcoming he resigned on 11th November 1963. The suggestion is that the respondent No. 1 continued to be a member of the Congress Party till the last day of filling nomination papers probably because he hoped that he would get an assurance. But when he was interviewed by one of the members of the High Command, the respondent No. 1 has admitted that he did not seek for an assurance in writing. I do not think that in such cases a prospective candidate would insist on an assurance in writing. When he realised that the Congress Party was not prepared to modify its policy on the issue of integration of Goa with Maharashtra State, he naturally resigned after waiting till the last day. Sixthly, it is suggested that if the respondent No. 1 had really joined the Maharashtrawadi Gomantak on 11th November 1963, which was the last day of filing nomination papers, it is unlikely that he would have been able to file his nomination papers on that day. But the respondent No. 1 has offered an explanation and it is this that he had kept his nomination papers ready with the required proposer and seconder. He applied for the membership of the Maharashtrawadi Gomantak on the very day in the morning and filed his nomination papers during the scheduled hours. Lastly, an attempt was made to show that the respondent No. 1 was after a ticket and when he found that the Congress Party did not issue any ticket to him, he resigned from the Congress Party and joined the Maharashtrawadi Gomantak. The suggestion is that the contention of the respondent No. 1, that he resigned from the Congress because there was a difference of opinion over the integration of Goa with Maharashtra State, has no foundation in fact. In support of this suggestion, the respondent No. 1 was asked in his cross-examination whether or not he was considered by the Congress Party, the Maharashtrawadi Gomantak and also by the United Goans simultaneously. The respondent No. 1 has definitely refuted this suggestion and has said that he was considered only by two organisations, the Congress and the Maharashtrawadi Gomantak simultaneously. Considering, therefore, the cross-examination of the respondent No. 1 and the evidence adduced by the petitioner, I have no hesitation in holding that the respondent No. 1 resigned from the Congress Party only on 11th November 1963 and he joined the Maharashtrawadi Gomantak on the very day.

12. Assuming for a moment that the respondent No. 1 joined Maharasthrawadi Gomantak some time between 4th or 6th November 1963 and 8th November 1963, the next question for consideration is whether Maharasthrawadi Gomantak Sanghatana and Maharasthrawadi Gomantak were two separate organisations or whether they were two names of

one and the same organisation. In this connection, the petitioner has said in his evidence that the word 'Sanghatana' in Maharasthrawadi Gomantak Sanghatana means a party. Maharasthrawadi Gomantak Sanghatana, according to him, therefore, is the name of Maharasthrawadi Gomantak Party. Maharasthrawadi Gomantak is admittedly a party. He has, therefore, contended that though there is a difference in the two names, inasmuch as 'Sanghatana' is a word used for party, Maharasthrawadi Gomantak Sanghatana and Maharasthrawadi Gomantak are but the two different names of one and the same organisation which is a political party started in Goa. My attention is also drawn in this connection to the admission of the respondent No. 1 who has said in his evidence that the word 'Sanghatana' may mean a party. The witness Jagannath Sukhatankar, who is examined by the respondent No. 1 at Ex. 92, has, however, said that 'Sanghatana' means an organisation. He does not say that 'Sanghatana' may also mean a party. Now, any person, who is well conversant with Marathi language, would at once understand the distinction between 'Sanghatana' and 'Paksha'. Every Sanghatana is not a Paksha, but every Paksha is a Sanghatana. The word 'Sanghatana' means an organisation, while the word 'Paksha' means a party. It is, therefore, obvious that though Maharasthrawadi Gomantak and Maharasthrawadi Gomantak Sanghatana are both organisations, admittedly Maharasthrawadi Gomantak is a party (Paksha), while Maharasthrawadi Gomantak Sanghatana is not shown to be a party. On the contrary, the evidence on the record shows that it is an organisation started by some Goans in Bombay for the propagation of the ideal of integration of Goa with Maharastra State and also for the spread of Marathi language in Goa. It is, therefore, difficult to hold that Maharasthrawadi Gomantak and Maharasthrawadi Gomantak Sanghatana are but the two names of one and the same organisation.

13. In fact, we have ample evidence on the record to show that whereas Maharasthrawadi Gomantak is a political party in Goa, Maharasthrawadi Gomantak Sanghatana is an organisation started in Bombay. The petitioner has admitted in his evidence that Maharasthrawadi Gomantak, which he calls Maharasthrawadi Gomantak Sanghatana, was started in Goa some time in May 1963. He was specifically asked in his cross-examination whether or not Maharasthrawadi Gomantak Sanghatana was started in Bombay and the Advocate Sushil Kavalekar was its President. The petitioner, however, denied any knowledge of it. The respondent No. 1 has, however, said in his evidence that Maharasthrawadi Gomantak Sanghatana was an organisation started in Bombay. Advocate Sushil Kavalekar was its President, one V. Naik was its Secretary and Jagannath Sukhatankar was one of its office bearers. It is true that respondent No. 1 has admitted in his cross-examination that Advocate Sushil Kavalekar had filed his nomination paper for Margaon Constituency as a candidate of the Maharasthrawadi Gomantak. It is, therefore, suggested that if Maharasthrawadi Gomantak Sanghatana was an independent organisation started in Bombay, Advocate Sushil Kavalekar would have filed his nomination paper as a candidate of Maharasthrawadi Gomantak Sanghatana and not as a candidate of Maharasthrawadi Gomantak. But I have already indicated, and I shall shortly show, that Maharasthrawadi Gomantak Sanghatana was not a political party started for contesting elections, while Maharasthrawadi Gomantak was admittedly a political organisation which contested elections on the issue of integration of Goa with Maharasthra State. I, therefore, do not see anything strange in the Advocate Sushil Kavalekar filing his nomination paper as a candidate of Maharasthrawadi Gomantak. Apart from it, the respondent No. 1 has examined Jagannath Sukhatankar at Ex. 92 and has also got produced the Register of the members of Maharasthrawadi Gomantak Sanghatana at Ex. 95 and the Proceeding book of the organisation at Ex. 94. It is material to note here that the petitioner has not challenged the genuineness of these books. His attempt has been only to show that there was no organisation named Maharasthrawadi Gomantak Sanghatana in existence at the relevant time. Now, Jagannath Sukhatankar has said in his evidence that Maharasthrawadi Sanghatana was started in Bombay in June 1963. Originally a few Goans interested in the future status of Goa gathered together in Bombay and appointed an Ad Hoc Committee which was presided over by the witness. A reference to the Proceeding book at Ex. 94 would show (vide page 1) that a few Goans interested in the future of Goa held a meeting to consider the questions of language and status of Goa. In this meeting an Ad Hoc Committee was appointed on 8th June 1963. The Ad Hoc Committee was to prepare an outline of the constitution of the Sanghatana. On 20th June 1963 a meeting of the Ad Hoc Committee was held and in that meeting the following decision amongst others was taken:—

> " गोमंतकांत मराठी भाषेला योग्य स्थान मिळावें. व गोमंतकाचें महाराष्ट्रांत त्वरीत विलिनीकरण व्हावें. याकरीतां मराठी, कोंकणी व अिंग्रजीत प्रचारपत्रकें काढावींत. "
>
> (vide page 2)

A second meeting of the Ad Hoc Committee was held on 10th August 1963 and in this meeting it was decided that the Committee should issue pamphlets in Konkani language in Roman script in order to explain to the Christians in Goa, language issue and the issue of the future status of Goa (vide त्याचप्रमणें ख्रिश्चनानां देखील ह्या प्रश्नाची बाजू नीट समजावून देणेसाठीं रोमन लिपींत, कोंकणी भाषेंत पत्रकें काढावीं असें ठरलें).

On 20th September 1963, a third meeting of the Ad Hoc Committee was held and the draft of constitution of the organisation was approved. On 12th October 1963 (vide pages 5, 6 and 7) the constitution of the organisation was passed by the members of the organisation. In this meeting the name of the organisation was changed from Maharasthrawadi Gomantak Sanghatana to Maharasthrawadi Gomantak Mandal. It should be remembered here that in the meeting held on 20th June 1963 (vide page 2) one of the decisions taken by the Ad Hoc Committee was that the organisation should be named as Maharasthrawadi Gomantak Sanghatana (vide आणी अशा प्रकारचें कार्य कांहीं महीने केल्यानंतर कायम स्वरुपाची संघटना अस्तित्वांत आणावी आणी तोपर्यंत महाराष्ट्रवादी गोमंतक संघटना या नांवानेच कार्य चालू ठेवावें).

It was suggested in the cross-examination of Jagannath Sukhatankar that at page 2 the words «Maharasthrawadi Gomantak» are put in the single inverted commas in the description of the meeting 'महाराष्ट्रवादी गोमंतक' संघटणेच्या समितीची सभा .... and, therefore, Maharasthrawadi Gomantak Sanghatana was not the name of the organisation. The name of the organisation was Maharasthrawadi Gomantak. I do not see any force in this suggestion inasmuch as the Proceeding book at Ex. 94 at page 2 definitely shows that the Ad Hoc Committee had decided to name the organisation as Maharasthrawadi Gomantak Sanghatana. It is, therefore, clear from the Proceeding book (Ex. 94) that the organisation started by Goans in Bombay was known as Maharasthrawadi Gomantak Sanghatana till 12th October 1963 on which day the name was change to Maharasthrawadi Gomantak Mandal. Once the genuineness of the books (Exs. 94 and 95) is accepted by the petitioner, there can be no difficulty in holding that till 12th October 1963 the organisation knows as Maharasthrawadi Gomantak Sanghatana was functioning in Bombay, that Jagannath Sukhatankar, the witness examined at Ex. 92, was its office bearer and also the Chairman of the Ad Hoc Committee for some time, that in October 1963 the name of the organisation was changed to Maharashtrawadi Gomantak Mandal of which Advocate Sushil Kavalekar was the President, one Shri V. Naik was its Secretary and the witness Jagannath Sukhatankar was a member of the Executive Committee. Thus there can be no difficulty in holding that Maharasthrawadi Gomantak Sanghatana was altogether an independent organisation in existence in Bombay during the relevant period when the pamphlet in dispute came to be distributed and that this organisation had also decided to distribute a pamphlet in Konkani language in Roman script amongst Christians of Goa. I have, therefore, no hesitation in holding that Maharasthrawadi Gomantak, a political party started in Goa, and Maharasthrawadi Gomantak Sanghatana, an organisation started in Bombay for propagation of certain ideals, were two different organisations unconnected with each other.

14. There is no allegation, much less any proof, that the respondent No. 1 was in any connected with the Maharasthrawadi Gomantak Sanghatana started in Bombay. I, therefore, hold that the petitioner has failed to prove that the respondent No. 1 was a member of the Maharasthrawadi Gomantak Sanghatana or in any way connected with it.

