SMT. LATA DEVI (MALI)

v.

HARU RAJWAR

AUGUST 22, 1989

[N.D. OJHA AND K.N. SAIKIA, JJ.]

The Representation of the People Act, 1951/Conduct of Election Rules, 1961: Sections 30 and 100/Rule 10—Election Petitioner—Candidate for election—Complaint that main reason for defeat at election was change of symbol—That voters were misled and could not be apprised of the change of symbol—High Court judgment set aside—Election petitioner failed to discharge burden of proof that result of election was materially affected.

In the election to the Bihar Legislative Assembly held in 1985, the appellant was declared elected from the 286 Chandan Kyari (S.C.) Constituency. The respondent, a sitting M.L.A., who secured 430 votes less than the appellant, filed an election petition in the Patna High Court (Ranchi Bench) calling in question the election of the appellant. The respondent's main grievance was that the Returning Officer re-allocated his 'bow and arrow' symbol to another candidate Murura Dasi, and instead allotted the symbol of 'ladder' to him, and this sudden change of symbol left him with less than 20 days time for campaign which resulted in confusion amongst his supporters as a result of which his election was materially affected. On this premise the respondent contended that the election was liable to be declared void on the ground of (i) violation of section 30(d) of the Representation of People Act, 1951, which according to him prescribed atleast 20 days time for election campaign, which he did not have after change of the symbol; and (ii) violation of Rule 10(5) of the Conduct of Election Rules, 1961 under which, according to him, the election symbol could not be changed without permission of the Election Commission. The respondent-election petitioner examined himself. Evidence of no other witness appears on record.

The High Court allowed the petition and declared the appellant's election to be void holding that the result of the election in so far as it concerned the returned candidate was materially affected by violation of Rule 10(5) of the Conduct of Election Rules, 1961.

Before this Court, it was contended on behalf of the appellant that

A (i) the appellant did not receive any notice of the election petition against her and the trial had proceeded *ex-parte*; (ii) there was no breach of section 30(d) of the Representation of the People Act inasmuch as the minimum 20 days time was available after the date of withdrawal of nomination paper to the date of poll; (iii) there was no violation of Rule 10(5) of the Conduct of Election Rules; and (iv) even B assuming that there was violation of this rule, the election petitioner dismally failed to prove by evidence that the result of the election was materially affected thereby, inasmuch as no sufficient evidence was adduced in proof of his cliam, and he himself could not have proved his averments.

C Allowing the appeal, this Court,

HELD: (1) Under s.30 of the Representation of the People Act, 1951, as soon as the notification calling upon a constituency to elect the member or members is issued, the Election Commission shall, by notification in the Official Gazette appoint, amongst others, under clause (d), D the date or dates on which a poll shall, if necessary, be taken, which or the first of which shall be a date not earlier than the twentieth day after the last date for the withdrawal of candidature. [928F]

(2) In the instant case, the last date for the withdrawal of nomination was 9.2.1985 and the date of poll was 5.3.1985. There was, therefore, clear compliance with the requirement of s. 30(d). The respondent himself stated that on 14.2.1985 he received notice of intention of the Returning Officer to change his election symbol and the symbol was actually changed on 15.2.1985. This Court agrees with the High Court that only the spirit of s. 30(d) was not complied with. In terms, this provision was clearly complied with. [928G-929A] F

(3) The violation of sub-rule (5) of Rule 10 *per se* will not invalidate the election. The election petitioner has also to prove that the result of the election, in so far as it concerns the returned candidate, was materially affected. [934A-B]

G (4) The party who wishes to get an election declared void has to establish by satisfactory evidence that the result of the poll had in fact been materially affected by the violation of Rule 10(5) of the Rules. For doing this, it has to be demonstrated that the votes would have been diverted in such a way that the returned candidate would have been unsuccessfull. [931B] H

Vashist Narain Sharma v. *Dev Chandra & Ors.*, [1955] 1 SCR 509; *Inayatullah Khan* v. *Diwanchand Mahajan & Ors.*, 15 ELR 219; *S.N. Balakrishna* v. *Fernandes*, AIR 1969 SC 1201, (1969) 3 SCR 603; *Shiv Charan Singh* v. *Chandra Bhan Singh*, [1988] 2 SCC 12 and *Chhedi Ram* v. *Jhilmit Ram & Ors.*, [1984] 2 SCC 281, referred to. A

