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मध्यप्रदेश राजपत्र

(असाधारण)

प्राधिकार से प्रकाशित

क्रमांक 159]

भोपाल, शनिवार, दिनांक 2 अप्रैल 2016—चैत्र 13 शक 1938

विधि (निर्वाचन) कार्य विभाग

भोपाल, दिनांक 1 अप्रैल 2016

फा. क्र. 06-2014-चार-विधि.निर्वा.-96.—भारत निर्वाचन आयोग की अधिसूचना क्रमांक 82-एम.पी.-एल.ए.-(06-2014)-2016, दिनांक 14 मार्च 2016 राज्य के असाधारण राजपत्र में प्रकाशित की जाती है.

एस. एल. बंसल, सचिव.

भारत निर्वाचन आयोग

निर्वाचन सदन, अशोक रोड, नई दिल्ली 110 001

नई दिल्ली, दिनांक 14 मार्च, 2016—24 फाल्गुन, 1937 (शक)

अधिसूचना

सं० 82/म.प्र.-वि.स./ (06/2014)/2016 :-लोक प्रतिनिधित्व अधिनियम, 1951 (1951 का 43) की धारा 106 के अनुसरण में भारत निर्वाचन आयोग, एतद्द्वारा माननीय मध्य प्रदेश उच्च न्यायालय, जबलपुर बेंच की निर्वाचन याचिका संख्या 06/2014 (ब्रिजेन्द्र प्रताप सिंह बनाम पंडित मुकेश नायक) जोकि ब्रिजेन्द्र प्रताप सिंह ने पंडित मुकेश नायक के मध्य प्रदेश के 58 - पवई विधान सभा निर्वाचन क्षेत्र हेतु नवम्बर, 2013 में हुए निर्वाचन को चुनौती देते हुए दाखिल की थी, में दिनांक 27.01.2016 को दिये गये अधिनिर्णय/आदेश को प्रकाशित करता है ।

आदेश से,

हस्ता./-

(अनुज जयपुरियार)

सचिव,

भारत निर्वाचन आयोग.

ELECTION COMMISSION OF INDIA

Nirvachan Sadan, Ashoka Road, New Delhi—110 001

New Delhi, Dated 14th March, 2016—24 Phalgun, 1937(SAKA)

NOTIFICATION

No. 82/MP-LA/(06/2014)/2016:- In pursuance of Section 106 of the Representation of the People Act, 1951 (43 of 1951), the Election Commission of India hereby publishes the judgment/order of the Honb'le High Court of Madhya Pradesh, Jabalpur Bench dated 27.01.2016 in Election Petition No. 06 of 2014 (Brijendra Pratap Singh Vs. Pandit Mukesh Nayak) filed by Brijendra Pratap Singh challenging the Election of Pandit Mukesh Nayak from 58 – Pawai Legislative Assembly Constituency of Madhya Pradesh, held in November, 2013.

IN THE HIGH COURT OF MADHYA PRADESH

PRINCIPAL SEAT AT JABALPUR

ELECTION PETITION NO. 6/2014

(Election Petition under section 80/80A of the
Representation of People Act, 1951)**Petitioner**

Brijendra Pratap Singh

Son of late Shri Uday Pratap Singh,

Aged about 46 years,

Resident of Village-Etori, Tehsil-
Amanganj, District-Panna (M.P.)**Versus**

Respondent

Pandit Mukesh Nayak

Son of Shri Biharilal Nayak,

Aged about 56 years,

Resident of house No. 577,

Civil Ward No. 6,

Chhatrasal Ward, Damoh (MP)

PIN —470661

ELECTION PETITION UNDER SECTION 80/80-A OF THE
REPRESENTATION OF PEOPLE ACT, 1951

The Election Petitioner is calling in question the election of respondent who is a returned candidate from 58-Pawai Assembly Constituency, mainly on the ground of corrupt practice as contained under section 123 of Representation of People Act, 1951 (here-in-after referred as Act of 1951). The election petitioner is further challenging the election of

IN THE HIGH COURT OF MADHYA PRADESH
PRINCIPAL SEAT AT JABALPUR.

ELECTION PETITION NO.06/2014

BRIJENDRA PRATAP SINGH

Vs.

PANDIT MUKESH NAYAK

Present: Hon'ble Shri Justice C.V. Sirpurkar

Shri Mrigendra Singh, counsel for the petitioner.

Shri Arvind Shrivastava, counsel for the respondent.

JUDGMENT

{Delivered on this 27th Day of January, 2016}

1. This election petition under sections 80 read with 81 of the Representation of People Act, 1951 (herein after referred to in the judgment as "the Act") has been preferred by the losing candidate challenging the election of the respondent as member of Legislative Assembly of the State of Madhya Pradesh from Assembly Constituency No.58, Pawai, District-Panna on the ground that on the date of election, respondent was disqualified for being elected as a member of the Legislative Assembly, on the ground of corrupt practices adopted during election campaign and on the ground of non-compliance with the provisions of the Act, Rules or Orders made under the Act.

2. Following facts in this election petition are either admitted or are not specifically denied. The notification for holding Assembly election for the State of Madhya Pradesh was issued by the Election Commission on 04.10.2013. The election programme of Assembly Constituency No.58, Pawai was notified by the Returning Officer on 01.11.2013. As per the programme, the date of filing of nomination paper was up to 08.11.2013. Scrutiny of nomination paper was to take place on 09.11.2013. The latest date for withdrawal of nomination paper was 11.11.2013. The date of polling was 25.11.2013 and votes were to be counted on 08.12.2013. The result was also to be declared on 08.12.2013. The election petitioner was sponsored as a candidate by Bhartiya Janata Party, a registered national political party, to contest the election from Assembly Constituency No.58, Pawai, District-Panna. Indian National Congress, also a recognized political party,

sponsored the respondent as its candidate to contest the election from aforesaid constituency. The election symbol of the petitioner was Lotus ("Kamal") and that of the respondent was Hand ("Panja"). Apart from the petitioner and respondent, nine other candidates contested the election from aforesaid constituency either as candidates of other recognized parties or as independents. The number of voters enrolled for the constituency was 2,41,485. There were 276 polling stations in the constituency. The total number of votes polled on 25.11.2013 in the constituency was 1,74,953. Out of aforesaid number of votes, 1,71,738 were found to have been validly polled, at the time of counting. Out of aforesaid number of valid votes, the petitioner received 67,254 votes, whereas the respondent secured 78,949 votes. Thus, the respondent was declared elected by the Returning Officer by a margin of 11,695 votes. On the date of election, respondent was Chairman of Madhya Pradesh Branch of Indian Red Cross Society (hereinafter referred to in this judgment as "the Society").

3. Apart from aforesaid undisputed facts, the case of the petitioner may be summarized as hereunder: The election of the respondent is vitiated because he committed corrupt practice of bribery as defined under section 123 (1)(A)(b). Most of the electors in the Assembly Constituency No.58, Pawai are poor and illiterate villagers and can be swayed by means of bribery to vote for a particular candidate. At around 4.00 pm on 20.11.2013, at Village Takhauri, Tehsil-Raipura, District-Panna, the respondent paid Rs.5,000/- by way of bribe to one Narayan Adiwasi in the presence of witness Takhat Singh for voting along with his family members in favour of the respondent. At around 2.30 pm on 20.11.2013, respondent bribed Chetram Lodhi by paying a sum of Rs.3,000/- for voting, along with his family members, in favour of the respondent at Village-Aghrad in the presence of witness Hakam Singh. On 21.11.2013, at around 04.30 pm at Village-Kariya, respondent paid a bribe in the sum of Rs.2,000/- to Jeevan Lodhi, in the presence of witness Anand Lodhi for voting in favour of the respondent. All of aforesaid three recipients of bribe were voters of Pawai Assembly Constituency. The petitioner and his agent made complaints in this regard to the Election Commission of India, State Election Officer, Bhopal, and District Returning Officer, Panna.