15. **Issues Nos. 2 and 3:** Assuming, however, that Maharasthrawadi Gomantak and Maharasthrawadi Gomantak Sanghatana are but the two names of one and the same

organisation and that the respondent No. 1 had become a member of that organisation before 8th November 1963, the next question that arises for consideration is whether the petitioner has been able to prove that the respondent No. 1 and his party-men distributed the pamphlet Ex. A in Sanguem, Kurdi and Rivona for a period of 10 to 12 days before 8th December 1963 and whether the distribution amounts to an appeal to vote or refrain from voting on on the ground of religion or appeal to, or use of religious symbol, for the furtherance of the prospects of the election of the respondent No. 1. Before I proceed to discuss the evidence on the point, it is necessary to refer to this corrupt practice defined in section 123 of the Act. Section 123, so far as it is relevant here, reads thus:—

> «123. The following shall be deemed to be corrupt practices for the purposes of this Act:—
>
> (1) ....
>
> (2) ....
>
> (3) The appeal by a candidate or his agent or by any other person with the consent of a candidate or his election agent to vote or refrain from voting for any person an the ground of his religion, race, caste, community or language or the use of, or appeal to, religious symbols or the use of, or appeal to national symbols, such as the national flag or the national emblem, for the furtherance of the prospects of the election of that candidate or for prejudicially affecting the election of any candidate.
>
> ....»

It is, therefore, obvious that before the corrupt pratice defined in sub-section (3) of section 123 of the Act can be held proved, it is necessary for the petitioner to establish that (1) the pamphlet Ex. A amounts to an appeal, (2) it is an appeal by a candidate or his agent or by any other person with the consent of a candidate or his election agent, (3) the appeal is to vote or refrain from voting, (4) the appeal is to vote or refrain from voting for any person, and (5) such an appeal is on the ground of his religion; or he must prove that (1) the pamphlet makes use of or appeals to (2) religious symbol (3) appeal to or use of is by a candidate or his agent or by any other person with the consent of the candidate or his election agent, and (4) the appeal to or use of is for the furtherance of the prospects of the election of that candidate or for prejudicially affecting the election of any candidate.

16. Now, the pamphlet Ex. A, which contains a photograph of the interior of St. Francis Xavier's Church in Old Goa and which is in Konkani language in Roman script, is admittedly an appeal. The respondent No. 1 has admitted in his cross-examination (vide Ex. 83) that the pamphlet is an appeal to the electorate. In fact, the last paragraph of this pamphlet in express terms recites that it is an appeal to people inasmuch as it says:—

> «For this reason, we appeal to the people of Goa to think what is best for them and to realise what others wish to do about this matter.»
>
> (The translation is supplied by the petitioner himself.)

17. The important question, however, is whether it is an appeal by the respondent No. 1 or his agent or by any other person with the consent of the respondent No. 1 or his election agent. It may be noted at the outset that it is not the case of the petitioner that the pamphlet amounts to an appeal by an agent of the respondent No. 1 or by any other person with the consent of the respondent No. 1 or his election agent. The petitioner's case in this connection is that the pamphlet Ex. A was issued by Maharasthrawadi Gomantak, which is also known as Maharasthrawadi Gomantak Sanghatana, and the respondent No. 1, who contested the election on the ticket of Maharasthrawadi Gomantak, personally distributed it in Sanguem, Kurdi and Rivona for a period of 10 to 12 days before 8th December 1963. The question, therefore, is whether the petitioner has been able to prove it.

18. The petitioner has admitted in his evidence at Ex. 61 that the pamphlet was issued by Maharasthrawadi Gomantak Sanghatana, though he does not know whether it was issued in September 1963. I have already found that Maharasthrawadi Gomantak Sanghatana is altogether different from and independent of the Maharasthrawadi Gomantak. That being so, on the admission of the petitioner, it would be clear that the pamphlet in question was issued not by Maharasthrawadi Gomantak but by Maharasthrawadi Gomantak Sanghatana. The petitioner, however, examined one Edwardo Pereira at Ex. 65 to prove that the pamphlet was got printed by Maharasthrawadi Gomantak, but the witness has admitted in his evidence that he received an order for printing the pamphlet on 19th September 1963 from one Jagannath Sukhatankar and that on 29th September 1963 he delivered copies of the pamphlet to him. He has also deposed that Jagannath Sukhatankar is a business-man in Bombay and it was he who paid the printing charges. I have already pointed out how Jagannath Sukhatankar was one of the office bearers of Maharasthrawadi Gomantak Sanghatana started by some Goans in Bombay. He was a Chairman of the Ad Hoc Committee known as Maharasthrawadi Gomantak Sanghatana and after the name was changed to Maharasthrawadi Gomantak Mandal, he was also a member of the Executive Committee of the organisation. It is, therefore, obvious that the pamphlet was got printed by Jagannath Sukhatankar, one of the office bearers of Maharasthrawadi Gomantak Sanghatana. Jagannath Sukhatankar is examined, as I have already said, by the respondent No. 1 (vide Ex. 92). He has deposed that it was he who gave an order to the Prafulla Printing Press for printing the pamphlet on 19th September 1963 and also paid the printing charges. He has also produced a receipt from the Prafulla Press at Ex. 97. The witness also says that it was he who got the block prepared for the photograph printed in the pamphlet. He also produced a bill for the block at Ex. 96. It is true that the receipt (Ex. 97) does not show that the payment was made by Maharashtrawadi Gomantak Sanghatana, but nevertheless the receipt discloses the name of the organisation as 'Maharashtrawadi Sanghatana Chem Potr, Panjim'. The witness has also said in his evidence that though he personally paid the printing charges, the name of Maharashtrawadi Gomantak Sanghatana, the short-form of which is Maharashtrawadi Sanghatana, is given by him to the printer. The witness has also deposed that on 18th September 1963 he came to Goa and on 19th September 1963 he placed the order for printing this pamphlet with the Prafulla Printing Press. Though the press was known to the witness, the Proprietor being not acquainted with him, he had to pay the printing charges in advance. The witness being an office bearer and also a Chairman of the Ad Hoc Committee of the Maharashtrawadi Gomantak Sanghatana, there is nothing unusual if he paid the printing charges personally for and on behalf of the Maharasthrawadi Gomantak Sanghatana and got the pamphlet printed. It is true that there is nothing on the record to show that he recovered the amount of Rs. 357/- paid by him to the printer on account of printing charges from the Maharashtrawadi Gomantak Sanghatana, but the witness has said in his evidence that he was paid by the Sanghatana some time in December 1963. The bill for the block at Ex. 96 was also challenged in the cross-examination of this witness on the ground that it does not show that it relates to the block of the photograph printed in the pamphlet Ex. A. But in the first place, at the top of the bill (Ex. 96), we have the name of the organisation written as Maharasthrawadi Gomantak Sanghatana, Bombay 4. Secondly, the witness has said that he has an account with Dhargalkar Process Private Ltd. which made the block. He often gets blocks prepared by Dhargalker Process for himself and makes payments by cheques. When he places an order with Dhargalkar Process, the latter sends the block to him by delivery book and thereafter the Company sends its bill with the proof of block attached to it. It is, therefore, quite natural that the bill does not show that it relates to the particular block of the photograph printed in the pamphlet. It was then pointed out that according to the witness, he places an order in the name of his firm, but the bill (Ex. 96) does not disclose the name of the firm of the witness. The witness, however, has given an explanation for it and it is this that whenever he places an order for any block, he writes the name of his client for whom the bill is to be prepared. That is why we find the name of Maharasthrawadi Gomantak Sanghatana at the top of the bill at Ex. 96 and not the name of the business firm of the witness. Lastly, it is pointed out that the witness did not produce account books of the organisation, though admittedly such accounts were maintained by the Ad Hoc Committee. But it must be borne in mind that the onus is on the petitioner to prove that this pamphlet was issued by Maharasthrawadi Gomantak. It is not necessary for the respondent No. 1 to prove that it was issued by some other organisation and not by Maharasthrawadi Gomantak. What the respondent No. 1 has done in this case by examining the witness Jagannath Sukhatankar is to show that the pamphlet could not have been issued by Maharasthrawadi Gomantak, a political organisation in Goa, It is, therefore, difficult to hold that because the respondent No. 1 did not get the account books of the Maharasthrawadi Gomantak Sanghatana produced in this case to show that the pamphlet was issued by Maharasthra-

wadi Gomantak Sanghatana, an organisation started in Bombay, the evidence of the witness Jagannath Sukhatankar on this point should be discarded. In fact, I have already pointed out that even according to the petitioner, the order for printing this pamphlet was placed by Jagannath Sukhatankar and the delivery of the copies was also taken by him (vide Ex. 65).

19. It was then suggested in the cross-examination of the witness Jagannath Sukhatankar that there is nothing in the Proceeding book (Ex. 94) to show that the Maharasthrawadi Gomantak Sanghatana had decided to issue the very pamphlet Ex. A in this case. I have already pointed out that a decision to issue pamphlets was taken by the Maharasthrawadi Gomantak Sanghatana in the meeting held on 20th June 1963 and in pursuance of this decision, in the meeting held on 10th August 1963 it was decided to issue a pamphlet in Konkani language in Roman script for Christians. The witness has said in his evidence that according to this decision a draft was prepared and approved by three members of the Ad Hoc Committee. Thereafter, the witness came to Goa with that draft and gave it to the proprietor of the Prafulla Printing Press for printing the pamphlet. If the draft had come forward, it would have at once identified the pamphlet Ex. A. But it was for the petitioner to produce the manuscript of the pamphlet from the Prafulla Printing Press in order to prove the pamphlet. The petitioner examined the Proprietor of the Prafulla Printing Press at Ex. 65, but no explanation is forthcoming why he should not have produced the manuscript. It cannot be doubted for a moment that the manuscript is and must be in the custody of the Prafulla Printing Press. It is, therefore, futile for the petitioner to challenge the identity of the pamphlet taking advantage of the absence of the manuscript which he ought to have produced in this case to prove the pamphlet. The pamphlet is admitted in evidence because the respondent No. 1 admits that this pamphlet was issued by Maharasthrawadi Gomantak Sanghatana. When the onus is on the petitioner to prove that the pamphlet was issued by Maharasthrawadi Gomantak which according to him is also known as Maharasthrawadi Gomantak Sanghatana, he ought to have produced the manuscript of this pamphlet. He cannot expect the respondent No. 1 to produce the manuscript when there is no burden on him to prove that the pamphlet Ex. A was got printed by the Maharasthrawadi Gomantak Sanghatana, an organisation started in Bombay. If, therefore, there is nothing in the Proceeding book (Ex. 94) to show that this very pamphlet Ex. A with the photograph was drafted, discussed and approved of by the Ad Hoc Committee of the Maharasthrawadi Gomantak Sanghatana, it would not help the petitioner to contend that, therefore, the pamphlet referred to in Ex. 94 is some pamphlet other than the pamphlet Ex. A in this case.

20. Lastly, it was suggested in the cross-examination of Jagannath Sukhatankar that the pamphlet Ex. A may have been got reprinted by the Maharasthrawadi Gomantak after the Maharasthrawadi Gomantak Sanghatana printed it in the Prafulla Printing Press, Panjim. The witness, however, has definitely denied this suggestion and for very good reason. He has said that when he took the delivery of the copies of the pamphlet from the Proprietor of the Prafulla Printing Press, he also got back the block. In the absence of the block, therefore, it would be impossible for any person or organisation to reprint the pamphlet. Moreover, when the proprietor of the Prafulla Printing Press was in the witness-box, no question was put to him on this point. He does not state that after he gave the delivery to Jagannath Sukhatankar, he had printed this pamphlet again either at the instance of Maharashthrawadi Gomantak or any person. The petitioner also suggested that Jagannath Sukhatankar got this pamphlet printed in the Prafulla Printing Press as an agent of the Maharasthrawadi Gomantak, but there is no foundation in fact for this suggestion. The witness has definitely refuted it. I am, therefore, of the opinion that the pamphlet Ex. A was got printed by the Maharashtrawadi Gomantak Sanghatana started in Bombay and not by the Maharasthrawadi Gomantak, a political party functioning in Goa.

