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मध्यप्रदेश राजपत्र

(असाधारण)
प्राधिकार से प्रकाशित

क्रमांक 48]

भोपाल, शुक्रवार, दिनांक 3 फरवरी 2023—माघ 14, शक 1944

विधि और विधायी (निर्वाचन) कार्य विभाग

भोपाल, दिनांक 3 फरवरी 2023

फा. क्र. EP. 05-2019-चार-8.—माननीय उच्च न्यायालय द्वारा निर्वाचन याचिका संख्या 05/2019 के संबंध में पारित निर्णय बावत् भारत निर्वाचन आयोग की अधिसूचना क्र. 82/म. प्र.-वि.स./(05/2019)/2023, दिनांक 16 जनवरी 2023 सर्वसाधारण की जानकारी हेतु प्रकाशित की जाती है.

राजेश कुमार कौल, सचिव.

भारत निर्वाचन आयोग

निर्वाचन सदन, अशोक रोड, नई दिल्ली - 110 001

अधिसूचना

तारीख: 16 जनवरी 2023

26 पौष 1944 (शक)

सं.- 82/म.प./05/2019/2023 - लोक प्रतिनिधित्व अधिनियम, 1951 (1951 का 43) की धारा 106 के अनुसरण में, भारत निर्वाचन आयोग वर्ष 2019 की निर्वाचन याचिका सं. 05 में मध्य प्रदेश उच्च न्यायालय के दिनांक 09.11.2022 के निर्णय/आदेश को एतद्वारा प्रकाशित करता है (श्रीमती चंदा सिंह गौर विरुद्ध श्री राहुल सिंह लोधी)

आदेश से,
हस्ता./-
(अमित कुमार)
सचिव,
भारत निर्वाचन आयोग.

ELECTION COMMISSION OF INDIA

Nirvachan Sadan, Ashoka Road, New Delhi-110001

Dated: 16th January, 2023
26 Pausha, 1944 (Saka)

NOTIFICATION

No. 82/MP/05/2019/2023 - In pursuance of Section 106 of the Representation of the People Act, 1951 (43 of 1951), the Election Commission hereby publishes the Judgment order dated 09.11.2022 of the High Court of Madhya Pradesh in the Election Petition No. 05 of 2019 (Smt. Chanda Singh Gour Vs. Shri Rahul Singh Lodhi).

**IN THE HIGH COURT OF MADHYA PRADESH, PRINCIPAL
SEAT AT JABALPUR**

ELECTION PETITION No. 05 /2019

PETITIONER : Smt. Chanda Singh Gour
W/o Shri Surendra Singh Gour ,
Aged about 57 years,
R/o Village Bamhori Abda, Post
Tanga Dist. Tikamgarh (M.P.)
Occupation: Politician

Versus

RESPONDENT : Shri Rahul Singh Lodhi
R/o H.No.28 , Civil Line ,
District Tikamgarh M.P.

**PETITION UNDER SECTION 80 & 81 OF THE REPRESENTATION OF
PEOPLE ACT, 1951**

The petitioner most respectfully submits as under -

1. The petitioner is a bone fide resident of District Tikamgarh M.P. and the petitioner's name is recorded in the electoral roll of Ward No.44, Jatara , District Tikamgarh and contested election from Khargapur Legislative Assembly Constituency No. 47 of the Madhya Pradesh Vidhan Sabha. The petitioner is politically active in Tikamgarh and is a Member of the Indian National Congress.

2. That the elections for the Legislative Assembly Constituency Khargapur No. 47 were held on 28.11.2018. The Election Commission of India has notified the election program of Khargapur Legislative Assembly Constituency No.47 of Madhya Pradesh

IN THE HIGH COURT OF MADHYA PRADESH
AT JABALPUR

BEFORE

HON'BLE SMT. JUSTICE NANDITA DUBEY

th
ON THE 9 OF NOVEMBER, 2022

ELECTION PETITION No. 5 of 2019

BETWEEN:-

SMT. CHANDA SINGH GOUR W/O SHRI SURENDRA SINGH
GOUR, AGED ABOUT 57 YEARS, R/O VILLAGE BAMHORI ABDA,
POST TANGA, DISTT. TIKAMGARH (MADHYA PRADESH)
OCCUPATION: POLITICIAN.

....PETITIONER

(BY SHRI RAJMANI MSISHRA - ADVOCATE)

AND

SHRI RAHUL SINGH LODHI, R/O. H.NO.28 CIVIL LINE DISTT.
TIKAMGARH (MADHYA PRADESH)

(BY SHRI ASHISH TIWARI - ADVOCATE)

....RESPONDENTS

*This petition coming on for hearing this day, the Court
passed the following:*

ORDER

The instant petition has been filed under the relevant provisions of the Representation of People's Act, 1951 calling in question the election of respondent Rahul Singh Lodhi, who is the returned candidate from 47 Khargapur Assembly constituency.