4. It has also been pleaded in the petition that the respondent also indulged in another corrupt practice as defined in Section 123 (4) by making statements of facts which were false and which he believed to be false in relation to personal character or conduct of the petitioner,

which was calculated to prejudice the prospects of the petitioner in the election. On 16.11.2013, in a public meeting at Village-Mohdra, respondent narrated false and fabricated story that an old lady visited the residence of the petitioner at Bhopal seeking his help for treatment but the petitioner refused to extent any help to her. However, when the lady met the respondent, he open heartedly help her. The respondent repeated the same concocted story at Village-Semaria as well.

5. It has further been averred in the election petition that on the date of election, the respondent was holding the post of Chairman of Madhya Pradesh Branch of Indian Red Cross Society, which is an office of profit. Respondent received Rs.5,000/- as advance for his tour to Delhi, Rs.28,000/- towards Contingent expenditure, Rs.8,164/-, Rs.9,498/- and Rs.2,697/- as bills of telephone at residence and Rs.2,204/- towards mobile phone expenses. Thus, the respondent made pecuniary gains from his office of Chairman. Thus, aforesaid office is an office of-profit. For the same reason, the respondent had resigned from the post of Chairman of aforesaid society before filing his nomination papers for election to Legislative Assembly in the year, 2008. However, he refrained from resigning this time around. Thus, the election petitioner was disqualified from being a member of the State Legislative Assembly on the date of his election under section 100 (1) (a) of the Act. Respondent misused the office of Chairman by selectively extending medical benefit to the voters of his constituency, which is demonstrated by the fact that 104 out of 146 patients treated by the society were from Pawai Constituency.

6. The petitioner has further contended in the election petition that the code of conduct evolved by the Election Commission is mandatory in nature. It has been provided therein that each and every vehicle hired/engaged for the purpose of election must be registered and enrolled with the District Election Officer. During the election campaign of Pawai Assembly Constituency, the police caught two vehicles, one under the jurisdiction of P.S.-Shahnagar and other under the jurisdiction of P.S.-Semaria. Both the vehicles were registered in the name of independent candidate Jeevan Prasad; however, on search of vehicles, pamphlets, posters and other electoral material of Indian National Congress were found. In this regard, first information reports were registered by P.S.-Semaria and Shahnagar and offences under section 188 of the IPC read with section 126 of the Act were registered.

7. It has also been pleaded that the respondent, in contravention of mandate of Section 126 (1) (a) of the Act held public meetings within the prohibited period of 48 hours next prior to the conclusion of polling in Pawai Assembly Constituency. Accordingly, a public meeting was held at 03.40 pm on 24.11.2013 at Gaisabad Road, P.S.-Semaria and another at 08.30 pm on 24.11.2013 at Jhanda Bazaar, Pawai. Police Stations Semaria and Pawai have already lodged first information reports under Section 188 of the IPC read with section 126 of the Act in this regard. In consequence, election of the respondent from 58, Pawai Assembly Constituency was materially affected by non-compliance of section 126 of the Representation of the People Act, 1951 as well as the order passed by the Election Commission under the Representation of the People Act, 1951. Therefore, it has been prayed that the election of the respondent from Assembly Constituency No.58, Pawai be declared void.
8. In his written statement, respondent has categorically denied that he ever bribed any one. It has been specifically denied that he paid bribes to Narayan Adiwasi, Chetram or Jeevan Lodhi as alleged in the election petition. It has been stated that aforesaid allegations indicate petitioner's lack of trust and faith in democratic process and electorate's wisdom. It has also been denied that any complaint in this regard was made to any of the authorities related to the election.
9. The respondent has also specifically denied that he narrated any story with a view to assassinate the character of the petitioner for undermining the prospectus of the petitioner in the election. He never told any such story in any public meeting either at Mohindra or at Semaria. The transcript of the speech alleged to have been made by the respondent and which has been filed along with the election petition, contains no allegations against the petitioner.
10. It has also pleaded in the written statement that though on the date of election, the respondent was holding the post of Chairman of the Madhya Pradesh Branch of the Society, this was an honorary post carrying no pecuniary benefits. It has further been contended that facilities provided to the Chairman for discharge of his official duties cannot be equated with pecuniary gains. No payments as alleged in the petition were made to the respondent. As such, office of the Chairman was not an office of profit. Merely, because prior to earlier election respondent had resigned from the post of Chairman, does not mean that the post is an office of profit.

11. Respondent has further contended that he did not misuse his position as Chairman of the Society by selectively getting the patients from Pawai Constituency, treated. The list filed by the petitioner is incomplete and cannot be relied upon. In any case, extending medical benefit to the voters of the Constituency does not fall under the purview of electoral corrupt practice.

12. Respondent countered the averments made in the petition with regard to seizure of vehicles engaged by an independent candidate allegedly containing electoral material of the Indian National Congress by pleading that the respondent had nothing to do with independent candidates, Jeevan Prasad. He is not aware of any such seizure by the authorities. If any such incident has taken place, it may be handy work of the petitioner himself. It has been specifically denied that the said independent candidate Jeevan Prasad acted on his behalf or by his consent.

13. The respondent has specifically denied that in violation of legal restrictions, he convened/held any public meeting/procession as pleaded in the election petition. The first information reports lodged against the respondent are motivated action taken by local administration and police under the influence of the petitioner and ruling party of the State. Even otherwise, mere lodging of first information report is not a proof of commission of offence unless the allegations made therein are proved in the competent Court. It has also been denied that any such alleged corrupt practices have materially affected the election result.

14. On the basis of the pleadings of the parties and the documents filed by them, my learned predecessor had framed following issues. The conclusions of the Court are recorded against each of them.

No.	Issue	Finding
1.	Whether the returned candidate/respondent has bribed the voters and thus committed corrupt practice as mentioned in Section 123 (1) of R.P. Act, 1951?	Not proved.
2.	Whether the returned candidate/respondent has made false statements in relation to personal character or conduct of the petitioner in public meeting thereby prejudiced the prospects of petitioner's election?	Not proved.
3.	Whether on the date of filing the nomination	Yes.

	paper, the returned candidate was holding the post of Chairman of Red Cross Society, which is an office of profit? If yes, effect?	But it is not an office of profit under the government.
4.	Whether the respondent has resorted to corrupt practice by misusing his power of post of Chairman of State Red Cross Society by extending the medical help to patients who were the voters of Pawai Constituency?	No.
5.	Relief and costs?	Election Petition dismissed with costs.
	<u>Additional Issue</u>	
6.	Whether the election of the respondent from 58, Pawai Assembly Constituency has been materially affected by non-compliance of Section 126 of the Representation of the People Act, 1951 as well as the order passed by the Election Commission under the Representation of the People Act, 1951?	Not proved.

Issue No.1 Whether the returned candidate/respondent has bribed the voters and thus committed corrupt practice as mentioned in Section 123 (1) of R.P. Act, 1951?

15. The burden of proving this issue was upon the petitioner. Before advertng to the evidence adduced by the parties on this issue, it would be appropriate to refer to the relevant part of Section 123 of the Act, which reads as hereunder:

123. Major Corrupt practices.—The following shall be deemed to be corrupt practices for the purposes of this Act:—

(1) "Bribery", that is to say—

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

(a) *

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

(i) *

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

16. On this issue, Takhat Singh (PW/4) has stated in paragraph No.1 of his examination-in-chief that at around 04.00 pm on 20.11.2013, respondent Mukesh Nayak paid Rs.5,000/- to Narayan Adiwasi by way of bribe in Village-Takhauri in his presence. Respondent Mukesh Nayak asked Narayan Adiwasi to vote in favour of congress. Next day i.e 21.11.2013, he went to petitioner Brijendra Pratap Singh (PW/1) and told him about the incident. Brijendra Pratap Singh (PW/1) has stated in paragraph No.18 of his cross-examination that he received information of aforesaid bribery on 21.11.2013.