21. The petitioner has then contended that whether the pamphlet Ex. A was got printed by the Maharasthrawadi Gomantak Sanghatana or by the Maharasthrawadi Gomantak, it being distributed by the respondent No. 1 personally, the distribution of this pamphlet amounts to an appeal to the electorate by the respondent No. 1. The petitioner has alleged in his evidence that in the last week of November 1963 while he was proceeding at about 4.30 P.M. in a car from Sanguem to Savardem along with one Francis Rodrigues, he saw on the way a crowd where some pamphlet were being distributed. He, therefore, slowed down his car and asked for the pamphlet. He further says that the respondent No.1 was distributing the pamphlet and one from the crowd gave the pamphlet to him. He has further deposed that he returned to Sanguem at about 7.30 P.M. and while he was sitting in his office, one Americo Costa came and gave him the same pamphlet saying that the respondent No. 1 gave him the pamphlet telling him that he was a catholic, that all Christians were also catholics, that therefore they should vote for him and in return he would see that the relics of St. Francis Xavier would remain where they were. Respondent No. 1 also told Americo Costa that he should not trust the United Goans whose symbol was 'Hand'. Americo Costa also told the petitioner that the respondent No. 1 had given him the pamphlet in the town of Sanguem. The petitioner further says that while he was carrying his own propaganda, in the villages of Netorlim, Vissundrem, Colomba and Kurdi, he met one Custodio Furtado. The latter told him that the respondent No. 1 had gone to him requesting him to vote for him and at that time he also showed him the pamphlet. Similarly, in Rivona the petitioner met one Milagres Lopez and Xavier Fernandes and both of them told him that the respondent No. 1 had distributed this pamphlet in Rivona also. But curiously enough, the petitioner has not cared to examine Americo Costa, Francis Rodrigues, Custodio Furtado, Milagres Lopez or Xavier Fernandes, in support of this allegation. Instead, he produced one Sebastian Francis Pereira examined at Ex. 74. He claims to be the driver of the petitioner driving the latter's car at the time when the petitioner saw respondent No. 1 distributing the pamphlet in Sanguem. I first propose to discuss the evidence of Sebastian Pereira.

22. Sebastian Francis Pereira has deposed that he was serving the petitioner as a driver on the relevant date. While he was taking the petitioner in a car to Savardem along with one Francis Rodrigues, he saw the respondent No. 1 distributing a pamphlet. The pamphlet had a photograph of the casket of St. Francis Xavier printed on it. He stopped the car at the request of the petitioner who asked him to bring one pamphlet for him. When he was about to get down from the car, he saw a boy who, the witness says, is known to him, called him by his name and asked him to get one pamphlet for him. The witness admits that the boy had already one pamphlet with him and the same he gave to the witness who passed it on to the petitioner. The witness also says that while the respondent no. 1 was distributing these pamphlets, he was also addressing the crowd on a mike. In his cross-examination, however, he has admitted that when the boy gave him the pamphlet, the respondent no. 1 was addressing the crowd on the mike. He also admits that when they left the place at that time also the respondent No. 1 was still addressing the crowd. Even at the time when the petitioner asked the witness to slow down the car, the respondent No. 1, the witness admits, was addressing the crowd. It is, therefore, obvious that since the time when the petitioner sighted the respondent no. 1 till he left, the respondent No. 1, according to the witness, was addressing the crowd on a mike. If that is so, it is difficult to believe the petitioner when he says that he had seen the respondent no. 1 distributing the pamphlet. It is material to note that the petitioner has not said in his evidence that when the respondent no. 1 was distributing the pamphlet, he was also addressing the crowd. Similarly, when the witness Sebastian Pereira admits that the respondent No. 1 was addressing the crowd, it is also difficult to believe that at the same time he was also distributing the pamphlet, which I have just now pointed out is not even the case of the petitioner. Surely, on the question whether or not the respondent no. 1 was actually distributing the pamphlet, the best evidence would have been that of the boy known to the witness Sebastian Pereira because we are asked to believe that the boy had actually received the pamphlet from the respondent No. 1. Admittedly, the petitioner did not receive any pamphlet from the respondent No. 1 nor even the witness Sebastian Pereira; but for the reasons best known to the petitioner, he has not examined the boy though he is known to the witness Sebastian Pereira who was the servant of the petitioner on the relevant date. Then I have already pointed out that though according to the petitioner, one Custodio Furtado had received the pamphlet from the respondent no. 1 and though Milagres Lopez and Xavier Fernandes had seen the respondent no. 1 actually distributing the pamphlets in Rivona, no explanation is forthcoming why the petitioner did not examine these witnesses. The evidence, therefore, adduced by the petitioner to prove that the respondent no. 1 had distributed the pamphlet in the town of Sanguem and the villages of Kurdi and Rivona is far from being sufficient to prove this allegation.

23. Coming to the evidence of the respondent No. 1 (vide Ex. 83), he has not only denied to have distributed the pamphlet at any time but has also said that he came

to know about this pamphlet for the first time in September or in the first week of October 1963 when there was controversy going on in the Press over the pamphlet. He says that at that time this pamphlet was criticized in the newspaper *A Vida* and there was a news item in another newspaper *Pradeep* announcing that the pamphlet was not issued by Maharashtrawadi Gomantak. The cross-examination of the respondent No. 1 shows that he did not, however, at that time know the contents of the pamphlet. He says that he came to read it after he was served with the notice of the present petition. My attention, however, is drawn to certain facts admitted by the respondent No. 1 in his cross-examination and an attempt is made to show relying on these facts that the pamphlet in question was distributed by the respondent No. 1. The respondent No. 1 has admitted in his cross-examination that at the time of the elections Maharasthrawadi Gomantak had given to him some leaflets published by the organisation. Some of these leaflets were in Konkani in Roman script, while others in Devnagari script. But at the same time he has said that he himself never distributed these leaflets. The learned counsel Shri Dias appearing on behalf of the petitioner wants me to draw an inference that the literature published by Maharashtrawadi Gomantak and delivered to the respondent No. 1 included the pamphlet Ex. A. I shall shortly show that there is absolutely no evidence on the record to prove that after Jagannath Sukhatankar took the delivery of the pamphlets from the Prafulla Printing Press, they were either handed over by him to Maharashtrawadi Gomantak or to any other person or that the literature including the leaflets received by the respondent No. 1 from Maharashtrawadi Gomantak included this pamphlet also. The mere fact, therefore, that Maharashtrawadi Gomantak had published some literature at the time of the elections and that the respondent No. 1 had received this literature from the party is not sufficient to conclude that, therefore, this pamphlet was either published by Maharashtrawadi Gomantak or was handed over to the respondent No. 1 for distribution. Then the respondent No. 1 had also admitted that he used to hold meetings near market or in the church compound in Sanguem. It is not clear from the evidence of the petitioner or that of Sebastian Pereira where precisely the respondent No. 1 was seen addressing a meeting or distributing the pamphlet. Even assuming that the respondent No. 1 was seen by the petitioner and his driver Sebastian Pereira addressing a meeting either near market or in the compound of the church in Sanguem, still that cannot establish the truth of what the petitioner and his witness Sebastian have alleged in their evidence. Thirdly, it is pointed out that at the time of the General Elections, controversy over the integration of Goa with Maharashtra State was in full swing and number of pamphlets and leaflets were issued by persons and organisations. If that is so, the petitioner will have to adduce cogent evidence to prove that the pamphlet in dispute was issued by Maharashtrawadi Gomantak and was distributed by the respondent No. 1. In fact, the respondent No. 1 has said that this controversy was going on and the pamphlets and leaflets were being issued before he joined the Maharashtrawadi Gomantak. Fourthly, my attention is drawn to the fact that the respondent No. 1 has admitted in his cross-examination that his workers and the workers of the Maharashtrawadi Gomantak were the same, but unless there is evidence on the record to show that this pamphlet was either issued by the Maharashtrawadi Gomantak or came into its hands, it is difficult to hold that the same must have been distributed by the volunteers of the Maharashtrawadi Gomantak who were also the volunteers of the respondent No. 1. In fact, the respondent No. 1 has definitely denied that the literature which he received from the Maharashtrawadi Gomantak included the pamphlet in dispute. Lastly, it is pointed out that the respondent No. 1 has admitted in his cross-examination that he agrees with the views expressed in the pamphlet on the question of integration. That is so. But can it be a ground, therefore, to hold that this pamphlet must have been issued by Maharasthrawadi Gomantak or that it must have been also distributed by the respondent No. 1. Admittedly, as I have already pointed out, there was a controversy going on over the integration of Goa with Maharasthra State when different organisations and persons had issued pamphlets and leaflets. If in these circumstances the views expressed in a pamphlet coincide with the views of the respondent No. 1, it cannot be said that, therefore, either the pamphlet was issued by the Maharasthrawadi Gomantak or that it was distributed by the respondent No. 1.

24. It is true that Jagannath Sukhatankar, who is examined by the respondent No. 1, has said in his evidence that after he obtained the delivery of the pamphlet from the Prafulla Printing Press on 29th September 1963 he gave it to Sarvashri Prabhu and Narvekar for distribution in Mhapasa, Bardez and Panjim and he himself left for Bombay. It is also true that in his cross-examination the petitioner has successfully shown that both Sarvashri Prabhu and Narvekar were in Bombay on 30th September 1963 inasmuch as they attended the meeting of the Ad Hoc Committee held on that day, in Bombay (vide Ex. 94). But I do not see how the evidence of Jagannath Sukhatankar on this point would help the petitioner to prove that the pamphlet was distributed by respondent No. 1. The most that can be said in favour of the petitioner is that the respondent No. 1 has not been able to show that this pamphlet was distributed by Sarvashri Prabhu and Narvekar as alleged by the witness. But the question still remains whether the petitioner has been able to prove that this pamphlet after Jagannath Sukhatankar obtained its delivery from the Prafulla Printing Press came into the hands of the respondent No. 1 or that it was distributed by him. It is no doubt true that Jagannath Sukhatankar has admitted in his cross-examination in Goa like Maharasthrawadi Gomantak Sanghatana, he would have handed over this pamphlet to such an organisation for its distribution. But that would not necessarily mean that, therefore, after he obtained the delivery of the pamphlet, he must have handed it over to Maharasthrawadi Gomantak for distribution. Jagannath Sukhatankar has denied that he had handed over this pamphlet to Maharasthrawadi Gomantak for distribution. In fact, as I have already said, the burden of proof is on the petitioner to establish that this pamphlet was distributed by the respondent No. 1 in Sanguem as alleged by him. It is, therefore, for him to show that after Jagannath Sukhatankar obtained the delivery of the pamphlet from the Prafulla Printing Press, he had handed it over to the Maharasthrawadi Gomantak for its distribution and thereafter Maharashtrawadi Gomantak gave this pamphlet to the respondent No. 1 along with its other literature and that ultimately the pamphlet was distributed by the respondent No. 1. The evidence adduced by the petitioner certainly falls far short of the required proof. The trial of an election tribunal is in the nature of an accusation and is a quasi criminal action. If the same test is applied, there would be a presumption of innocence and direct proof would be required before person charged is held to be responsible for any corrupt practice. I, therefore, hold that the petitioner has failed to prove that the pamphlet was distributed by the respondent No. 1. Obviously, therefore, distribution of this pamphlet cannot amount to an appeal to the electorate by the respondent No. 1.