2. According to the petitioner, the election of respondent is vitiated under the provisions of 100(1)(b) & (d)(i) and (iv) of the Act of 1951 and also for non-compliance of the provisions of the Act of 1951 and Conduct of Election Rules 1961 and therefore liable to be set aside and declared void.

Summary of averments from the pleadings

3. The notification relating to the conduct of election of Khargapur Legislative Assembly Constituency No.47 was issued by the Election Commission, pursuant to which the election programme of the constituency was notified by the Returning Officer. The last date of filing of nomination paper was 09.11.2018, scrutiny of nomination paper was to be done on 12.11.2018, last date for withdrawal of nomination paper was 14.11.2018 and 28.11.2018 was fixed as the date of polling. The counting of votes and declaration of result was to be effected on 11.12.2018. Petitioner was the sitting member of the legislative

assembly and a candidate of Indian National Congress party, contesting the election from 47 Khargapur assembly constituency. Besides petitioner and respondent, there were 16 other candidates, who contested the election from the aforementioned constituency. There were 2,35,000 voters in the aforementioned constituency. The total number of votes polled in the constituency were 1,58,609, out of which, petitioner received 51,401 votes, whereas the respondent received 63,066 votes and was declared elected as a returned candidate on 11.12.2018. The respondent thus defeated the petitioner by a margin of 11,665 votes.

4. According to the petitioner, the respondent has suppressed the fact in his nomination paper that the Hon'ble High Court has imposed a cost of Rs.10,000/- in I.P. No.11/2014 (Rahul Singh Lodhi Vs. Chanda Singh Gour), and further not given the cost to the petitioner and thus guilty of non-compliance of the order of this Hon'ble Court under the provisions of Section 100 (1)(d)(iv) of the Act of 1951.

5. The petitioner further alleged that respondent's nomination papers were improperly accepted, which has materially affected the result of the election. It is alleged that respondent submitted two nomination forms, with different information regarding his status as partner in the Firm, M/s R.S. Constructions, Tikamgarh having contract with MPRRDA, which

amounts to corrupt practices as enumerated under Section 100 (1) (b) & (d)(i) of the Act of 1951.

6. Notice of the election petition was issued to the respondent, who appeared and filed his reply. He categorically denied all the allegations pertaining to respondent's involvement in corrupt practices. He admitted that a cost of Rs.10,000/- was imposed on him in E.P. No.11/2014 but denied that the same was not given to the petitioner. He has stated that respondent requested the petitioner several times to receive the cost as per Court's order but petitioner refused to receive the same in good faith. Since she has lost the election, therefore, the false allegation has been made. He has further stated that the allegation that he has given the wrong information in the nomination form regarding cost is baseless since it relates to fine amount in the criminal cases and not cost. He has further stated that he has not suppressed the fact that he is a partner in the partnership firm, who had a contract with MPRRDA. However, he later on realized his mistake and resigned from the partnership firm and published the notice in the gazette notification and submitted another nomination form with affidavit within the stipulated time.

7. This Court framed the following issues on 19.06.2019

:-

- (i) *Whether the respondent is guilty of non-compliance of order passed in Election petition No.11/2014 in respect*

of payment of cost of Rs. 10,000/- and suppressing this in the nomination form. If yes, whether it amounts to violation of Section 100 (1)(d)(iv) of the Representation of Peoples Act, 1955.

(ii) Whether furnishing different information with regard to the contract with MPRRDA in the two nomination papers submitted by the respondent amounts to irregularity and giving false information with regard to nomination papers, which has resulted in improper acceptance of the nomination papers.

(iii) Relief and costs.

8. Learned counsel for the petitioner after having given the brief narrative of the dates and events leading to the election has invited the attention of this Court to the deposition of Chanda Singh Gour (P.W.-1), Rahul Singh Lodhi (D.W.-1) and para 34 of Ex.P/1 i.e., the order passed in E.P. No. 11/14, to establish that the respondent has not paid the cost as directed by the High Court nor given its details in the nomination, resulting in non compliance of the order passed under the Act of 1951 as enumerated under Section 100 (1)(d)(iv) of the Act of 1951.