17. Likewise, Hakam Singh Yadav (PW-2) has stated in his deposition that at around 2:30 p.m. on 20-11-2013, he saw respondent Mukesh Nayak giving Rs.3000/- to Chetram Lodhi. Respondent Mukesh Nayak had asked Chetram Lodhi to vote in his favour and also induce his relatives and neighbours to do the same. Respondent Mukesh Nayak had further told witness Hakam Singh that if he needed liquor at night, the same shall be provided by the respondent. Thereafter, this witness had informed petitioner Brajendra Pratap Singh, who was the candidate of his party, the same day, about the incident. Petitioner Brajendra Pratap Singh (PW-1) has stated that he learnt about the incident on 21-11-2013.

18. Anand Kishore Lodhi (PW-3) has deposed that during Vidhan Sabha Elections in the year 2013, at around 4:30 p.m. on 21-11-2013 he had gone to village Kardiya to see respondent Mukesh Nayak. He saw respondent Mukesh Nayak gave Rs.2000/- to Dilan Lodhi. The respondent had asked Dhilan Lodhi to vote in his favour and also ask his relatives to vote in favour of the respondent. Thereafter, he went to village Mohindra and informed Brajendra Pratap Singh on telephone. When he met Brajendra Pratap Singh later, he also told the petitioner about the aforesaid incident in person. Petitioner Brajendra Pratap Singh (PW-1) has stated that he was told about the aforesaid incident of bribery in the evening on 21-11-2013.

19. Before proceeding to appreciate the evidence of petitioner's witnesses Takhat Singh (PW-4), Hakam Singh (PW-2), Anand Kishore

Lodhi (PW-3) and petitioner Brajendra Pratap Singh (PW-1), it is apposite to take a look at the prevailing legal position. On the subject of nature of proceedings on allegations of electoral corrupt practices and the standard of proof required to prove such practices, a three judge bench of Supreme Court in the case of **Abdul Hussain Mir vs. Shamsul Huda**, AIR 1975 SC 1612 has held that:

“When elections are challenged on grounds with a criminal taint, the benefit of doubt in testimonial matters belongs to the returned candidate.”

20. In the case of **Razik Ram vs. Jaswant Singh Chouhan**, AIR 1975 SC 667, the Supreme Court observed that:

“It is well settled that a charge of corrupt practice is substantially akin to a criminal charge. The commission of a corrupt practice entails serious penal consequences. It not only vitiates the election of the candidate concerned but also disqualifies him from taking part in elections for a considerably long time. Thus, the trial of an election petition being in the nature of an accusation, bearing the indelible stamp of quasi-criminal action, the standard of proof is the same as in a criminal trial. Just as in a criminal case, so in an election petition, the respondent against whom the charge of corrupt practice is levelled, is presumed to be innocent unless proved guilty. A grave and heavy onus, therefore, rests on the accuser to establish each and every ingredient of the charge by clean unequivocal and unimpeachable evidence beyond reasonable doubt.”

21. Likewise, in the case of **Jeet Mohinder Singh vs. Harinder Singh Jassi**, 1999 AIR SCW 4361, a three judge bench of Supreme Court held that:

“Charge of corrupt practice is quasi-criminal in character. If substantiated, it leads not only to the setting aside of the election of the successful candidate, but also of his being disqualified to contest an election for a certain period. It may entail extinction of a person's public life and political career. A trial of an election petition though within the realm of civil law is akin to trial on a criminal charge. Two consequences follow. Firstly, the allegations relating to commission of a corrupt practice should be sufficiently clear and stated precisely so as to afford the person charged a full opportunity of meeting the same. Secondly, the charges when put to issue should be proved by clear, cogent and credible evidence. To prove charge of corrupt practice a mere preponderance of probabilities would not be enough. There would be a presumption of innocence available to the person charged.”

The charge shall have to be proved to the hilt, the standard of proof being the same as in a criminal trial."

22. In case of **Tukaram S. Dighole Vs. Manikrao Shivaji Kokate**, AIR 2010 SC 965, the Supreme Court observed that:

"11. Before we proceed to examine the controversy at hand, we deem it necessary to reiterate that a charge of corrupt practice, envisaged by the Act, is equated with a criminal charge and therefore, standard of proof therefor would not be preponderance of probabilities as in a civil action but proof beyond reasonable doubt as in a criminal trial. If a stringent test of proof is not applied, a serious prejudice is likely to be caused to the successful candidate whose election would not only be set aside, he may also incur disqualification to contest an election for a certain period, adversely affecting his political career. Thus, a heavy onus lies on the election petitioner to prove the charge of corrupt practice in the same way as a criminal charge is proved."

23. In another case of **Pradip Buragohain V. Pranati Phukan**, 2010 AIR SCW 6032, the Division Bench of Supreme Court considering a number of earlier judgments of Supreme Court held that:

"11. Before we proceed to examine the controversy at hand, we deem it necessary to reiterate that a charge of corrupt practice, envisaged by the Act, is equated with a criminal charge and therefore, standard of proof therefor would not be preponderance of probabilities as in a civil action but proof beyond reasonable doubt as in a criminal trial. If a stringent test of proof is not applied, a serious prejudice is likely to be caused to the successful candidate whose election would not only be set aside, he may also incur disqualification to contest an election for a certain period, adversely affecting his political career. Thus, a heavy onus lies on the election petitioner to prove the charge of corrupt practice in the same way as a criminal charge is proved."

24. The essence of aforesaid pronouncements is that an allegation of corrupt practice leveled in proceedings under the Act, is in the nature of a charge in a criminal case and is required to be proved beyond reasonable doubt. Though, trial of an election petition is within the realm of civil law, it is akin to a trial on a criminal charge and as in a criminal case, it is required to be proved by clear, cogent and credible evidence, beyond reasonable doubt. The standard of proof of preponderance of probabilities, applicable in a civil case would not be applicable to a trial of an election petition on allegations of corrupt practices.

25. There are various pronouncements of the Supreme Court on probative value of oral evidence for the purpose of proving electoral corrupt practices. In the case of **Joseph M. Puthussery vs. T.S. John**, AIR 2011 SC 906, the Supreme Court addressed the question as to what is the value of oral evidence while deciding issue of corrupt practices. Relying upon the judgment of *Abdul Hussain Mir (supra)*, the Court held:

“What is the value of oral evidence while deciding issue of corrupt practice within the meaning of Section 123(4) of the Act will have to be considered? So far as election law is concerned by now it is well settled that it would be unsafe to accept the oral evidence on its face value without seeking for assurance from other circumstances or unimpeachable document. It is very difficult to prove a charge of corrupt practice merely on the basis of oral evidence because in election cases, it is very easy to get the help of interested witnesses. In *Abdul Hussain Mir v. Shamsul Huda and another* (1975) 4 SCC 533 : (AIR 1975 SC 1612), the Three Judge Bench of this Court held that *“Oral evidence, ordinarily is inadequate especially if it is of indifferent quality or easily procurable. According to this Court, the oral evidence has to be analyzed by applying common sense test. It must be remembered that in assessing the evidence, which is blissfully vague in regard to the particulars in support of averments of undue influence, cannot be acted upon because the court is dealing with a quasi-criminal charge with serious consequences and, therefore, reliable, cogent and trustworthy evidence has to be led with particulars. If this is absent and the entire case is resting on shaky ipse dixits, the version tendered by witnesses examined by election petitioner cannot be accepted.”*