25. Then it is not enough for the purposes of the alleged corrupt practice defined in section 123(3) of the Act, that the appeal should be by a candidate or his agent or by any other person with the consent of a candidate or his election agent. It must be an appeal to vote or refrain from voting for any person. Now, it is possible to construe the pamphlet Ex. A to mean that it is an appeal to the electorate to vote or refrain from voting because the last but two paragraphs, which reads thus:

> «General Elections are now going to be held in Goa. At that time there will be some people who will tell you all kinds of lies, to get your votes. They will speak to you about your religion. They will try to deceive you by telling you that your religion is threatened. You are now a part of India, where every man is free to follow his own religion. There are thousands of Christians in the rest of India who are practising their religion with absolute freedom»,

cautions the electorate against exercise of the franchise on religious grounds. In other words, this paragraph appeals to the people not to vote on religious grounds. The last paragraph, which reads «For this reason, we appeal to the people of Goa to think what is best for them and to realise what others wish to do about this matter», makes a direct appeal to the electorate to think out what is best in their interest and to understand what others desire them to do in the matter of integration of Goa with Maharasthra State. The necessary implication, therefore, is that this pamphlet appeals to the electorate to vote for the integration of Goa with Maharasthra State and refrain from voting for Goa remaining as Union Territory. But the question still remains whether it is and appeal to vote or refrain from voting *for any person* as required by section 123(3) of the Act and the petitioner has made an unequivocal admission on this point in his cross-examination. He has stated that the pamphlet Ex. A does not ask any person to vote for any particular person or organisation, nor does it request voters to cast their votes in favour of any particular person. Surely, therefore, whate-

ver else it may be, the pamphlet in question does not amount to an appeal by a candidate or his agent or by any other person with the consent of the candidate or his election agent to vote or refrain from voting *for any person.*

26. When the petitioner, however, realised that in the absence of any appeal, by a candidate to vote or refrain from voting *for any person,* in the pamphlet, it would not amount to the corrupt practice defined in section 123(3) of the Act, he attempted to make out a new case in his cross-examination. He said that although the pamphlet does not amount to an appeal to vote or refrain from voting for any person, when the respondent No. 1 was distributing it, he was orally requesting people to vote for him. But admittedly in the petition he never alleged that when the respondent No. 1 distributed this pamphlet, he told people to vote for him. When his attention was drawn to this omission in the petition, he stated that the original petition was written by him in Portuguese language but the same was not correctly translated into English. What he suggested was that in the original petition which was drafted by in Portuguese, he had alleged that the respondent No. 1 was orally telling people to vote for him when he was distributing the pamphlet. But while translating that draft into English, that averment in the petition in Portuguese remained to be translated into English in the present petition. He also ventured to state that when he put his signature below the petition which he filed with the Election Commission, he did not read it for himself nor did he get it read out to him and explained to him by any person. Though the petitioner is an Advocate, he went to the extent of stating on oath that he put his signature on the petition without understanding its contents. It is in evidence that the petitioner has a son who knowns English perfectly well and according to the petitioner, it was he who had translated the original draft in Portuguese into English. It is, therefore, not possible to believe that the petitioner had alleged in the Portuguese draft of the petition that the respondent No. 1 was appealing to people orally at the time of distribution of the pamphlet that they should vote for him. I, therefore, do not see any difficulty in holding that whether the pamphlet was distributed by the respondent No. 1 or not, it surely does not amount to an appeal to vote or refrain from voting *for any person.*

27. Even assuming that the pamphlet in dispute is an appeal by the respondent No. 1 to vote for himself, unless such an appeal is on the ground of his religion, it would not amount to a corrupt practice as defined in section 123(3) of the Act. The question, therefore, is whether the pamphlet Ex.A amount to an appeal on the ground of religion of the respondent No. 1.

28. The pamphlet, as I have already said, is in Konkani language in Roman script. It contains a photograph on its cover page, of a statue of St. Francis Xavier, the cask containing the relics of the Saint and an altar. The allegation of the petitioner in paragraph 5 of the petition is that this pamphlet appealed to the voters to vote for Maharasthrawadi Gomantak Sanghatana "by arousing the religious feeling of the people and inducing them to vote for the said Sanghatana". In his cross-examination, however, when he was asked to point out the portion of the pamphlet which, according to him, was objectionable he said that there were only two or three passages which, according to him, "aroused religious feeling of the people" and, therefore, were objectionable. These passages, which are five in number, read thus:—

(1) "........................ The very same big shots who had kept poor people oppressed during the portuguese regime are now trying to keep them in the same condition".

(2) "The poor people were penniless and could not get free education and therefore, they had to carry on living by working as slaves of the land-lord ......"

(3) "........................ Now, the Congress and "Amcho Poks" are trying to deceive the poor people by saking that they support the Konkani language".

(4) "They keep on telling the people to teach Konkani to their children, but, they themselves send their children to English or Marathi Schools. The poor people should open their eyes to this."

(5) "The priests have now started to make propaganda in the Churches, with a view to keep Goa separate. These priests are only doing what the rich and the land-lords tell them to do. They have no thought for the poor. When the Portuguese were here, they were making propaganda for them. Do these priests think that the poor people should forever remain as such? They have not exerted any effort to alleviate the sufferings of the poor. They have not tried to educate them, so that they may get better jobs. Are these priests of the opinion that the poor people should always remain as slaves of the rich and the land-lords?"

When the cross-examination was pursued further, the petitioner said that these passages are objectionable because they contained false statements made by the person responsible for this pamphlet to instigate people of Goa. He also stated that passages 3 and 4 were objectionable because they tended to create linguistic differences. As regards the last passage, he stated that it not only contained false statements but it tended to set Christians and priests against Hindus. He, however, admitted that according to him, none except the last paragraph aroused religious feelings of people of Goa. When he was asked how this paragraph, which contains criticism against the priests, aroused religious feelings, he replied that the priests, according to the author of the pamphlet, were tools in the hands of land-lords. The author of the pamphlet, therefore warned poor Christians not to listen to the priests who were tools in the hands of the land-lords and to vote for Maharasthrawadi Gomantak Sanghatana. It is, therefore, obvious that according to the petitioner even the last paragraph warns poor Christians not to listen to the priests not on religious grounds but on the ground that they were tools in the hads of land-lords. In my opinion, therefore, the cross-examination of the petitioner with reference to the contents of the pamphlet successfully shows that there is nothing in this pamphlet so far as its contents go to show that the appeal was on religious grounds. On the contrary, the paragraph, which refers to the General Elections and which I have already quoted above, definitely shows that the pamphlet cautions people to decide the question of integration of Goa with Maharasthra State on religious grounds, inasmuch as it says that there will be some people who will tell the electorate all kinds of lies, to secure their votes. They would also tell them about religion and try to deceive them by alleging that their religion was threatened. The pamphlet, therefore, assures these people that like the rest of India where every man is free to follow his own religion, the Christians would be absolutely free to practice their own religion. It is, therefore, extremely difficult to hold that there is anything in this pamphlet which may amount to an appeal on religious grounds. Secondly, the petitioner has addmitted that the Sanguem Constituency where, according to him, this pamphlet was distributed, is predominantly a Hindu Constituency. The respondent No. 1 has said in his evidence that only 20 to 25 per cent of the population in this Constituency is Christian. If, therefore, the pamphlet was an appeal to Christians on religious grounds, it was an appeal to a minority of the population. It is, therefore, unlikely that any candidate, much less a Christian candidate like the respondent No. 1, would alienate the sympathies of Christians, who are in minority in this area, by criticising their priests in the pamphlet. The respondent No. 1 has definitely said in his evidence that if he himself had distributed such a pamphlet, the Christians would have certainly voted against him. In fact, he swears that he does not agree with the cristicism levelled against the priests in the last but one paragraph of this pamphlet. The learned counsel Shri Dias then pointed out that admittedly this pamphlet was meant for Christians, majority of whom do not know Marathi. The pamphlet was, therefore, addressed to them in Konkani language in Roman script. If the pamphlet was meant for Hindus also, it would have been issued in Marathi or in Konkani language but certainly in Devanagari script. It is, therefore, argued that inasmuch as the pamphlet was exclusively meant for Christian people, it amounts to an appeal on religious grounds. I cannot agree. In ***Gavaralli Khan V. Keshao Gupta*** **A. I. R. 1959 Allahabad 264** Their Lordships of the Allahabad High Court have held that even if the appeal is to the members of a particular community, it does not necessarily fall within the mischief of sub-section (3) of section 123 of the Act. The mere fact, therefore, that this pamphlet was exclusively meant for a particular community, it would not be sufficient to hold that, therefore, it is an appeal on religious grounds.

29. The learned counsel appearing on behalf of the petitioner then argued that the photograph printed on the cover page of the pamphlet of the statue of St. Francis Xavier, the casket containing his relics and the altar, shows that the pamphlet was an appeal on religious grounds. I cannot agree. It is not disputed before me that the photograph is that of the interior of St. Francis Xavier's Church in Old Goa. While considering the question whether the pamphlet is an appeal to the voters to vote or refrain from voting on religious grounds, the document containing the photograph must be taken as a whole and after consideration of the entire document a decision has to be arrived at whether or not the pamphlet amounts to an appeal to vote or refrain from voting

on religious grounds. If the pamphlet is a whole is merely a criticism of rival political parties or if it invites the electorate to consider any political issue on its merits, it would not amount to an appeal on religious grounds simply because it contains the photograph of a temple or a church or a mosque. It is likely that when a particular pamphlet is meant for a particular community in order to attract the attention of that community or with a view to induce them to read it, the person or the organisation responsible for publication of such a pamphlet may also publish in it a photograph of an object like a church, a temple or a mosque. It might even contain the photograph of a saint revered by that community, but in such cases the question that has got to be considered is whether the pamphlet aims at inducing the voters to vote or refrain from voting on any religious grounds. In the instant case if we carefully read the pamphlet Ex. A, we would find that the first paragraph contains criticism of the Congress Party alleging that the Congress Party is not started for the benefit of the poor, but it belongs to the privileged few. The second paragraph criticizes the policy of Portuguese when these territories were under their dominion. It says that even during the Portuguese regime the poor people used to be exploited by the Portuguese with the help of the rich. In the third paragraph, the author of the pamphlet warns the voters that they should not be misled by the political parties such as Congress and "Amcho Pokx". The next paragraph points how the leaders in these parties keep on telling Goans to teach Konkani to their children and send their own children to Marathi or English schools. It also warns people that if Goa remains a separate State only the rich people and landlords would dominate over the poor and would become richer at their cost. In the fifth paragraph, the author of the pamphlet says that Maharasthrawadi Gomantak Sanghatana is the party of poor people and it is not against the spread of Konkani language. He further says that it is, however, necessary to learn Marathi also because is the language of the whole of Maharasthra State. In the sixth paragraph, the pamphlet says that if people of Goa neglect Marathi and Goa becomes a separate State, the landlords would become Ministers. It also criticizes the policy of the Congress Party and "Amcho Pokx" regarding the industrial development of Goa. The next paragraph warns the electorate to decide the issue of integration on religious grounds. In the last but one paragraph, there is a criticism against priests on the ground that they being the tools in the hands of landlords, they would not care for the poor. The last paragraph, therefore, appeals people of Goa to think out for themselves what is best in their own interest and to understand what others desire them to do. It would thus be seen that not only there is nothing in this pamphlet which can be said to amount to an appeal on religious grounds but on the contrary the author of the pamphlet warned people of Goa not to decide the issue of integration on religious grounds. When these are the contents of the pamphlet Ex. A, can it be said that simply because it contains the photograph of the interior of a church with the statue of St. Francis Xavier, the casket of his remains and the altar, the pamphlet is an appeal to the electorate on religious grounds. In my opinion such a pamphlet, even though it appeals to a particular community and, therefore, it contains a photograph of an object revered by that community, it is essentially a pamphlet appealing to the electorate on the ground of wrong policy of the rival organisation. I am, therefore, inclined to think that the pamphlet taken as a whole even though it contains the photograph of the interior of St. Francis Xavier's Church, it cannot be held to amount to an appeal to vote or refrain from voting on religious grounds.