(5) A decision in an election petition can be given only on positive and affirmative evidence and not on mere speculation and suspicion, however, strong they are. In the instant case, there is no such positive and affirmative evidence. Mere assertions by the election petitioner were not enough. [932D] B

(6) There could be no proposition or contention that a candidate with a particular symbol would always be successful at the hustings or that a particular voter or a number of voters would always vote for a symbol irrespective of the candidate to whom it is allotted. [932E] C

(7) There is no dispute about the importance of the symbol in a backward constituency. This will however, not absolve the election petitioner of his burden of proving that the result of the election has been materially affected. [933B] D

All Party Hill Leaders' Conference, Shillong v. *Captain W.A. Sangama*, AIR 1977 SC 2155 and *Roop Lal Sathi* v. *Nachhattar Singh Gill*, [1982] 3 SCC 487, referred to. E

(8) The election petitioner has not stated and proved that more than 430 voters would have voted for him, had the symbol of 'bow and arrow' not been changed, and that they voted for Murura Dasi only for her having the symbol of 'bow and arrow'. How could that be proved would, of course, depends on the facts and circumstances of the case. [929F] F

(9) In the instant case, the election petitioner dismally failed to discharge the burden of proving that the result of the election, in so far as it concerned the appellant, who has been the returned candidate, was materially affected. The High Court was in error in holding, without sufficient evidence, that it was materially affected. [934C] G

CIVIL APPELLATE JURISDICTION: Civil Appeal No. 3955 (NCE) of 1987.

From the Judgment and Order dated 16.11.1987 of the Patna High Court in Election Petition No. 4 of 1985. H

R.K. Garg and D.K. Garg for the Appellant.

S.N. Singh, H.L. Srivastava, B.M. Sharma and T.N. Singh for the Respondent.

The Judgment of the Court was delivered by

SAIKIA, J. This election appeal under S. 116A of the Representation of the People Act 1951, hereinafter referred to as 'the Act', is from the Judgment of the Patna High Court (Ranchi Bench) in the respondent's Election Petition No. 4 of 1985 allowing the petition and declaring the election of the appellant to the Bihar Legislative Assembly from the 286 Chandan Kyari (S.C.) Constituency to be void.

Pursuant to the Notification of Election to the Bihar Legislative Assembly, the Returning Officer of the 286 Chandan Kyari (S.C.) Assembly Constituency announced the following programme:

A.	Last date for filing nomination paper	6.2.1985
B.	Date of the Scrutiny of the nomination paper	7.2.1985
C.	Last date of withdrawal of candidature	9.2.1985
D.	Date of Poll	5.3.1985
E.	Date of counting	6.3.1985

The appellant, the respondent and 17 others filed their nomination papers; and the Returning Officer accepted the nomination papers found valid at the scrutiny. Three of them withdrew their candidature, leaving 16 contesting candidates in the field. The Returning Officer prepared and bublished the following list of contesting candidates with the allotted symbols:

S. No.	Name	Party	Symbol
1.	Ayodhya Rajak	Independent	Boat
2.	Uma Bawri	"	Horse
3.	Kokil Rajwar	"	Cultivator cutting crops
4.	Kiriti Bhusan Das	"	Fish
5.	Tilakdhari Bawri	"	Two leaves
6.	Dulal Das	Independent	Spade & Stroker

7.	Nakul Chandra Rajak	Independent	Rising Sun	A
8.	Panchanan Rajak	"	Ladder	
9.	Padam Lochan Rajwar	B.J.P.	Lotus	
10.	Mahindri Rajwar	Independent	Bicycle	
11.	Murura Dasi	Jharkhand Mukti Morcha	A Woman carrying a basket on her head.	B
12.	Yogendra Bawri	Indian Congress (J)	Scale	
13.	Ramdas Ram	Independent	Camel	
14.	Lata Devi (Mali)	Indian National Congress(I)	Hand	C
15.	Shankar Bawri	Independent	Swastik within the circle	
16.	Haru Rajwar	Marxist coordination	Bow and arrow	D

The poll was held according to schedule on 5.3.1985; and, after counting, the following result was announced on 6.3.1985 by the Returning Officer: E