26. Likewise, in the case of *Pradip Buragohain (supra)*, the Supreme Court relying upon the judgments in the cases of **Rahim Khan vs. Khurshid Ahmed and others**, AIR 1975 SC 290, **Narayan Rao vs. G. Venkata Reddy**, AIR 1977 SC 208 and **Thakur Sen Negi vs. Dev Raj Negi and another**, AIR 1994 SC 2526 that :

*“10. The second aspect that distinctly emerges from the pronouncements of this Court is that in an election dispute it is unsafe to accept oral evidence at its face value unless the same is backed by unimpeachable and incontrovertible documentary evidence. The danger underlying acceptance of such oral evidence in support of a charge of corrupt practice was lucidly stated by this Court in *Rahim**

Khan's case (AIR 1975 SC 290) (supra) in the following words: (Para 21 of AIR)

"We must emphasize the danger of believing at its face value oral evidence in an election case without the backing of sure circumstances or indubitable documents. It must be remembered that corrupt practices may perhaps be proved by hiring half-a-dozen witnesses apparently respectable and dis-interested, to speak to short and simple episodes such as that a small village meeting took place where the candidate accused his rival of personal vices. There is no X-ray whereby the dishonesty of the story can be established and, if the Court were gullible enough to gulp such oral versions and invalidate elections, a new menace to our electoral system would have been invented through the judicial apparatus. We regard it as extremely unsafe, in the present climate of kilkenny-cat election competitions and partisan witnesses wearing robes of veracity, to upturn a hard won electoral victory merely because lip service to a corrupt practice has been rendered by some sanctimonious witnesses. The Court must look for serious assurance, unlying circumstances or unimpeachable documents to uphold grave charges of corrupt practices which might not merely cancel the election result, but extinguish many a man's public life."

11. *To the same effect is the decision of this Court in M. Narayana Rao v. G. Venkata Reddy and Ors. (1977) 1 SCC 771 : (AIR 1977 SC 208) where this Court observed: (Para 19 of AIR)*

"A charge of corrupt practice is easy to level but difficult to prove. If it is sought to be proved only or mainly by oral evidence without there being contemporaneous document to support it, court should be very careful in scrutinizing the oral evidence and should not lightly accept it unless the evidence is credible, trustworthy, natural and showing beyond doubt the commission of corrupt practice, as alleged."

12. *Reference may also be made to the decision of this Court in Dadasaheb Dattatraya Pawar and Ors. v. Pandurang Raoji Jagtap and Ors. (1978) 1 SCC 504 : (AIR 1978 SC 351) where this Court expressed a similar sentiment and Laxmi Narayan Nayak v. Ramratan Chaturvedi and Ors. (1990) 2 SCC 173 : (AIR 1991 SC 2001) where this Court upon a review of the decisions on the subject held the following principles applicable to election cases involving corrupt practices: (Para 5 of AIR)*

(V) It is unsafe in an election case to accept oral evidence at its face value without looking for assurances for some surer circumstances or

unimpeachable documents vide Rahim Khan v. Khurshid Ahmed (1974) 2 SCC 660 : (AIR 1975 SC 290), M. Narayana Rao v. G. Venkata Reddy (1977) 1 SCC 771 : (AIR 1977 SC 208), Lakshmi Raman Acharya v. Chandan Singh (1977) 1 SCC 423 : (AIR 1977 SC 587) and Ramji Prasad Singh v. Ram Bilas Jha (1977) 1 SCC 260 : (AIR 1975 SC 2573).

13. *The decision of this Court in Thakur Sen Negi v. Dev Raj Negi and Anr., 1993 Supp (3) SCC 645 : (AIR 1994 SC 2526 : 1994 AIR SCW 3566) also states the same proposition and highlights the danger underlying acceptance of oral evidence in an election dispute as witnesses in such disputes are generally partisan and rarely independent. This Court observed: (Para 3 of AIR, AIR SCW)*

"It must be remembered that in an election dispute the evidence is ordinarily of partisan witnesses and rarely of independent witnesses and, therefore, the court must be slow in accepting oral evidence unless it is corroborated by reliable and dependable material. It must be remembered that the decision of the ballot must not be lightly interfered with at the behest of a defeated candidate unless the challenge is on substantial grounds supported by responsible and dependable evidence."

27. On the basis of aforesaid pronouncements of the Supreme Court, it is absolutely clear that it is unsafe in an election petition to accept oral evidence at its face value without looking for assurance for some surer circumstances or unimpeachable documents.

28. Reverting back to the facts of the case in the backdrop of aforesaid legal principles, it is found that the case of the petitioner with regard to corrupt practices of bribery on the part of the respondent rests exclusively upon the oral evidence of Hakam Singh Yadav (PW-2), Anand Kishore Lodhi (PW-3) and Takhat Singh (PW-4) who are said to be eyewitnesses to three different incidents of bribery.

29. Understandably, none of those allegedly bribed have come forward to depose in favour of the petitioner. However, none of aforesaid three witnesses i.e. Hakam Singh (PW-2), Anand Kishore Lodhi (PW-3) and Takhat Singh (PW-4) is resident of village in which the incident of bribery is alleged to have taken place. Hakam Singh (PW-2) is resident of village Jamundadh and he is said to have witnessed the incident of bribery which allegedly took place in village Agrad, which is about 5 km from his village. Likewise, Anand Kishore Lodhi is resident of village Moharkala and he witnessed the incident of bribery which took place in village Kardiya which is about 3-4 kms

away. Takhat Singh (PW-4) is resident of Mankori and he is said to have witnessed the alleged incident of bribery which took place in village Takhauri. None of the witnesses have stated in their examination-in-chief that alleged witnesses were voters of Pawai Assembly Constituency. Hakam Singh (PW-2) has admitted that he has been a worker of Bharatiya Janata Party, i.e. the party of election petitioner, for past 15 years. Anand Kishore Lodhi (PW-3) has admitted that he has been associated with Bharatiya Janata Party for past 5-6 years and he has an affection for Bharatiya Janata Party; therefore, he had informed about the alleged bribery to petitioner Brajendra Pratap Singh. He has further stated that he not only knows the mobile number of the petitioner from before the incident but also stated that he can tell mobile number of the petitioner from his memory. Thus, it is clear that aforesaid two witnesses are members of Bharatiya Janata Party and have been closely associated with that party. Anand Kishore Lodhi is personally close to the petitioner. Takhat Singh (PW-4) has denied that he is a worker of Bharatiya Janata Party but has admitted in his cross-examination that he travelled a distance of about 60 k.ms. from his village Mankori to the residence of petitioner to inform him about the alleged incident of bribery. Thus, it is clear that he too is a motivated witness. None of the aforesaid witnesses took any exception when alleged corrupt practices of bribery was being committed in their presence. They did not lodge any report with any authority connected with the elections or otherwise. They simply informed the petitioner. The petitioner is an experienced politician who was a Minister in the State Government. He had participated in the three elections but he did not make any written report in this regard to any authority. He explains that his counsel had advised him that even after giving the complaint in writing, the process of elections would not be stopped; therefore, whatever action is to be taken should be taken by means of an election petition; hence, he did not lodge any written complaint with any authority. He simply orally informed the local authorities. Needless to state, aforesaid explanation carries no weight.

30. In the case of *Pradip Buragohain(supra)*, there was similar allegation of purchase of voters. The witnesses produced by the petitioner were partisan witnesses. They had also not reported the matter to any authority. In that case also, the respondent had denied his presence at the time, place and spot alleged. In the circumstances, the

Supreme Court held that oral evidence of the petitioner's witnesses was not reliable.