30. The learned counsel Shri Dias has then argued that at any rate the printing of such a photograph in a pamphlet like the one we have in this case amounts to use of or appeal to religious symbol. In other words, the learned counsel argues that the photograph of the interior of St. Francis Xavier's Church in the pamphlet Ex. A is a religious symbol. In this connection, he has drawn my attention to the evidence of the petitioner at Ex. 61 where he has said that in Goa in almost every Christian house the picture printed in the pamphlet Ex. A is framed an hung against a wall. Whenever anybody is ailing in a Christian house, Christians pray before the picture and occasionally they also touch the sick with it so that he may be cured. The Christians people believe that St. Francis Xavier performed miracles and that is why they keep this picture in their houses and pray before it. The respondent no. 1 has not challenged this part of the evidence of the petitioner in his cross-examination, but he has denied in his own evidence that the picture is a religious symbol. He admits that the Church of St. Francis Xavier in Old Goa is a place of pilgrimage, but according to him it is so both for Hindus and Christians. In other words, according to the respondent no. 1, the picture is no doubt an object of veneration, but at the same time he denies that it is a religious symbol. The question for consideration, therefore, is whether the photograph of the interior of the Church of St. Francis Xavier printed in the pamphlet Ex. A is a religious symbol.

31. The expression «religious symbol» is nowhere defined in law, much less in the Act. We have, therefore, to depend on the meaning of the word 'symbol' in the Dictionaries which would appropriately fit in the context in which the word is used in section 123(3) of the Act. In Webster's New International Dictionary, Volume 2, 1932, at page 2097, the meaning of the word 'symbol' is given thus: —

> "that which stands for, or represents, something else, a visible sign or representation of an idea or quality, or another object, by means of natural aptness, of association, or of convention; an emblem".

In the Concise Oxford Dictionary of Current English, Fourth Edition, reprinted in 1958, at page 1289, we have the following meaning: —

> "Thing regarded by general consent as naturally typifying or representing or recalling something by possession of analogous qualities or by association in fact or thought".

In Murray's New English Dictionary, 1919 Edition (Oxford), various meanings of the word "symbol" are given; but the one which is applicable here and quoted in *Karan Singh v. Jamuna Singh*, 15 Election Law Reports 370 at page 374 reads thus: —

> "Something that stands for, represents, or denotes something else (not by exact resemblance, but by vague suggestion, or by some accidental or conventional relation) especially a material object representing or taken to represent something immaterial or abstract, as a being, idea, quality or condition; a representative or typical figure, sign or token".

It is, therefore, clear that symbol is something that stands for, represents, or denotes something else not by exact resemblance, but by vague suggestion, or by some accidental or conventional relation especially a material object representing or taken to represent something immaterial or abstract, as a being, idea, quality or condition. It also means an emblem. There is, however, a distinction between symbol and an emblem. An emblem has some natural fitness to suggest that for which it stands, but a symbol has been chosen or agreed upon to suggest something else, with or without natural fitness. It is, therefore, obvious that every emblem is a symbol, but every symbol is not an emblem. In the case of a symbol it may represent or suggest something else with or without natural fitness. If it suggests some natural fitness, it may be an emblem. Thus the elements of bread and wine in the Lord's supper are both appropriate emblems and his own chosen symbols of suffering and death, while a statement of doctrine is often called a symbol of faith, but it is not an emblem (vide *Karan Sing v. Jamuna Sing, 15 Election Law Reports 370)*. Bearing in mind, therefore, the dictionary meaning, it is to be seen whether the photograph in the pamphlet Ex. A can be said to be a religious symbol.

31. Normally, a photograph only represents the person or the object of which it is a photograph. A photograph, therefore, can be said to be a symbol of the person or object of which it is a photograph, but in considering the question whether the photograph containing the statue of St. Francis Xavier, the casket of his remains and the altar, the interior of the Church named after the great Saint, is a religious symbol, the meaning of the word symbol which can properly be applied is only that under which it must appear that the photograph represents something religious by some natural fitness and that it would also be an emblem. If there is no natural fitness at all between what the photograph actually is and what it represents, it would be very difficult to hold that it is a religious symbol. The argument of the learned counsel was that the photograph represented Christian religion and, therefore, it was a religious symbol. It is not even suggested, much less it is argued, that because the photograph contains the picture of the statue of St. Francis Xavier or the casket of his remains or the altar or the interior of Church, it represents Christianity. In fact, the allegation in the petition is that because the picture contains "tomb of St. Francis Xavier" on the cover page and, therefore, it arouses the religious feelings of people, it is an appeal to the electorate on religious grounds. The petitioner nowhere alleges in the petition that the printing of the picture in the

pamphlet amounts to an appeal to or use of a religious symbol. It was, however, argued that because the picture represented St. Francis Xavier, the great Christian Saint, it should be treated as a religious symbol, but surely my merely representing St. Francis Xavier, the photograph which may be a symbol of St. Francis Xavier cannot become a religious symbol. The photograph of St. Francis Xavier cannot be said to be typical of Christianity. People may keep the photograph of St. Francis Xavier in their houses because they revere him or they have a great regard for him, but by keeping such a photograph, it cannot be said that there is any intention to signify that Christianity as such is present or represented wherever the photograph is hung. It seems to me, therefore, the photograph because it contains the picture of the statue of St. Francis Xavier cannot be treated as religious symbol in the sense that white is a symbol of purity or thunderbolt, of Zeus or courage, of Lion or Cross, of Christanity. Surely, the photograph does not represent something religious by some natural fitness, much less it is an emblem. I am, therefore, of the opinion that the photograph in the pamphlet Ex. A cannot be held to be a religious symbol.

32. The learned counsel Shri Dias draw my attention to certain rulings in support of his argument that the photograph in the instant case is a religious symbol. He has first pointed out that in *Lakshmi Narain v. Balwan Sing*, 20 Election Law Reports 76, the photograph of a banian tree is held to be a religious symbol on the ground that the banian tree is a sacred tree worshipped by persons following the Hindu religion. In that case the respondent no. 1 had selected the symbol of the banian tree and the allegation was that he had actually made appeals to the Hindu women to cast their votes in his favour because his symbol was the banian tree and the banian tree is a sacred tree. It was also alleged that Hindu women were told that a vote for the banian tree box was a vote for their husband's life and prosperity. The Election Tribunal found that the banian tree was considered a holy tree by Hindus and many Hindu women worship the tree as the worship is cosidered to prolog the life and increase the prosperity of their husbands. The Tribunal, however, came to the conclusion that it was unable to find that the respondent no. 1 had either anything to do with the printing of the pamphlet or that he ever made any appeals to vote for him on the grounds of the religious symbol. The Allahabad High Court agreed with the Election Tribunal in holding that the commission of the corrupt practice had not been proved. It did not express any opinion whether or not banian tree could be considered to be a religious symbol. In *Rustom Satin v. Sampoornanand* 20 Election Law Reports 221, distribution of pictures displaying the election symbol of the Congress with the figures of Annapurnaji or Bhagwan Visvanathji was held to constitute use of religious symbols within section 123(3) of the Act. But in that case one of the leaflets relied upon contained a coloured picture of the goddess "Annapurna Ji" on the front, and a standing picture of Mahatma Gandhi carrying a stick, on the back. Another leaflet contained a picture of the symbol of Bhagwan Viswanath Ji with a priest sitting by the side of it on the front, and a standing picture of Mahatma Gandhi carrying a stick, on the back, while the third contained coloured pictures of the symbol of Bhagwan Viswanath Ji with two priests sitting by its side on the front, and a standing picture of Mahatma Gandhi carrying a stick on the back. All this pictures displayed the election symbol of the Congress (namely, two bullocks and yoke) on the front side. The Allahabad High Court, therefore, held that these pictures contained religious symbols of the kind prohibited by section 123(3) of the Act. Surely, none of these pictures can be compared with the photograph we have in the instant case. Lastly, reliance is placed on *Shambhunnath Devanabh v. Ram Nath Prasad* A. I. R. 1960 S.C. 148. But in that case there was a leaflet addressed to the electorate mainly consisting of adivasis issued by the candidate's party consisting of Adivasis in the name of a cock which was the party's symbol in the election and which amongst the Adivasis formed a very important integral part of religious ceremonies. The pamphlet invoked the wrath of the deities on the electorate in case they forgot the cock, that is to say, forgot to vote for the party for which the cock was the symbol. It was in view of these facts and circumstances that the cock was held by Their Lordships of the Supreme Court to be a religious symbol. In my opinion, therefore, none of these rulings helps the petitioner to prove that the photograph printed in Ex. A is a religious symbol.

33. Assuming, however, that it is a religious symbol, an appeal to or use of religious symbol is not enough for the purposes of section 123(3) of the Act. It must be further established that the appeal to or use of religious symbol was for the furtherance of the prospects of the election of *that particular candidate,* who either by himself or by his agent or by any other person with his consent or the consent of his election agent, is alleged to have made use of it or appealed to it, or for prejudicially affecting the election of any other candidate. Now, I have already held that the petitioner has failed to prove that either the respondent no. 1 or even the Maharasthrawadi Gomantak on whose ticket the respondent no. 1 contested the election, had distributed the pamphlet. It was issued by the Maharasthrawadi Gomantak Sanghatana and there is no satisfactory evidence to prove who actually distributed it. That being the position, one thing is certain that even if the pamphlet is taken to amount to an appeal to or use of a religious symbol, it cannot be said that use of or appeal to religious symbol was by the respondent no. 1 or his agent or by any other person with his consent of the consent of his election agent. It is, therefore, difficult to hold that the use of or appeal to this photograph, if at all it is a religious symbol, was for the furtherance of the prospects of the respondent no. 1. Moreover, I have already pointed out that even according to the petitioner, the pamphlet as a whole does not ask any person to vote for any particular person or organisation nor does it request any voters to cast their votes in favour of any particular person. In fact, the petitioner attempted to make out a new case at the time of hearing by alleging that at the time of distributing this pamphlet the respondent no. 1 was orally appealing to the voters to vote for him. I have already offered my comments on this part of the story. I am, therefore, of the opinion that even if the photograph is treated as a religious symbol, it is not possible to hold in this case that use of or appeal to religious symbol was either by the respondent no. 1 or his agent or by any other person with the consent of the respondent no. 1 or of his election agent, nor can it be said that the appeal to or use of the religious symbol was for the furtherance of the prospects of the respondent no. 1 or prejudicially affecting the election of any other candidate.