S. No.	Name	Party	Votes secured	
1.	Ayodhya Rajak	Independent	187	
2.	Uma Bawri	"	590	F
3.	Kokil Rajwar	"	4564	
4.	Kiriti Bhusan Das	"	477	
5.	Tilakdhari Bawri	"	1458	
6.	Dulal Das	"	550	
7.	Nakul chandra Rajak	"	387	G
8.	Panchanan Rajak	"	434	
9.	Padam Lochan Rajwar	B.J.P.	8231	
10.	Mahandri Rajwar	Independent	2500	H

11.	Murura Dasi	Jharkhand Mukti Morcha	2228
12.	Yogendra Bawri	Indian Congress (J)	1163
13.	Ramdas Ram	Independent	195
14.	Lata Devi (Mali)	Indian National Congress (I)	8659
15.	Shankar Bawri	Independent	486
16.	Haru Rajwar	Independent	8229

The appellant Lata Devi (Mali) was declared elected. The respondent Haru Rajwar filed an election petition in the Patna High Court (Ranchi Bench) calling in question the election of the appellant to the Bihar Legislative Assembly on the ground, *inter alia*, that on 14.2.1985, he received a notice of the intention of the Returning Officer to change his allotted election symbol and though, through counsel, he objected on 15.2.1985, the Returning Officer re-allotted the respondent's 'bow and arrow' symbol to Murura Dasi and instead allotted the symbol of 'ladder' to him. It was urged in the petition that he contested and won the earlier election from the same constituency with the same 'bow and arrow' symbol; the sudden change of his symbol left him with less than 20 days time for campaign and it resulted in confusion amongst his supporters as a result of which his election was materially affected by the change; that the election was liable to be declared void on the ground of violation of S. 30(d) of the Representation of the People Act which, according to him, prescribed atleast 20 days time for election campaign, which he did not have after change of the symbol; and that the election was void also for violation of Rule 10(5) of the Conduct of Election Rules, 1961 under which, according to him, the election symbol could not be changed without permission of the Election Commission.

It is the appellant's case that she did not receive any notice of the election petition against her. The trial proceeded *ex parte*. The respondent-election petitioner examined himself at the trail.

The High Court by its impugned order dated 16.11.1987 allowed the petition and declared the appellant's election to be void holding that the result of the election in so far as it concerned the returned candidate was materially affected by violation of Rule 10(5) of the Conduct of Election Rules, 1961. Hence this appeal.

Mr. R.K. Garg, the learned counsel for the appellant submits, *inter alia,* what even assuming what was stated by the respondent—election petitioner to be true, there was no breach of section 30(d) of the Representation of the People Act inasmuch as the minimum 20 days time was available after the date of withdrawal of nomination paper to the date of poll; that there was no violation of Rule 10(5) of the Conduct of Election Rules; and that even assuming that there was violation of this rule, the election petitioner dismally failed to prove by evidence that the result of the election was materially affected thereby, inasmuch as no sufficient evidence was adduced in proof of his claims, and he himself could not have proved his averments.

Mr. S.N. Singh, the learned counsel for the respondent, relying on *All Party Hill Leaders' Conference, Shillong* v. *Captain W.A. Sangama,* AIR 1977 SC 2155, and *Roop Lal Sathi* v. *Nachhattar Singh Gill,* [1982] 3 SCC 487, strenuously argues that the violation of Rule 10(5) is itself sufficient to have materially affected the result of the election particularly in view of the fact that in the instant constituency of backward voters, the symbol was very important, and change thereof had disastrous consequences to the respondent candidate.

The material facts relevant to this appeal are not in dispute. The list of contesting candidates with respective symbols was published on 9.2.1985; the election petitioner's symbol 'bow and arrow' was re-allotted to candidate Murura Dasi and the symbol of ladder in place of 'bow and arrow' was re-allotted to the respondent; the poll took place on 5.3.1985; and the result was announced on 6.3.1985.

The respondent—election petitioner in the High Court examined himself as P.W. 1 and deposed to the following effect:

> ". . . . . I was given the symbol of 'bow and arrow'. I canvassed for my votes with the symbol of 'bow and arrow' till February 15, 1985. The Returning Officer changed my symbol and allottted to me the symbol of 'Sirhi' (ladder). The symbol of 'bow and arrow' was given to Murura Dasi, the another candidate. I was the sitting MLA and my symbol in the last election was also 'bow and arrow'. I lost the election this time by a margin of 430 votes. In the election held in the year 1980, I won the election by a margin of 9611 votes. This time the main reason of my defeat in the election is the change of my symbol. Due to change of my symbol, the voters were misled and they

A could not be apprised of this change. I could not canvass for my votes with the symbol of 'ladder' in that constituency and in that area. I was known largely and properly in the areas as the MLA with the symbol of 'bow and arrow'. The candidate of Congress party was declared elected in this election. The election of my constituency B was held in March 5, 1985. I did not get 20 days time as provided in law after the change of my symbol."