31. In aforesaid circumstances, this Court is of the opinion, that statement of prosecution witnesses, unsupported by any surer circumstances cannot be relied upon. The petitioner has failed to prove the corrupt practices of bribery on the part of the respondent beyond reasonable doubt.

32. Consequently, issue No.1 is decided against the petitioner.

IssueNo.2: Whether the returned candidate/respondent has made false statements in relation to personal character or conduct of the petitioner in public meeting thereby prejudiced the prospects of petitioner's election?

33. The burden of proving aforesaid issue was also upon the petitioner. In this regard, petitioner Brijendra Pratap Singh (PW/1) has stated in paragraph Nos. 7 and 8 of his examination-in-chief that respondent Mukesh Nayak concocted a false story in order to influence the voters in his favour. On 16.11.2013, at a public meeting in village Mohindra, he told the public that an old woman had approached the petitioner's residence at Bhopal for the purpose of securing medical aid; however, the petitioner refused to help the aforesaid women in any manner. Thereafter, that old woman sat on a culvert throughout the night and visited the respondent in the morning for the same purpose. The respondent helped the aforesaid women to the fullest extent. The petitioner further submitted that no such incident ever took place and aforesaid story was fabricated by the respondent in order to impress upon the voters that the petitioner was not empathic to the poor and was therefore, not a fit candidate. The petitioner further deposed that respondent Mukesh Nayak repeated aforesaid story in village Semaria as well and thereby he emotionally swayed the voters of Pawai Assembly Constituency in his favour.

34. The petitioner further stated that in this regard, a compact disc (Ex.P/1) was prepared. The transcript of the same is (Ex.P/2). The Respondent (Respondent Witness No.1) has categorically stated that he never made any imputation regarding conduct and character of any opposing candidates including the petitioner Brijendra Pratap Singh. He never

indulged in any false or malicious propaganda against the petitioner.

Section 123 (4) of the Act reads as hereunder:

“123. Major Corrupt practices.—The following shall be deemed to be corrupt practices for the purposes of this Act:—

(4) The publication by a candidate or his agent or by any other person with the consent of a candidate or his election agent, of any statement of fact which is false, and which he either believes to be false or does not believe to be true, in relation to the personal character or conduct of any candidate, or in relation to the candidature, or withdrawal, of any candidate, being a statement reasonably calculated to prejudice the prospects of that candidate's election.”

35. It may be noted here that the same principles with regard to standard of proof for proving the corrupt practices mentioned under sub-sections (1) and (4) of Section 123 of the Act would apply. On the basis of discussion under issue No.1, it is clear that the petitioner is required to prove the corrupt practice under Section 123(4) of the Act beyond reasonable doubt, as in a criminal case and mere oral evidence unsupported by surer circumstances would not be sufficient to prove the corrupt practice.

36. The petitioner has stated in his evidence that a compact disc (Ex.P./1) of aforesaid public meeting was prepared and has been filed in the case. At the time when the compact disc was sought to be adduced in evidence, the Court had made a specific note that aforesaid compact disc shall be read in evidence only when a certificate regarding its authenticity under the provision of Evidence Act, 1872, is filed. No such certificate has been filed by the petitioner. Such compact disc containing video recording of the alleged incident is an electronic record and may be proved in accordance with provision of Section 65-B of the Indian Evidence Act, 1872. No evidence has been adduced by the petitioner to reveal as to who prepared the aforesaid compact disc and in what manner; therefore, it may be presumed that the alleged incident must have been recorded by means of video camera on the memory card of the device and the alleged compact disc must have been prepared from such memory card

using a computer. Thus, there is no doubt that the compact disc (Ex.P./1) is not primary evidence under Section 62 of the Evidence Act. This in fact, is a computer output produced in the form of a compact disc by means of a computer. As such, it falls under the category of secondary evidence.

37. A three judge bench of the Supreme Court in the case of **Anvar P.V. Vs. P.K. Basheer**, (2014) 10 SCC 473 has held as hereunder:

"14. Any documentary evidence by way of an electronic record under the Evidence Act, in view of Sections 59 and 65-A, can be proved only in accordance with the procedure prescribed under Section 65-B. Section 65-B deals with the admissibility of the electronic record. The purpose of these provisions is to sanctify secondary evidence in electronic form, generated by a computer.

15. Under Section 65-B (4) of the Evidence Act, if it is desired to give a statement in any proceedings pertaining to an electronic record, it is permissible provided the following conditions are satisfied:

(a) There must be a certificate which identifies the electronic record containing the statement;

..... Most importantly, such a certificate must accompany the electronic record like computer printout, compact disc (CD), video compact disc (VCD), pen drive, etc., pertaining to which a statement is sought to be given in evidence, when the same is produced in evidence. All these safeguards are taken to ensure the source and authenticity, which are the two hallmarks pertaining to electronic record sought to be used as evidence. Electronic records being more susceptible to tampering, alteration, transposition, excision, etc. without such safeguards, the whole trial based on proof of electronic records can lead to travesty of justice.

17. Only if the electronic record is duly produced in terms of Section 65-B of the Evidence Act, would the question arise as to the genuineness thereof

..... The very caption of Section 65-A of the Evidence Act, read with Sections 59 and 65-B is sufficient to hold that the special provisions on evidence relating to electronic record shall be governed by the procedure prescribed under Section 65-B of the Evidence Act. That is

a complete code in itself. Being a special law, the general law under Sections 63 and 65 has to yield.

..... Thus, in the case of CD, VCD, chip, etc., the same shall be accompanied by the certificate in terms of Section 65-B obtained at the time of taking the document, without which, the secondary evidence pertaining to that electronic record, is inadmissible.

23. The appellant admittedly has not produced any certificate in terms of Section 65-B in respect of the CDs, Exts. P-4, P-8, P-9, P-10, P-12, P-13, P-15, P-20 and P-22. Therefore, the same cannot be admitted in evidence.

24. The situation would have been different had the appellant adduced primary evidence, by making available in evidence, the CDs used for announcement and songs. Had those CDs used for objectionable songs or announcements been duly got seized through the police or Election Commission and had the same been used as primary evidence, the High Court could have played the same in court to see whether the allegations were true.

It is clarified that notwithstanding what we have stated herein in the preceding paragraphs on the secondary evidence of electronic record with reference to Sections 59, 65-A and 65-B of the Evidence Act, if an electronic record as such is used as primary evidence under Section 62 of the Evidence Act, the same is admissible in evidence, without compliance with the conditions in Section 65-B of the Evidence Act."

38. It is clear from aforesaid authoritative pronouncement of the Supreme Court that without the certificate as envisaged under sub-section 4 of Section 65-B of the Evidence Act, such secondary evidence in the form of a compact disc is not admissible in evidence. Thus, the compact disc (Ex.P./1) cannot be and would not be read in evidence.

39. So far as alleged transcript (Ex.P./2) is concerned, the same has been prepared from the compact disc; therefore, even the transcript cannot be read in evidence.

40. Petitioner Brijendra Pratap Singh (PW/1) has admitted in paragraph No.22 of his cross-examination that his workers had informed him that respondent Mukesh Nayak had told aforesaid fabricated story in his speeches made in villages Mohindra and Semaria. Thus, it is clear that the petitioner Brijendra Pratap

Singh is not an eye witness of alleged speeches made by the respondent in Mohindra and Semaria. None of the workers, who are said to have heard any of aforesaid two alleged speeches, has been examined by petitioner. Thus, there is no evidence on record at all to prove that the respondent made any speech regarding personal character or conduct of the petitioner in contravention of sub-section 4 of Section 123 of the Act.

41. As such, the petitioner has failed to prove issue No.2 either and therefore, it is decided against the petitioner.

Issue No.3: Whether on the date of filing the nomination paper, the returned candidate was holding the post of Chairman of Red Cross Society, which is an office of profit? If yes, effect?