34. On consideration, therefore, of the evidence, on the record, I have come to the conclusion that the petitioner has failed to prove that the respondent no. 1 and/or his party-men distributed the pamphlet in Sanguem, Kurdi and Rivona for a period of 10 to 12 days before 8th December 1963 or that the distribution amounted to appeal to vote or refrain from voting on the ground of religion or appeal to or use of religious symbol for the furtherance of prospects of the election of respondent no. 1.

35. *Issue no. 4:* — The next corrupt practice alleged by the petitioner in his petition is that on the day of election, that is to say, on 9th December 1963, the respondent no. 1 himself carried in his jeep the voters and brought them to the polls, made them to stand in queue, gave them his identity cards with the symbol of Lion and asked them to mark stamp on Lion. He has also alleged that on that day even the respondent no. 5, another candidate contesting election from the same Constituency, not only protested against this conduct of the respondent no. 1 but he also lodged a protest with the Presiding Officer one Venctexa Poi Palandikar at Sanguem Polling Station. The respondent no. 1 has denied that he carried any voters in any conveyance to the polling booths in Sanguem and alleged that in fact on that day he was busy moving from one polling station to another throughout his Constituency. He also denied that the respondent no. 5 had lodged any protest with the Presiding Officer at one of the polling stations in Sanguem. Now, in support of this allegation, the petitioner said in his evidence (vide Ex. 61) that at about 1-30 P. M. on that day he saw respondent No. 1 bringing voters in a jeep, asking them to stand in a queue and giving them his identity cards with the symbol of Lion. He has also deposed that one Sebastian De'Costa, Francis Rodrigues, Benedicto Fernandes and Alex Mascarenhas were with him when he saw the respondent No. 1 carrying the voters in a jeep to the polling station in Sanguem. It is, however, surprising that the petition did not care to examine any of those persons who, he says, were with him at the time of the incident. Secondly, the petitioner admits that he is an Advocate and even then he did not note down the registration number of the jeep car nor the name of the driver. He wants us to believe that at the time when the respondent No. 1 brought the voters in his jeep there were good many persons present round about. He also shouted asking the respondent No. 1 what he was doing and his protest to the respondent No. 1 was also heard and seen by the persons round about. But curiously enough he did not note down the name of any of those persons who were present and who, according to him, had also witnessed the respondent No. 1 bringing voters in his jeep. In fact, though he has alleged in the petition that the respondent No. 5 protested against the conduct of the respondent No. 1, he does not allege in the petition that he had also protested to the respondent No. 1 against his conduct. He wants use to believe that at the time of drafting the peti-

tion he did not remember that he had himself protested against the respondent No. 1. He, however, admits that when the petition came to be published in the Government Gazette of India, he recalled that he had also protested not only to the respondent No. 1 but also to the Presiding Officer against the conduct of the respondent No. 1. Even then he did not seek an amendment of the petition. He tells us that he thought at that time that he would tell the Tribunal everything about this incident and, therefore, he did not think it necessary to amend the petition. I do not think that such an explanation, particularly when it comes from the petitioner who is an Advocate, can be accepted. As regards the protest by the respondent No. 5, he says that he and the respondent No. 5 saw the respondent No. 1 again at 4. 30 P. M. bringing voters in his jeep. One Shri Nadkarni was also with respondent No. 5 at that time. The respondent No. 5 then went to the Presiding Officer one Shri Palandikar and complained to him about what the respondent No. 1 was doing. The Presiding Officer asked the respondent No. 1 to file a complaint in writing. The respondent No. 5 presumably lodged a complaint in writing. Here again, neither the petitioner has cared to examine the respondent No. 5 as his witness nor one Shri Nadkarni who accompanied the respondent No. 5 at the time when he complained to the Presiding Officer. He has not even got the complaint in writing, if any, filed by the respondent No. 5 with the Presiding Officer, produced in this case.

36. The petitioner has, however, examined the witnesses Alex Joseph Mascarenhas and Louis Aleixo Antão at Exs. 73 and 76 respectively. The witness Alex Mascarenhas has said in his evidence that on 9th December 1963, the date of the election, he had been to the polling station in Sanguem at about 9 A. M. for exercising his right to vote. He went and stood in a queue and was waiting for his turn till 11.30 A. M. He has deposed that while he was standing in a queue, he saw somebody bringing voters in a jeep, making them stand in a queue and giving them identity cards. There were five or six persons in the jeep in every trip and the respondent No. 1 was one of them. He saw the electors being brought in the jeep thrice. After he cast his vote at about 11-30 A. M. he went to a restaurant, had his tea then went to the office of United Goans. One Francis Rodrigues was present in the office. He told him also that respondent No. 1 was carrying electors in his jeep. Francis Rodrigues said "let him bring". Now, it may be remembered here that the petitioner has said in his examination-in-chief that when he saw the respondent No. 1 bringing electors in his jeep, one Alex Mascarenhas was with him. Obviously, therefore,one is inclined to think that the witness Alex Joseph Mascarenhas examined at Ex. 73 is the same Alex Mascarenhas, who, the petitioner says, was with him at the time of this incident. But the learned counsel Shri Dias appearing on behalf of the petitioner has told me that Alex Joseph Mascarenhas examined as a witness by the petitioner is altogether a different person from the one who was with him when he saw the incident. There is nothing on the record to show that Alex Mascarenhas referred to by the petitioner in his examination-in-chief is other than Alex Joseph Mascarenhas examined by him at Ex. 73. It seems to me that the learned counsel has tried to get over the admissions made by the witness Alex Joseph Mascarenhas (Ex. 73) by offering the explanation for which there is no justification, on the ground that the witness Alex Joseph Mascarenhas is different from Alex Mascarenhas who was with the petitioner at the time of the incident. The witness has admitted in his cross-examination that while he was standing in a queue from 9 A. M. to 11.30 A. M. he did not see the petitioner during this period round about the place. He also admits that he was not with the petitioner throughout the day. He saw him for the first time in the office of the United Goans at 5 P. M. These admissions, therefore, definitely gave a lie to the statement of the petitioner that Alex Mascarenhas was with him when he saw the respondent No. 1 carrying the electors in his jeep to the polling station in Sanguem. The witness further admits that though he saw the petitioner in the office of the United Goans at 5 P. M., even then he did not tell him that the respondent No. 1 was seen carring electors in his jeep to the polling station. It is material to note that according to the petitioner the respondent No. 1 carried electors in his jeep to the polling station twice, once in the morning and again in the evening at about 4.30 P. M. But the witness Alex Joseph Mascarenhas says that he saw the respondent No. 1 carrying the electors in his jeep thrice during the period from 9 A. M. to 11.30 A. M. Then the witness admits that on the first occasion when he saw the respondent No. 1 bringing voters, he saw them getting down from the jeep and walking straight to the queue and standing in it. He does not state that he had seen the respondent No. 1 making these electors stand in a queue and giving them identity cards, with a stamp of Lion. On the second occasion, the witness says that he saw them getting down from the jeep, but he does not know where they went, while on the third occasion he admits that he was not standing in the queue. He, however, saw them getting down from the jeep. He does not know where they went. The petitioner has alleged in the petition that not only the respondent No. 1 was seen carrying the electors to the polling station, asking them to stand in a queue and giving them identity cards, but he was also seen telling them to mark a stamp on Lion. But neither the petitioner nor the witness Alex Joseph Mascarenhas says in his evidence that they had seen the respondent No. 1 asking these voters also to mark a stamp on his symbol of Lion. In fact, it is brought out in the cross examination of this witness that his political sympathies are with United Goans. He often goes to the office of the United Goans. He also knew about their propaganda and the fact that the petitioner was an authorised candidate of the United Goans. The evidence of this witness, therefore, certainly does not inspire any confidence.

37. As regards the witness Louis Antão (vide Ex. 76) he has deposed that he had gone to the polling station on that day at about 8 a. m. and finding that there was a long queue he went and sat in a tea-stall till about noon. During the period he was sitting in the tea-stall, he saw people coming in a car to the polling station for giving their votes. He, however, saw the car coming to the polling station twice. On the third occasion the car brought one ailing person to the polling station. He further says that one Shri Kamat was in the car on all the three occasions. It is not clear from his evidence whether Shri Kamat was an election agent of the respondent No. 1, but the witness says that Shri Kamat had something to do with the symbol of Lion. At the end of his examination-in-chief, when he was asked to give the description of the car, he told us that it was a goods truck. Surely, therefore, this was not the car in which the respondent No. 1 was seen by the petitioner and his witness Alex Joseph Mascarenhas bringing the electors to the polling station. The petitioner's allegation is that the respondent No. 1 himself was carrying electors to the polling station, Sanguem, in his own jeep car. He nowhere alleges that the agent of the respondent No. 1 or any other person with the consent of the respondent No. 1 or his election agent brought any electors to the polling station in Sanguem either in his jeep or any other conveyance. The evidence of this witness, therefore, does not help the petitioner. We are, therefore, left with the testimony of the petitioner himself on this point and for the comments I have already made, apart from the fact that it would be difficult to accept his uncorroborated interested testimony, I do not think that on the basis of his sole testimony the respondent No. 1 can be held to have carried the electors to the polling station, Sanguem, in his jeep.

38. Coming to the evidence of the respondent No. 1, he has said that on the date of the election he was moving from one polling station to another from 7 a. m. to 4-45 p. m. At one time when he was going from Zambauli to Rivona at about 11-30 a. m. his car failed on the way with the result that he reached Rivona after 1 p. m. Thereafter he went to Colomba at about 1-10 p. m. reaching there within 15 minutes thereafter. He left Colomba for Kurdi at about 1-45 p. m. and went to Quepem reaching there at about 2-45 p. m. Thereafter, he left for Netorlim reaching there at about 3-45 p. m. then he went to Sanguem at about 4-15 p. m. Thereafter he went to Bati because he had heard a complaint against the Presiding Officer there and came back to Sanguem at about 4-45 p. m. He has, therefore, denied that he could be seen by the petitioner at about 1-30 p. m. in Sanguem carrying electors in his jeep to the polling station. The learned counsel Shri Dias appearing for the petitioner cross-examined the respondent No. 1 even on minor details regarding his tour of all the polling stations from 7 a. m. to 4-45 p. m. and in my opinion the respondent No. 1 stood the test satisfactorily. The learned counsel drew my attention to so called improbabilities admitted by the respondent No. 1 which, according to the learned counsel, show that the story of the respondent No. 1's car failed on the way between Zambauli and Rivona was a myth. One of these improbabilities is that when the car failed, respondent No. 1 has admitted that he did not ask his driver what had happened. But the respondent No. 1 has admitted in his cross-examination that he knows nothing about the mechanism of an auto-mobile. It is, therefore, natural that he should not have made inquiries with his driver what had actually happened. But nevertheless the respondent No. 1 says that he asked the driver why the car stopped and the driver replied that he would see. Secondly, the respondent No. 1 has admitted that while they were thus standing on the road, one passenger bus came, two of the passengers in which were known to him by their faces, but according to