When recalled, he added that the symbol was a free symbol which had been allotted to him earlier i.e. the symbol of 'bow and arrow'. "The last date of withdrawal of the nomination paper was February 9, 1985. By the change of symbol 'bow and arrow', I was C materially affected and it affected the course of election and the voters were misled and they wrongly voted for Murura Dasi." Evidence of no other witness appears on record. The question before us is, whether on the basis of the above evidence on record the High Court was justified in holding that the result of the election was materially affected and in D declaring the appellant's election to be void on that ground.

Section 100 of the Representation of the People Act, 1951 states the grounds for declaring an election to be void. Sub-section 1(d)(iv) says: (1) subject to the provisions of sub-section (2) if the High Court is of opinion (d) that the result of the election, in so far as it concerns a E returned candidate, has been materially affected (iv) by any non-compliance with the provisions of the Constitution or of this Act or of any rules or orders made under this Act, the High Court shall declare the election of the returned candidate to be void. Sub-section (2) is not relevant for the purpose of this case. Was there in this case any violation of S. 30(d)? Under S. 30 of the Representation of the People Act, F 1951, as soon as the notification calling upon a constituency to elect the member or members, is issued, the Election Commission shall, by notification in the Official Gazette appoint, amongst others, under clause (d) the date or dates on which a poll shall, if necessary, be taken, which or the first of which shall be a date not earlier than the twentieth day after the last date for the withdrawal of candidature. In G the instant case the last date for the withdrawal of nomination was 9.2.1985 and the date of poll was 5.3.1985. There was, therefore, clear compliance with the requirement of S. 30(d). The respondent himself stated that on 14.12.1985 he received notice of intention of the Returning Officer to change his election symbol and the symbol was actually changed on 15.2.1985. We agree with the High Court that only the H spirit of S.30(d) was not complied with. In terms, this provision was

clearly complied with. The submission that it was violated, has, therefore, to be rejected. A

Rule 10 of the Conduct of Election Rules, 1961 deals with preparation of list of contesting candidates. Sub-rule (4) thereof requires that at an election in an assembly constituency, where a poll becomes necessary, the Returning Officer shall consider the choice of symbols B expressed by the contesting candidates in their nomination papers and shall, subject to any general or special direction issued in this behalf by the Election Commission (a) allot a different symbol to each contesting candidate in conformity, as far as practicable, with his choice; and (b) if more contesting candidates than one have indicated their preference for the same symbol decide by lot to which of such candidates the symbol will be allotted. Under sub-rule (5) the allotment by the C Returning Officer of any symbol to a candidate shall be final except where it is inconsistent with any directions issued by the Election Commission in this behalf in which case the Election Commission may revise the allotment in such manner as it thinks fit.

D

The change of symbol has not been proved to be violative of Rule 10(5). Even assuming violation, as Mr. Garg submits, was there enough evidence to show that the result of the election, in so far as it concerned the returned candidate, was materially affected? The election petitioner before the High Court deposed that he lost the election by a margin of 430 votes. From the result sheet it appears that the E appellant secured 8659 votes and the respondent secured 8229 votes. The difference is, therefore, of 430 votes. Murura Dasi despite the 'bow and arrow' symbol secured 2228 votes. The election petitioner has not stated and proved that more than 430 voters would have voted for him, had the symbol of 'bow and arrow' not been changed, and that they voted for Murura Dasi only for her having the symbol of 'bow and F arrow'. How could that be proved would, of course, depend on the facts and circumstances of the case.

The result of election, in so far as it concerns a returned candidate, may be affected in various ways by various factors stated under S.100(1)(d). So far as the burden and measure of proof of such G material effect is concerned, the law has been enunciated by several decisions of this Court. What is required to be demonstrated by evidence will vary according to the way in which the result of the election in so far as it concerns the returned candidate is alleged to have been materially affected. It is to be noted that in an election petition what is called in question is the election and what is claimed is that the election H

A of all or any of the returned candidates is void, with or without a further declaration that the election petitioner himself or any other candidate has been duly elected. Declaring the election of the returned candidate void does not, by itself, entitle the election petitioner or any other candidate to be declared elected.