42. The burden of proving the aforesaid issue was also upon the petitioner.

43. The respondent has not specifically denied the fact that he was holding the post of Chairman of Madhya Pradesh Branch of Indian Red Cross Society on the date of filing his nomination as well as on the date of his election as Member of Madhya Pradesh Legislative Assembly. In fact by implication he has admitted aforesaid fact in his pleadings. In paragraph No.3 of his deposition, he has categorically stated that at the time of election he was President of Indian Red Cross Society. Thus, it is an admitted fact that the petitioner was Chairman of Madhya Pradesh Branch of Indian Red Cross Society on relevant dates.

44. In view of aforesaid admission, the only question that survives for consideration with regard to issue No.3 is that whether it was an office of profit?

45. Petitioner Brijendra Pratap Singh (PW/1) has stated in paragraph No.10 of his deposition that the post of Chairman of Madhya Pradesh Branch of Indian Red Cross Society is an office of profit; therefore, the respondent was disqualified from being elected as member of the Legislative Assembly. He further stated that respondent Mukesh Nayak had also contested the election to Legislative Assembly in the year, 2008. On that occasion, he had resigned from the Chairmanship of aforesaid

society. Petitioner Brijendra Pratap Singh has further stated in paragraph No.11 of his deposition that by virtue of being Chairman of Madhya Pradesh Branch of Indian Red Cross Society, respondent Mukesh Nayak had received amount of expenses incurred by him for visiting Delhi from Bhopal from the contingent expenditure account of the society. Likewise, he had also received the amount of telephone bills. Thus, at the time of contesting present election, the respondent was holding an office of profit.

46. Respondent Mukesh Nayak (RW/1) on the other hand, has stated that Indian Red Cross Society is an international level social service organization, which works in the field of disaster management and renders services. He never received any pecuniary benefits while holding the post of Chairman. The respondent has further stated in paragraph No.8 of his cross-examination that he had contested the election to Legislative Assembly of the State in the year, 2008 from Pawai Assembly Constituency. Before contesting the aforesaid election in the year, 2008, he had resigned from the post of Chairman of the Madhya Pradesh Branch of Indian Red Cross Society; however, the respondent denied the suggestion that the post of Chairman of Madhya Pradesh Branch of Indian Red Cross Society is an office of profit. He clarified that before contesting the election in the year 2008, he was nominated by the Governor of the State to the post of Chairman; therefore, he had resigned from the post before contesting the election in the year, 2008. However, after the year 2008, the rules were changed and the post of Chairman became an elective post. In the press note issued by the Principal Secretary to the Governor with regard to election to the post of Chairman it was explicitly mentioned that the office of the Chairman of the Society would not be an office of profit and no salary or allowance would be payable to the Chairman. The person elected to the post shall also not be entitled to any facilities like vehicle or servants. As per the press note, travelling allowance was also not payable. Aforesaid press note was published in the daily newspaper Dainik Bhaskar on 02.05.2012. He had filed photocopy of aforesaid press note, which contains all of aforesaid conditions.

47. The petitioner also examined the General Secretary of Madhya Pradesh Branch of Indian Red Cross Society, Rajeev Nayan Tiwari (PW/7), who stated that he has been General Secretary of Madhya Pradesh Branch of Indian Red Cross Society since 09.06.2014. He is custodian of the record of the Madhya Pradesh Branch. He further stated that respondent Mukesh Nayak was elected as Chairman of Madhya Pradesh Branch and worked on aforesaid post from 06.06.2012 to 05.06.2015. He further stated that the post of Chairman was an honorary post. Aforesaid witness further deposed that the Madhya Pradesh Branch only provided facility of a personal assistant and a telephone at the office to respondent Mukesh Nayak. Telephone has been installed in the office of the Chairman since beginning and whoever holds the post of Chairman, uses it. The bills (Ex.P.18 to Ex.P./13) were paid by the Society in this regard. The witness further stated that apart from aforesaid land-line telephone, the Branch did not provide any other land-line telephone or mobile telephone to the respondent. No payment was made towards bill of any other telephone to the respondent. Apart from the facilities of a personal assistant and aforesaid land line telephone at office, no other salary, allowance or facility was provided to the Chairman. He denied the suggestion that the expenses were paid by the Society, for all travels of the respondent within India or abroad and his telephone bills and expenses incurred by him on vehicles were paid for by the Society. Aforesaid evidence of (PW/7) has remained uncontroverted.

48. Before appreciating the aforesaid evidence on record, it may be noted that the relevant part of Article 191 of the Constitution of India regarding disqualification for Membership of Legislative Assembly or Legislative Council of a State, reads as hereunder:-

“191. Disqualifications for membership.—(1) A person shall be disqualified for being chosen as, and for being, a member of the Legislative Assembly or Legislative Council of a State—

(a) if he holds any office of profit under the Government of India or the Government of any State specified in the First Schedule,

other than an office declared by the Legislature of the State by law not to disqualify its holder;

(b) *

(c) *

(d) *

(e) *

Explanation.—For the purposes of this clause, a person shall not be deemed to hold an office of profit under the Government of India or the Government of any State specified in the First Schedule by reason only that he is a Minister either for the Union or for such State.

(2) *"

Relevant part of Section 100 of the Act is also reproduced herein below:

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

(a) that on the date of his election a returned candidate was not qualified, or was disqualified, to be chosen to fill the seat under the Constitution or this Act or the Government of Union Territories Act, 1963 (20 of 1963); or

(b) *

(c) *

(d) that the result of the election, in so far as it concerns a returned candidate, has been materially affected—

(i) by the improper acceptance of any nomination, or

(ii) *

(iii) *

(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."

49. The term "office of profit" has not been defined either in the Constitution or in the Act; however, it has been subject matter of interpretation in numerous decision of the Supreme Court. There is further requirement that in order to be disqualified the returned candidate must have held the office of profit under the Government of India or Government of any State specified in Ist Schedule to the Constitution, other than the office declared by the Legislature of the State by Law not to disqualify its holder.

50. In this regard, Rajeev Nayan Tiwari (PW/7) has produced a booklet (Ex.P./31) containing rules for State/U.T./District Branches of Red Cross Society. The Indian Red Cross Society was constituted by section 2 of the Red Cross Society Act, 1920. As such, the Indian Red Cross society being the creature of a statute is a statutory corporation. Section 4 of the Red Cross Society Act, 1920, relating to incorporation, reads as hereunder:-

"4. Incorporation.—The first members of the Society and all persons who may hereafter become members thereof so long as they continue so to be, are hereby constituted a body corporate under the name of the Indian Red Cross Society, and the said body shall have perpetual succession and a common seal with power to hold and acquire property, moveable and immovable, and shall sue and be sued by the said name."

51. In aforesaid circumstances, office of Chairman of the State Branch of Indian Red Cross Society cannot be said to be an office either under the Government of India or under the Government of any State.

52. Learned counsel for the petitioner has invited attention of the Court to the case of **Jaya Bachchan Vs. Union of India**, AIR 2006 SC 2119, wherein the Supreme Court has held that:-

5. It is not in dispute that the Council is not an autonomous body or statutory corporation, that the Council has no budget of its own, and that all its expenses are met by the department of the State Government administratively in charge of it. Similarly, the fact that the petitioner was appointed as chairperson of the Council, conferring on her the rank of a

Cabinet Minister entitling her to all the remuneration and benefits as provided in the OM dated 22-3-1991 (extracted above), is also not disputed.