the respondent No. 1 none of these passengers made any inquiries why they were standing on the road. I for myself do not see anything improbable about the conduct of the passengers in the bus. The cross-examination of the respondent No. 1 shows that the passenger bus was stopped because the car of the respondent No. 1 was standing in the middle of the road. After it was taken on one side, the passenger bus immediately left. If, therefore, none of the passengers made any inquiries about the failure of the car of the respondent No. 1, there is nothing improbable about it. Thirdly, the learned counsel pointed out that the respondent No. 1 did not even request the driver of the passenger bus for his assistance, but I have already said that the respondent No. 1 knows nothing about the mechanism of a motor-car. Admittedly, he himself was not driving the jeep at that time. If therefore, anybody required the assistance, it was his driver. So long as the driver was attempting to set right the car, it is but natural that the respondent No. 1 should not have requested the driver of the passenger bus to help him. Fourthly, it is pointed out that after the passenger bus left, a touring car also came, but the respondent No. 1 did not make any inquiries with the driver of that car also, but he has admitted in his cross-examination that it was the driver of that car who being acquainted with the driver of his own car actually helped the driver and set right the car. It was, therefore, hardly necessary for the respondent No. 1 to make any inquiries with the driver of that car particularly when he knows nothing about the engine of a motor car. Fifthly, it is pointed out that while the respondent No. 1 was on the road with his car, some persons also passed by, but the respondent No. 1 says that none of them made inquiries why they were waiting on the road. Here again, there is nothing unusual if the passers-by do not make any inquiries about the car whose owner and driver are unknown to them. Lastly, my attention is drawn to the fact that whereas in his examination-in-chief the respondent No. 1 has said that he left Netorlim at about 3-30 p.m., in his cross-examination he says that he left it about 2-58 p.m. But the respondent No. 1 has said in his evidence that he had no watch with him. He, therefore, could not mark the time when he left one polling station and reached another. In fact, he says that the time he has given is his estimate only based on observation. It is true that the respondent No. 1 has not alleged in his written-statement that his car had failed between Zambauli and Rivona, but nevertheless he has definitely alleged that on the date of the elections he was moving from one polling station to another to see whether or not his polling agents were performing the task assigned to them properly and the electors were given all the necessary facilities permissible under law to enable them to exercise their franchise. I, therefore, do not see any reason to disbelieve the respondent No. 1 when he says that on the day of the election he was busy going round all the polling stations and that, therefore, he could not have, and in fact did not, carry any voters in his jeep to any of the polling stations in Sanguem.

39. The respondent no. 1 has also examined two Presiding Officers, one from Colomba Polling Station and the other from Quepem, at Exs. 100 and 102 respectively. The Presiding Officer at Colomba, one Dattatraya Faldesai (vide Ex. 101) has said in his evidence that the respondent no 1 had gone to the polling station at Colomba between 1 P. M. and 1-30 P. M. It is true that he has admitted in his cross-examination that he was not marking time when anybody came or when anybody left the polling station. But his cross-examination shows that the time he gave was his estimate only. He has also given the basis for his estimate and it is this that according to him, about the time when the respondent no. 1 came to the polling station, he and the polling officers were talking to each other that it was their lunch time. The witness says that on that day he and his polling officers worked at the polling station without any break. The other Presiding Officer is one Manohar Sail of Quepem (vide Ex. 102). He has deposed that the respondent no. 1 had gone to his polling station between 2 P. M. and 2-30 P. M. The only suggestion made in his cross-examination was that he belonged to the Government Department of Industry of which the respondent no. 1 is Minister at present. But I do not think that can be a ground to reject the evidence of this witness. Thus the evidence of both these Presiding Officers shows that whether or not the car of the respondent no. 1 had failed between Zambauli and Rivona, the fact remains that at about 1-30 P. M. when the petitioner says that he saw him bringing electors to the polling station in a jeep car, he could not be in Sanguem.

40. On consideration, therefore, of the evidence on the record, I hold that the petitioner has failed to prove that on 9th December 1963, the respondent no. 1 himself carried in his jeep any electors to the polling stations in Sanguem.

41. *Issue No. 5:* — The next corrupt practice alleged in the petition is that the respondent no. 1 together with his wife distributed sarees and cloth pieces in the various villages and asked the recipients thereof to vote for the Lion so that the Lion might make them rich and prosperous. In the full particulars supplied at Ex. 43, the petitioner gave the names of villages as Netorlim, Vissunderem and Colomba where the respondent no. 1 and his wife were alleged to have distributed sarees and cloth pieces. However, the petitioner neither gave the names of the recipients of sarees and cloth pieces in Ex. 43 nor did he give the date or dates when the respondent no. 1 and his wife were alleged to have made this distribution. The petitioner, therefore, by the order passed at Ex. 47 was asked to give a few names of the persons to whom the sarees were distributed and the dates when they were distributed. Thereafter under Ex. 51 he stated that the respondent no. 1 and his wife had distributed sarees and cloth pieces to Jaiu Chondru Velipo, Pitol Choudru Velipo, Sonum Naraian Velipo, Sangunim Velipo, Abolem Sangty Gauncar, Kusturem Pantu Gauncar and others and that the distribution took place between 25th November 1963 and 30th November 1963. The respondent no. 1 denied in his written-statement that either he or his wife had distributed any sarees or cloth pieces to any persons at any time. The question for consideration, therefore, is whether the petitioner has been able to prove that the respondent no. 1 and his wife distributed sarees and cloth pieces to the aforesaid persons and others between 25th November 1963 and 30th November 1963.

42. It is material to note that while verifying the petition the petitioner stated that whatever was said in the petition was true to his personal knowledge. However, in his evidence at Ex. 61 he admitted that he had no personal knowledge and that whatever he said in the petition was what he came to know from one Alex Pereira who told him that the respondent No. 1 and his wife had distributed sarees amongst the voters. He also said that it was Alex Pereira who gave the name of the family to whom the sarees and cloth pieces were distributed, as Velipos. It is, therefore, obvious that even Alex Pereira did not tell the petitioner that the respondent No. 1 and his wife had distributed sarees and cloth pieces in various villages. According to the petitioner, what he told him was that the sarees and cloth pieces were distributed in the family of Velipos. He has, however, admitted that there are good many families of Velipos and that he did not make inquiries with any of these Velipos families. He also admitted that nobody from any of the family of Velipos told him that he had received any sarees or cloth pieces either from the respondent No. 1 or his wife. He did not even examine any person from any of the Velipos families in support of the allegation made in the petition. In the list of witnesses filed by him, he had given the names of Jaiu Chondru, Pitol Chondru, Sonum Naraian and Sangunim Sonum Velipo, but even with these witnesses, he admits, he never made any inquiries whether or not they had received any sarees or cloth pieces from the respondent No. 1 or his wife. He wants us to believe that he gave the names of these persons relying on Alex Pereira. Even then he did not care to examine Alex Pereira. Lastly, he has admitted that though he came to know about this corrupt practice committed by the respondent No. 1 long before the date of the elections, he neither protested to respondent No. 1 nor inform his own Party the United Goans about the alleged distribution of cloth pieces and sarees made by the respondent No. 1 and his wife. It would thus be seen that in the absence of evidence of any of the persons alleged to have received sarees and cloth pieces from the respondent No. 1 and his wife or even of the evidence of Alex Pereira from whom, the petitioner says that, he had come to know about the alleged distribution, the evidence of the petitioner himself becomes hearsay. When the attention of the petitioner was drawn to the verification of the petition, he stated that in the original draft of the petition which was in Portuguese he had alleged that he had come to know about the alleged dstribution of sarees and cloth pieces by the respondent No. 1 and his wife from Alex Pereira, but while translating the original draft into English, his son, who did the translation, committed an error. He, however, admits that his son is well conversant with English language and that the original petition, which was only a draft, was not verified in Portuguese language. Obviously, therefore, there could be no mistake in verifying the present petition in English language. The fact, however, remains that there is no legal evidence before the Tribunal to hold that the respondent No. 1 and his wife had distributed sarees and cloth pieces as alleged. The respondent No. 1, who has examined himself at Ex. 83, has definitely denied the allegation. I, therefore, hod that the petitioner has failed to prove that the respondent No. 1 and his wife had distributed sarees and cloth pieces to Jaiu Chondru Velipo, Pitol Chondru Velipo,

Sonum Narainan Velipo, Sanguinim Velipo, Abolem Sangtu Gauncar, Kosturem Pantu Gauncar and others between 25th November 1963 and 30th November 1963.

43. *Issue No. 9:* — The petitioner has also alleged in paragraph 6 (iv) of the petition that the respondent no. 1 promised to pay Rs. 2000/- to one Sarpanch from his Constituency and asked him to induce the persons in his locality to vote for him. Here again, a reference to exhibits 43, 47, 51 and 56 would show that inspite of the repeated demands from the respondent no. 1 to give the name of the Sarpanch and notwithstanding the order of the Tribunal passed at Ex. 47, the petitioner not only did not give the date and the place of this corrupt practice but he did not also disclose the identity of the Sarpanch. Only on the day on which the issues were framed, he informed the Tribunal under Ex. 56 that the Sarpanch was the Sarpanch of a group of villages including Vissunderem and that he was residing in Vissunderem. The issue was, therefore, framed whether the petitioner proved that the respondent no. 1 promised to pay Rs. 2000/- to the Sarpanch of Vissunderem from his Constituency with the object, directly or indirectly, of inducing electors to vote for him. The question, therefore, is whether the petitioner has proved the alleged corrupt practice.

44. The petitioner has deposed (vide Ex. 61) that on 7th November 1963 he had gone to the village of Vissunderem for his election propaganda, that being the day of a village fair in Vissunderem. He had requested one Louis Antão to call a meeting of the voters so that he would address them. One Francis Rodrigues was also with him. While they were in the village, one Pavatu Vithoba Gauncar came there and had some talk with Loui Antão, Loui Antao noted his name. The Sarpanch of Netorlim was also present. At that time the petitioner says that he heard Pavatu Gauncar telling Loui Antão that Sarpanch of Netorlim was saying that the respondent no. 1 had promised to pay Rs. 2000/- to their religious association in the village and that the Sarpanch of Netorlim was asking how much the petitioner would pay. The petitioner told them all that he had no sufficient funds with him and that, therefore, he would not be able to pay anything to them. Francis Rodrigues then noted down the name of Pavatu Gauncar. According to the petitioner, therefore, though the Sarpanch of Netorlim was present, he did not approach the petitioner directly nor he told the petitioner that the respondent no. 1 had promised to pay Rs. 2000/- to their religious association. It was Pavatu Gauncar who told Loui Antão what the Sarpanch of Netorlim was saying and the talk between Pavatu Gauncar and Loui Antão was heard by the petitioner. It may be noted here that though the petitioner has challenged in the petition that the respondent no. 1 had promised to pay Rs. 2000/- to the Sarpanch himself, what he says in his evidence is that the promise was to pay Rs. 2000/- to the religious association and not to the Sarpanch. Secondly, whereas in the particulars supplied by the petitioner at Ex. 56, he has stated that the Sarpanch was the one of Vissunderem, in his evidence he says that he was the Sarpanch of Netorlim. It is not clear from the record whether the Sarpanch of Vissunderem and the Sarpanch of Netorlim are one and the same person. Even assuming that the Sarpanch of Netorlim is also the Sarpanch of Vissunderem, the fact remains that what the petitioner has alleged in the petition is obviously hearsay inasmuch as he had heard about this corrupt practice in the talk which Pavatu Gauncar had with Loui Antao. Neither the Sar-panch nor Pavatu Gauncar is examined by the petitioner in support of this allegation. As regards his personal knowledge about this corrupt practice, he has admitted in his cross-examination that he does not know anything about it personally. He came to know about it only on the occassion when he happened to be in Vissunderem for his election propaganda at the time of the village fair. The petitioner did not even care to examine Francis Rodrigues who, the evidence of the petitioner shows, happened to be invariably with him at the time of almost every corrupt practice alleged to have been committed by the respondent no. 1. Then again, though the petitioner has alleged in his petition that to his personal knowledge, the respondent no. 1 asked the Sarpanch to induce voters in his locality to vote for him, there is nothing in his evidence to show that he had heard in the talk between Pavatu Gauncar and Loui Antao that the respondent no. 1 had asked the Sarpanch of Netorlim to induce the voters to vote for him. In fact, he has admitted in his cross-examination that it was only an inference drawn by him from the talk between Pavatu Gauncar and Loui Antao which he had heard in Vissunderem. Surely, therefore, the evidence of the petitioner cannot help him to prove this corrupt practice alleged against the respondent no. 1.