B *Vashit Narain Sharma* v. *Dev Chandra and Ors.*, [1955] 1 SCR 509, was a case of improper acceptance or rejection of nomination paper and the manner of proving that the result of the election had been materially affected was slightly different from that of the instant case as that involved the question of possible distribution of wasted votes. However, this Court has stated that the result of the election being materially affected is a matter which has to be proved and the C onus of proving it lies upon the petitioner. Their Lordships observed:

> "It will not do merely to say that all or a majority of the wasted votes might have gone to the next highest candidates. The casting of votes at an election depends upon a D variety of factors and it is not possible for any one to predicate how many or which proportion of the votes will go to one or the other of the candidates. While it must be recognised that the petitioner in such a case is confronted with a difficult situation, it is not possible to relieve him of the duty imposed upon him by Section 100(1)(c) and hold with- E out evidence that the duty has been discharged. Should the petitioner fail to adduce satisfactory evidence to enable the court to find in his favour on this point, the inevitable result would be that the Tribunal would not interfere in his favour and would allow the election to stand."

F In *Inayatullah Khan* v. *Diwanchand Mahajan & Ors,* 15 ELR 219, where a nominated candidate was found to have been disqualified under S. 7(d) of the Act the question arose as to what had happened to the election as a result. It was contended that the margin of votes was small and that the result of the election must be taken to have been materially affected because Nandlal, a disqualified candidate, got G 8,000 odd votes, which in the event of his not contesting would have gone to Mahajan. Evidence was led to show how the votes which went to Nandlal would have been divided and both sides claimed that if Nandlal had not contested the election, the votes would have gone to them. The Madhya Pradesh High Court observed that the evidence on this part of the case was exceedingly general and apart from the state- H ment by the witnesses who came forward as to their opinion, there was

nothing definite about it. All the evidence which had been brought to Court's notice was not decisive of the matter under S. 100 of the Act in view of the test laid down in *Vashit Narain Sharma's* case (supra). It can, therefore, be taken as settled that the party who wishes herein to get an election declared void has to establish by satisfactory evidence that the result of the poll had in fact been materially affected by the violation of Rule 10(5) of the Rules. For doing this, it has to be demonstrated that the votes would have been diverted in such a way that the returned candidate would have been unsuccessful. In the instant case there was no evidence to demostrate the returned candidate having derived any benefit from the change of symbol of the election petitioner. Murura Dasi, to whom the 'bow and arrow' symbol was later allotted, was not the successful candidate. The election petitioner was required to show that such number of votes had gone in favour of the successful candidate instead of in favour of the petitioner, simply because of the change of symbol as would, without that number of votes, make the successful candidates unsuccessful. The petitioner, besides making bare statement, had not produced any other satisfactory evidence in support of such a proposition.

In *S.N. Balakrishna* v. *Fernandes,* AIR 1969 SC 1201: (1969) 3 SCR 603, which was a case under S. 100(1)(d)(ii) and S. 123(4) corrupt practice charged against an agent other than election agent, on the question of the result of the election, in so far it concerned the returned candidate, being materially affected, Hidayatullah, C.J. observed at para 58:

> "In our opinion the matter cannot be considered on possibility. Vashit Narain's case insists on proof. If the margin of votes were small something might be made of the points mentioned by Mr. Jethmalani. But the margin is large and the number of votes earned by the remaining candidates also sufficiently huge. There is no room, therefore, for a reasonable judicial guess. The law requires proof. How far that proof should go or what it should contain is not provided by the legislature. In *Vashit's* case, 1955 (1) SCR 509: AIR 1954 SC 513, and in *Inayatullah* v. *Diwanchand Mahajan,* [1958] 15 Ele LR 219 at pp. 235-246 (MP) the provision was held to prescribe an impossible burden. The law has however remained as before. We are bound by the rulings of this Court and must say that the burden has not been successfully discharged. We cannot overlook the rulings of this Court and follow the English rulings cited to us."

In *Chhedi Ram* v. *Jhilmit Ram and Ors.*, [1984] 2 SCC 281 which was also a case of improper acceptance of nomination paper, Chinnappa Reddy, J. observed that the answer to the question whether the result of the election could be said to have been materially affected must depend on the facts, circumstances, and reasonable probabilities of the case. Under the Indian Evidence Act, a fact is said to be proved when after considering the matters before it, the Court either believes it to exist or considers its existence so probable that a prudent man ought, under the circumstances of the particular case, to act upon the supposition that it exists. If having regard to the facts and circumstances of the case, a reasonable probability is all one way, the Court must not lay down an impossible standard of proof and hold a fact as not proved.