6. Clause (1)(a) of Article 102 provides that a person shall be disqualified for being chosen as, and for being, a member of either House of Parliament if he holds any office of profit under the Government of India or the Government of any State, other than an office declared by Parliament by law not to disqualify its holder. The term "holds an office of profit" though not defined, has been the subject-matter of interpretation, in several decisions of this Court. An office of profit is an office which is capable of yielding a profit or pecuniary gain. Holding an office under the Central or State Government, to which some pay, salary, emolument, remuneration or non-compensatory allowance is attached, is "holding an office of profit". The question whether a person holds an office of profit is required to be interpreted in a realistic manner. Nature of the payment must be considered as a matter of substance^{CS 270} rather than of form. Nomenclature is not important. In fact, mere use of the word "honorarium" cannot take the payment out of the purview of profit, if there is pecuniary gain for the recipient. Payment of honorarium, in addition to daily allowances in the nature of compensatory allowances, rent free accommodation and chauffeur driven car at State expense, are clearly in the nature of remuneration and a source of pecuniary gain and hence constitute profit. For deciding the question as to whether one is holding an office of profit or not, what is relevant is whether the office is capable of yielding a profit or pecuniary gain and not whether the person actually obtained a monetary gain. If the "pecuniary gain" is "receivable" in connection with the office then it becomes an office of profit, irrespective of whether such pecuniary gain is actually received or not. If the office carries with it, or entitles the holder to, any pecuniary gain other than reimbursement of out of pocket/actual expenses, then the office will be an office of profit for the purpose of Article 102(1)(a). This position of law stands settled for over half a century commencing from the decisions of Ravanna Subanna v. G.S. Kaggeerappa¹, Shivamurthy Swami Inamdar v. Agadi Sanganna Andanappa², Satrucharla Chandrasekhar Raju

v. Vyricherla Pradeep Kumar Dev³ and Shibu Soren v. Dayanand Sahay⁴.

53. It may be noted here that the observation made in paragraph No.5 above gives an indication that an office in a statutory corporation cannot be said to be an office under the Government of India or Government of any State. Even in the case of *Jaya Bachchan (Supra)* the Supreme Court has held that if the office carries with it or entitles the holder to any pecuniary gain other than reimbursement of out of pocket/actual expenses, then office will be an office of profit for the purpose of Article 102 (1) (a) of the Constitution.

54. The Supreme Court has held in the case of *U.C. Raman Vs. P.T.A. Rahim*, AIR 2014 SC 3477 that amount paid to the chairperson of State Haj Committee by way of travelling allowance and daily allowance cannot be said to be in the nature of remuneration and a source of pecuniary gain; therefore, the office in question is not an office of profit.

55. A five judge bench of Supreme Court in the case of *Purno Agitok Sangma Vs. Pranav Mukherjee* held (by majority) that in order to be an office of profit, the office must carry pecuniary benefits, such as official accommodation or chauffeur driven car. In the case of *Gajanan Samadhan Lande Vs. Sanjay Shyamrao Dhotre*, AIR 2012 SC 486, Supreme Court held that the office of Director from grower's constituency on the board of Maharashtra Seeds Corporation, was not an office of profit because the returned candidate held an elected office and not the office by appointment. Thus, the returned candidate cannot be said to be holding an office of profit under the Government because the Government had no power to remove the returned candidate from the office.

56. In the instant case, the respondent held office in a corporation, which was a creature of statute. Respondent was not nominated but was elected thereto. He did not hold the office at the pleasure of either of the State Government or the Government of India. He was not removable from his post by either of the two Governments. As such, there was no question of conflict of interest. In these circumstances, it cannot be said

that the respondent held an office either under the State Government or the Government of India.

57. It is settled position of law that the question whether a person holds the office of profit is required to be interpreted in a realistic manner. The nature of payment must be considered as a matter of substance rather than that of form. Nomenclature is not important. Office of profit is an office, which is capable of yielding a profit or pecuniary gain, which is non-compensatory in nature, to the holder of the office. Whether or not he actually claimed or received or availed that profit or gain, is immaterial. However, if the office merely provides for reimbursement of out of pocket/actual expenses, the office cannot be said to be an office of profit for the purpose of Article 191 of the Constitution.

58. In the case at hand, as a Chairman of Madhya Pradesh Branch of Indian Red Cross Society, respondent was not entitled to any "Honorarium" or daily allowance. Office did not entail any pecuniary gain or facilities such as rent free accommodation or chauffeur driven car. He was not even entitled to any land line-phone at his residence or a mobile phone. He was also not entitled to any domestic servant. The only facilities that were attached to the office were a land-line telephone installed at the office and a personal assistant for official work. The bills of the land line telephone were paid by the society. Both of aforesaid facilities were necessary for proper discharge of his official duties as a Chairman of Madhya Pradesh Branch of the Society. None of the aforesaid facilities yielded any pecuniary gain or profit to the respondent. Thus, by no stretch of imagination can be said that the office of Chairman was an office of profit. In aforesaid view of the matter, neither the office of Chairman of Madhya Pradesh Branch of Indian Red Cross Society was an office under either the State Government or the Government of India nor was it an office of profit.

59. Thus, issue No.3 is also decided against the petitioner.

Issue No.4: Whether the respondent has resorted to corrupt practice by misusing his power of post of Chairman

of State Red Cross Society by extending the medical help to patients who were the voters of Pawai Constituency?

60. The burden of proving this issue was also upon the petitioner.

61. The petitioner has submitted in this regard that respondent Mukesh Nayak misused his office as Chairman of Madhya Pradesh Branch of the Society and swung the voters of Pawai Assembly Constituency in his favour by selectively providing medical benefits to them. In this regard, he had made an application to the Public Information Officer of the Red Cross Society at Bhopal but no documents were provided to him. He also filed an appeal against inaction on the part of the Public Information Officer to the Appellate Authority but he was informed that there is no post of such Appellate Authority in that organization. He has admitted that he has filed documents relating to patients treated by the society in the year, 2005, 2006 and 2007. He denied the suggestion that the list did not contain the names and addresses of the patients. The petitioner also tried to get the record of all the patients treated by the society during the tenure of respondent as Chairman of Madhya Pradesh Branch of Indian Red Cross Society through General Secretary Rajeev Nayan Tiwari (PW/7); however, the witness stated on oath that it is impossible to compile such information because the society has treated about 3 lacs patients during aforesaid period.

62. Thus, it may be noted that apart from vague allegation in this regard that the respondent had nurtured his constituency by selectively making medical aid available to its voters by misusing his post, there is nothing specific on record to prove that the respondent misuse his office of Chairman in aforesaid manner. In any case, it would be difficult to hold that providing free medical aid to voters of the constituency would be a corrupt practice.

63. Thus, the petitioner has also failed to prove issue No.4, which is decided against him.

Issue No.6: Whether the election of the respondent from 58, Pawai Assembly Constituency has been materially affected

by non-compliance of Section 126 of the Representation of the People Act, 1951 as well as the order passed by the Election Commission under the Representation of the People Act, 1951?

64. Issue No.6 comprises two distinct allegations made in the election petition. The first one relates to contravention of Section 126 of the Act and second one relates to directive of Election Commission with regard to regulation of use of vehicles by different candidates.

65. The relevant part of Section 126 of the Act reads as here under:

“126. Prohibition of public meetings during period of forty-eight hours ending with hour fixed for conclusion of poll.—

(1) No person shall—

(a) convene, hold, attend, join or address any public meeting or procession in connection with an election; or

*(b) **

*(c) **

in any polling area during the period of forty-eight hours ending with the hour fixed for the conclusion of the poll for any election in that polling area.

(2) Any person who contravenes the provisions of sub-section (1) shall be punishable with imprisonment for a term which may extend to two years, or with fine, or with both.