45. The petitioner, however, has examined Louis Alex Antao at Ex. 76, but he gave altogether a different version. According to him, one Vaddo Bhick Velipo came to him while they were in Vissunderem and asked him whether he could see Francis Rodrigues. The witness told Vaddo Velipo that he could see Francis Rodrigues and could tell him whatever he wanted to say. Vaddo Velipo then asked Francis Rodrigues whether he was willing to pay for votes because Vaddo Velipo said that he wanted some money for erecting a temple. The witness, however, admits that he did not hear any further talk between Francis Rodrigues and Vaddo Velipo. He has admitted in his cross-examination that he had gone to Vissunderem for witnessing the fair. The petitioner never told him to call any meeting. He knows the Sarpanch of Netorlim, one Gopal Krishna, and admits that so long as he was there, the Sarpanch of Netorlim did not come there. The witness was in Vissunderem from 8 p. m. to mid-night, while the evidence of the petitioner showns that he had gone there before 8 p. m. There is nothing on the record to show that Loui Antão referred to by the petitioner in his examination-in-chief is altogether a different person from Louis Alex Antao, the witness examined at Ex. 76. As regard Pavatu Gauncar, the witness says that he does not know him. That being the state of evidence of Louis Alex Antão, it is extremely difficult to rely on the petitioner and hold this corrupt practice proved.

46. Coming to the evidence of Sebastian Francis Pereira (vide Ex. 74), another witness examined by the petitioner to prove this corrupt practics, the witness says when the petitioner went to Vissunderem, he happened to be his driver. He has deposed that while they were in Vissunderem, one Antão Rozerio came and had some talk with Francis Rodrigues. At that time, there was one man who claimed to be the Sarpanch of Vissunderem. He saw Francis Rodrigues after he was introduced to him by Antão Rozerio. It is not clear from the evidence of this witness whether Antão Rozerio and Loui Antão referred to by the petitioner in his examination-in-chief are one and the same person. Assuming, however, that Antão Rozerio mentioned by this witness is none else but Louis Antão, the witness examined at Ex. 76, this witness says that the Sarpanch of Vissunderem told Francis Rodrigues that he had with him 200 voters and that the respondent No. 1 had promised to pay him Rs. 2000/- and donate some money for a temple. He also asked Francis Rodrigues what they would pay and both the petitioner and Francis Rodrigues told him that they had no funds. According to this witness, therefore, the respondent No. 1 had promissed to pay Rs. 2000/- not to any religious association but to the Sarpanch of Vissunderem himself and in addition to that he had also promised to give a donation for a temple. But neither the petitioner nor Louis Antão has said in his evidence that the Sarpanch of Vissunderem had told Francis Rodrigues that the respondent No. 1 had promised to pay Rs. 2000/- to him and a donation for a temple. In fact, the petitioner has clearly admitted in his evidence that the Sarpanch of Vissunderem had told Francis Rodrigues that the respondent No. 1 had promised to pay Rs. 2000/ to him and a donation for a temple. In fact, the petitioner has clearly admitted in his evidence that the promise alleged to have been made by the respondent No. 1 to the Sarpanch was to pay Rs. 2000/- to the religious association and not to the Sarpanch himself. As regards the donation to a temple, the petitioner does not refer to it in his evidence, while the witness Louis Alex Antão, who says something about it, has told us that it was one Vaddo Velipo who told Francis Rodrigues that he wanted money for a temple. He does not refer to any Sarpanch having told Francis Rodrigues that the respondent No. 1 had promised any donation for any temple. Thus, the evidence of Sebastian Francis Pereira also does not help the petitioner. The respondent No. 1 has denied in his evidence at Ex. 83 to have promised to pay any amount to any Sarpanch or any money to any religious association or to donate any amount for any temple.

47. I am, therefore, of the opinion that the petitioner has failed to prove that the respondent No. 1 had promised to pay Rs. 2000/- to the Sarpanch of Vissunderem from his Constituency with the object, directly or indirectly, of inducing electors to vote for him.

48. *Issues Nos. 10 and 11:* — The allegation covered by these issues made in paragraph 6(iv) of the petition is that the respondent No. 1 promised the voters to distribute all the property belonging to Bhatkaris (land-owners) amongst the voters who had no property. The respondent No. 1 has denied in paragraph 15 of his written-statement having promised the voters to distribute property belonging to Bhatkaris (land-owners) to the persons who had no property. He also contended that such a promise did not amount to any corrupt practice as defined in section 123 of the Act. The petitioner himself is silent on this point in his own

evidence at Ex. 61, though he has alleged in the verification of the petition that this corrupt practice was true to his personal knowledge. He, however, examined one Damion Julio D'Souza at Ex. 75. He has deposed that one day he had heard a speach of the respondent No. 1 and in that speech he had told the gathering that the tillers of the soil would be required to pay only 1/6th share in the agricultural produce to their land-lords and the remaining 5/6th share would be theirs. Obviously, therefore, the witness does not support the petitioner to say that the respondent No. 1 had promised to distribute the property belonging to Bhatkaris (land-owners) to the land-less. In his cross-examination, the witness admits that all that the respondent No. 1 had said in his speech was that he wanted to introduce agrarian reform in Goa. The respondent No. 1 also in his evidence at Ex. 83 has told us that during the election campaign while addressing the meetings of voters, he used to explain them the land reforms in Maharasthra and used to assure them that on integration of Goa with Maharasthra State these reforms would also be introduced in Goa. He has denied that he ever told any voters that he would take away the properties from Bhatkaris (land-owners) and would distribute them to the land-less. It is, therefore, clear that the petitioner has failed to prove that the respondent No. 1 promised to distribute all the property belonging to Bhatkaris (land--owners) to the persons owning no property. The question, therefore, whether such a practice amounts to corrupt practice as defined in section 123 of the Act, does not survive.

49. *Issues Nos. 6, 7 and 8:* — The petitioner did not lead any evidence in support of these issues. My findings against these issues are, therefore, in the negative.

50. On careful consideration, therefore, of the whole of the material on the record, I have come to the conclusion that the petitioner has not been able to prove any of the corrupt practices alleged by him in the petition.

51. *Issues Nos. 12, 13 and 14:* — Turning to the illegality alleged in paragraph 7 of the petition, the petitioner has neither stated anything about it in his own evidence nor has he adduced any evidence to prove it. One Anthony Sergio Furtado who, according to the petitioner, had protested to the Presiding Officer against this illegality, also did not come before the Tribunal to support the petitioner. It, however, appears from the evidence of the respondent No. 1 that there was a complaint against the Presiding Officer of Bati Polling Station that he was seen going into the voting compartment. The respondent No. 1 himself lodged a complaint in writing with the Presiding Officer. But the respondent No. 1 admits that when he made inquiries with his polling agent regarding the complaint, he came to know that the Presiding Officer entered the voting compartment only once or twice. However, there is no evidence on the record to show that the Presiding Officer had entered the voting compartment to request the voters to vote for the symbol of his own choice. I, therefore, find that the petitioner has failed to prove that at the Polling Station at Bati, the Presiding Officer one Kalian Salelkar was seen constantly going to the voting compartment and requesting the voters to vote on the symbol of his choice. I further hold that he has also failed to prove that his Polling Agent Shri Anthony Sergio Furtado had protested against the conduct of the Presiding Officer. The question, therefore, whether the conduct of the Presiding Officer amounted to an illegality, does not survive.

52. *Issue No. 15:* — In view of my findings recorded above, this issue does not survive.

53. *Issues Nos. 16 and 17:* — The election of the respondent No. 1, therefore, is perfectly valid and the petitioner cannot be declared to have been duly elected under clause (*c*) of section 98 of the Act. My findings on these issues are, therefore, in the negative.

54. In the result, the petition fails and must be dismissed with costs. As regards the costs, the hearing of this petition occupied in all 15 days out of which 8 days were required for recording evidence and 2 days for hearing arguments. On the rest of the days the petition was fixed for preliminary stages. On 15th July, 1964 the petitioner had applied at Ex. 66 for witness summonses and respondent No. 1 had pressed for his costs of the day. After taking into account these costs also, I assess the costs of the petition as below: —

	Petitioner	Respondent No. 1	Respondents Nos. 2 to 5
	Rs. Ps.	Rs.	
Pleader's fees	600/-	600/-	—
Other costs	75.75	33/-	—
Total	675.75	633/-	—

Order

It is hereby orderer that the petitioner has not been able to prove any of the corrupt practices alleged by him in his petition. The petition, therefore, is hereby dismissed. The petitioner do pay Rs. 633/- to the respondent no. 1 as costs of the petition and bear his own. The rest of the respondents do bear their own costs.

Panjim, 21st August, 1964.

P. S. MALVANKAR

Member of the Election Tribunal,
Panjim — Goa.

By order,

PRAKASH NARAIN
Secretary to the Election Commission.

Secretariat

ORDER

In exercise of powers conferred by the Goa, Daman and Diu (Administration) Removal of Difficulties Order, 1962, and notwithstanding anything to the contrary contained in any law for the time being in force in this Territory, I hereby order that Order dated 13th September, 1963, published in the Government Gazette no. 37, series II, dated 16-9-1963 (Supplement), shall remain in force in the current agricultural year.

By order and in the name of the Administrator of the Union Territory of Goa, Daman and Diu.

B. K. Chougule, Secretary, Industries and Labour Department.

Panjim, 19th September, 1964.

(Tradução)

Secretaria

Despacho

No uso das faculdades conferidas por «The Goa, Daman and Diu (Administration) Removal of Difficulties Order, 1962» e sem embargo do disposto em contrário em qualquer lei presentemente em vigor nete território, determino que o despacho de 13 de Setembro de 1963, publicado em Suplemento ao *Boletim Oficial* n.º 37, 2.ª série, de 16 de Setembro de 1963, continuará em vigor no corrente ano agrícola.

Por ordem e em nome do Administrador do território da União de Goa, Damão e Dio.

B. K. Chougule, Secretário do Departamento de Indústrias e Trabalho.

Pangim, 19 de Setembro de 1964.

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