As was reiterated in *Shiv Charan Singh* v. *Chandra Bhan Singh*, [1988] 2 SCC 12, in the absence of any proof the result of an election can not be held to be materially affected; and it is not permissible in law to set aside the election of the returned candidate on mere surmises and conjectures. A decision in election petition can be given only on positive and affirmative evidence and not on mere speculation and suspicious, however strong they are. Indeed, in the instant case there is no such positive and affirmative evidence. Mere assertions by the election petitioner were not enough. Nothing was alleged and proved against the successful candidate. There could be no proposition or contention that a candidate with a particular symbol would always be successful at the hustings or that a particular voter or a number of voters would always vote for a symbol irrespective of the candidate to whom it is allotted.

Mr. S.N. Singh relies on paragraph 29 of the Judgment in *All Party Hill Leaders' Conference, Shillong* v. *Captain W.A. Sangma*, (supra) wherein Goswami, J. observed:

> "For the purpose of holding elections, allottment of symbol will find a prime place in a country where illiteracy is still very high. It has been found from experience that symbol as a device for casting votes in favour of a candidate of one's choice has proved an invaluable aid. Apart from this, just as people develop a sense of honour, glory and patriotic pride for a flag of one's country, similarly great fervour and emotions are generated for a symbol representing a political party. This is particularly so in a parliamentary democracy which is conducted on party

lines. People after a time identify themselves with the symbol and the flag. These are great unifying insignia which cannot all of a sudden be effaced."

There is no dispute about the importance of the symbol in a backward constituency. This will, however, not absolve the election petitioner of his burden of proving that the result of the election has been materially affected. In *Roop Lal Sathi* v. *Nachhattar Singh Gill*, (supra) in the facts of that case, this Court observed that:

> "The symbols order was issued by the Election Commission under Article 324 of the Constitution in exercise of its undoubted powers of superintendence, direction and control of the conduct of all elections to Parliament and Legislature of every State. It is also relatable to Rules 5 and 10 of the Conduct of Elections Rules framed by the Central Government in exercise of their powers under S. 169 of the Act. Rule 4 of the Conduct of Elections Rules provides that every nomination paper presented under S. 33 of the Act shall be in Forms 2-A to 2-E, as may be appropriate. Forms 2-A and 2-B require the candidate to choose symbol. Under Rule 5(1) the Election Commission by notification may specify the symbols that may be chosen by candidates at elections to Parliamentary and Assembly constituencies. Under Rule 10(4) the Returning Officer shall consider the choice of symbols expressed by contesting candidates and "subject to any general or special direction issued by the Election Commission" allot different symbols to different candidates. The allotment of symbols by the Returning Officer is final under sub-rule (5) of Rule 10 except where it is inconsistent with any directions issued by the Election Commission in that behalf in which case the Election Commission may revise the allotment in such manner as it thinks fit."

Mr. Singh's submission is as if the violation of sub-rule (5) of Rule 10 would *ipso facto* make an election void. That, however, is not the legal position as would be clear from the provision itself. Section 100(1)(d)(iv) of the Act clearly says that subject to the provisions of sub-section (2) if the High Court is of opinion that the result of the election, in so far as it concerns a returned candidate, has been materially affected (iv) by any non-compliance with the provisions of the Constitution or of this Act or of any rules or orders made under this

A Act, the High Court shall declare the election of the returned candidate to be void. The violation of sub-rule (5) of Rule 10 *per se* will not invalidate the election. The election petitioner has also to prove that the result of the election, in so far as it concerns the returned candidate, was materially affected.

B From the evidence on record considered in light of the law enunciated above, we have no doubt that the election petitioner dismally failed to discharge the burden of proving that the result of the election, in so far it concerned the appellant, who has been the returned candidate, was materially affected. The High Court was in error in holding, without sufficient evidence, that it was materially affected.

C In the result, the impugned Judgment of the High Court is set aside and this appeal is allowed with costs which we quantify at Rs.3,000 (Rupees three thousand). Let steps be taken under Section 116C(2) of the Act.

D R.S.S. Appeal allowed.