*(3) *"*

66. The burden of proving aforesaid issue was also upon the petitioner, who has stated in paragraph No.12 of his examination in chief that respondent Mukesh Nayak did not stop his canvassing 48 hours before the election. At about 03.40 pm on 24.11.2013 and thereafter at 08.30 pm the same day, he convened public meetings and addressed those meetings at Gaisabad Road, P.S.-Semaria and Jhanda Bazar, Pawai respectively. In this regard, first information report was lodged. SHO of P.S.-Semaria, District-Panna, Jagdish Singh (PW/15)

has stated that he has been holding the post since 08.03.2014. On 24.11.2013, Shri K.S. Kori, Tehsildar and Office-in-Charge of Flying Squad lodged a first information report under Section 188 of the IPC and Section 126 of the Act. On the basis of aforesaid first information report, crime No.217/2013 was registered in P.S.-Semaria (Certified Copy Ex.P/16). Respondent Mukesh Nayak (PW/1) has stated in this regard that he did not indulge in any canvassing outside the prescribed time limit. He did not take out any procession in contravention of the model of code of conduct. He specifically denied the suggestion that he held any election meeting at 03.40 pm on 24.11.2013 at Gaisabaad Road, Semaria. He admitted that first information report (Ex.P./16) was lodged in this regard and on the basis of aforesaid first information report, a case under Sections 188 of the IPC and Section 126 of the Act, is pending in the Court of JMFC, Pawai. He also admitted that aforesaid FIR was not lodged by any private person but by an Administrative Officer, who at that point of time, was working under the Election Commission; however, he stated that the petitioner was a Cabinet Minister at that time and the officers of the Governments were under his influence. He also admitted that one more FIR was lodged against him by the Election Clerk of Tehsil office on the charge of holding election meeting at Jhanda Bazar on 24.11.2013 under Sections 188 of the IPC and 126 of the Act. He further admitted that a criminal case in this regard is also pending in the Court of JMFC, Pawai. On the other hand, petitioner in his cross-examination denied the suggestion that since he was a Cabinet Minister at that point of time, the police officers had registered a false FIR under his pressure.

67. It may be noted here that the petitioner has nowhere claimed that he was an eye witness to either of the aforesaid two election meetings allegedly convened and addressed by the respondent within the period prohibited under Section 126 of the Act. No person, who claims to have been present in either of the aforesaid two alleged meeting, has been examined. Tehsildar, K.S. Kori, who had lodged aforesaid F.I.R. has also not been examined; as such, there is no direct evidence available regarding aforesaid two meetings. Merely, F.I.R.

(Ex.P./16) alleging that a procession was taken out and slogans were shouted at the procession at about 03.40 pm on 24.11.2013 has been proved. The F.I.R. is not substantive evidence; therefore, the fact cannot be said to have been proved merely by proving that F.I.R. has been lodged in that regard. As such, the petitioner has also failed to prove that the respondent indulged in canvassing any manner during the period prohibited by Section 126 of the Act.

68. The second part of issue no.6 relates to use of vehicles registered for use by independent candidate Jeevan Prasad by the Returning Officer for the campaigning of Indian National Congress and the respondent in contravention of the Rules and directions of the Election Commission.

69. Election Petitioner Brijendra Pratap Singh (PW/1) has stated in paragraph No.13 of his examination-in-chief that as per the Rules framed by the Election Commission, the vehicles used by any candidate for the purpose of campaigning must be registered with the District Election Officer. However, two of the vehicles, which were registered in the name of independent candidate Jeevan Prasad, were found to be carrying pamphlets, posters and other canvassing material, which belonged to the respondent Mukesh Nayak and the Congress Party. As such, the respondent had contravened the aforesaid Rules and directions. A report in this regard was lodged in P.S.-Semaria and Shahnagar. As a result of aforesaid contravention, the election result of Assembly Constituency No.58, Pawai was materially affected. Raghunath Khatarkar (PW/5), the Inspector posted in police station-Shahnagar on the date of incident, has stated that Nayab Tehsildar, D.D. Suman, who was the Officer-in-Charge of the Flying Squad, had lodged a first information report (Certified copy of Ex.P/15). On the basis of aforesaid FIR, he had registered crime No.180/2013 under Sections 188 and 171 (cha) of the IPC. It was averred in the FIR that a Mahindra Xylo vehicle bearing registration number M.P. 04 CD 3130 was allotted to the independent candidate Jeevan Prasad for the campaigning; however, it was found to contain the posters and stickers of the candidate of Indian National Congress Mukesh Nayak. At that time, vehicle was being driven by one Ramesh Rao. Aforesaid vehicle was seized by Nayab Tehsildar and produced in the police station. The witness further stated that a charge-sheet in this regard was filed in the Court of JMFC; whereon, crime No.39/2014 was registered.

70. In this regard, respondent Mukesh Nayak (RW/1) has stated in paragraph Nos.10 and 11 of his cross-examination that he is not aware if his campaigning material being found in the vehicle of independent candidate Jeevan Prasad by Nayab Tehsildar. He is also not aware that on the basis of FIR (Ex.P/15), criminal case No.180/2013 under Sections 188 and 171 (cha) of the IPC was registered against him. He is also not aware that the FIR (Ex.P/17) was registered in this regard against one Mahak and Jeevan Prasad under aforesaid provisions and crime No.270/2013 was registered.

71. It may be noted here that the election petitioner has not examined the concerned Nayab Tehsildar, who is alleged to have discovered the election material belonging to respondent Mukesh Nayak in vehicle registered for use by independent candidate Jeevan Prasad. He has also not examined any of the witnesses of alleged seizure. Thus, there is no direct evidence that any such seizure was in fact made. The FIR alleging that such seizure was made is not substantive piece of evidence. Merely, on the basis of proof of such FIR, the factum of seizure is not proved.

72. Even, if we assume for the sake of arguments that such election material was indeed recovered from the vehicle for the use by aforesaid Jeevan Prasad, respondent Mukesh Nayak would not be liable for the acts of an independent candidate, unless it is proved that the material was being carried in such vehicle at the behest of or with the consent of the respondent or his election agent. No evidence is available on aforesaid point. Thus, the petitioner has also failed to prove the contravention of any Rules or any directions of the Election Commission, which can be said to have materially affected the result of the election.

Issue No.5: Relief and Costs?

73. On the basis of foregoing discussion, the Court is of the view that the petitioner has failed to prove that the respondent bribed any of the voters of his constituency or has made a false statements in relation to personal character or conduct of the respondent in a public meeting and has thereby prejudice the electoral prospects of the respondent and has thus committed a corrupt practice. The petitioner has also failed to prove that the post of Chairman of Madhya Pradesh Branch of Indian Red Cross Society is an office of profit and the respondent misused such office by selectively extending medical help/aid to the voters

belonging to Pawai Assembly Constituency. The petitioner has also failed to prove that the respondent indulged in any canvassing during the period prohibited by Section 126 (1) of the Act or that any vehicle registered for use by independent candidate Jeevan Prasad, was used for carrying campaigning material of the respondent or the Congress Party. Thus, this election petition deserves to be dismissed.

74. Consequently, this election petition preferred by the losing candidate Brijendra Pratap Singh, challenging the election of the returned candidate Mukesh Nayak as a member of State Legislative Assembly from the Assembly Constituency No.59, Pawai, District Panna, is hereby **dismissed**.

Election petitioner shall bear his own costs and that of the respondent of this election petition.

The advocates fee shall be payable as per schedule, if certified.

75. The Office is directed to send forthwith a certified copy of this judgment to the Election Commission and the Speaker of the State Legislative Assembly as per Section 103 of the Act.

Sd/-
(C.V.Sirpurkar)
Judge

By Order
Sd/-
(ANUJ JAIPURIAR)
Secretary,
Election Commission of India.