9. The learned counsel for the petitioner has further contended that the respondent has submitted two nomination papers giving different details regarding his partnership Firm having contract with MPRRDA to overcome and get out of the disqualification prescribed under Section 9-A of the Act. It is

argued that the respondent was not qualified at the time of filing of nomination as he was having a Govt. contract however, the Returning Officer was hand in glove with the respondent and even before the date of scrutiny 12.11.2018, scrutinized the nomination paper of Rahul Singh Lodhi (D.W.-1) and asked him to rectify the defects thereby giving opportunity to respondent to submit second nomination paper. However, the same was also filed without any supporting documents. Referring to Sections 33, 36 and the different Chapters of hand book which provides for duty and responsibility as well as procedure to be followed by the Returning Officer. He further submitted that last date of submission of nomination paper along with documents was 09.11.2018, but the Returning Officer illegally accepted documents from the respondent even after the said date. To establish his arguments he has drawn the attention of this Court to the deposition of Vandana Rajput (C.W.-1) and Rahul Lodhi (D.W.-1).

10. Learned counsel for the respondent on the other hand, submitted that the nomination paper has no column for disclosing any information with regard to imposition of cost under the Act. Referring to statements of Rahul Singh Lodhi (D.W.-1) and Brajesh Kumar (D.W.-2) he further argued that the respondent tried to pay the cost to the petitioner but she refused. It is further argued that under the Act, a candidate is entitled to submit multiple nomination forms. He further submitted that at the time

of filing of first nomination form, answering respondent was partner in the Firm having contract with Govt., but he resigned from the Firm and submitted another nomination Form, before the last date for submission of nomination Form. It is argued that qualification or disqualification is to be seen as on the date fixed for scrutiny and not on the date of submission of nomination.

11. As regards issue No.1, Chanda Singh Gour (P.W.-1) in para 1 of her examination-in-chief has stated that Rahul Singh Lodhi (D.W.-1) has filed I.P. No.11/2014, which was dismissed with a cost of Rs.10,000/- to be paid to her, however, he has not paid the cost till the date. In para 3 she has denied the suggestion that Rahul Singh Lodhi (D.W.-1) himself and through his associates has several times tried to give the cost/amount to her, but she refused. Rahul Singh Lodhi (P.W.-1) in para 1 to 3 of his deposition though admitted that High Court has imposed a cost of Rs.10,000/- to be paid to Chanda Singh Gour, but stated that the same was refused every time by her whenever he himself or through his associates Brijesh Mishra, Ravindra Shrivastava and Sunil Choubey tried to give the cost/amount to Chanda Singh Gour (P.W.-1). In para 12 he has stated that there was no column in the nomination form for giving details about the cost, hence he could not fill the details of cost in nomination paper. Brajesh Kumar Mishra (D.W.-2) in para 1 and 2 of his deposition has corroborated the statement of Rahul Singh Lodhi (D.W.-1) that he

was directed to give the cost amount Rs.10,000/- to Chanda Singh Gour (P.W.-1), but she refused to accept the same.

12. A perusal of para 34 of order passed in E.P. No.11/2014 (Ex.P-1) shows that the Court while dismissing the petition has imposed a cost of Rs.10,000/- on petitioner Rahul Singh Lodhi, which was to be paid to respondent Chanda Singh Gour. Though Rahul Singh Lodhi (D.W.-1) and Brijesh Kumar Mishra (D.W.-2) have stated that they tried several times to give the cost amount to Chanda Singh Gour (P.W.-1) and she has refused to accept the same, however, the same has been categorically denied by her. In reply to a suggestion by respondent's counsel, she stated that she is ready to accept the cost amount even now. Further no document has been produced by respondent Rahul Singh Lodhi (D.W.-1) to show that Chanda Singh Gour (P.W.-1) has refused to accept the cost amount or that he has tried to send it through demand draft or any other means or has given a notice to Chanda Singh Gour in this regard. It is thus clear that the cost as directed by the Court has not been paid by the respondent, resulting in non-compliance of the order made under this Act.

13. Section 100 of the Act of 1951 provides grounds for declaring the election to be void. Sub-section (1)(d)(iv) provides that if the provision of the constitution or of this Act or of any

rules or orders made under this Act is not complied with (the High Court) shall declare the election of the returned candidate to be void.

14. In the present case, I.P. No.11/2014 was decided under the provision of this Act of 1951 and the Court has passed an order directing the respondent to pay a cost of Rs.10,000/- to Chanda Singh Gour, which has admittedly not been complied with till date.

15. As regards the contention of learned counsel for the petitioner about non-disclosure of details of cost in the nomination form, the same is summarily rejected as Section 33 A of the Act only requires a candidate to furnish information regarding his conviction in any criminal case. Further Section 33 B provides that no candidate shall be liable to disclose or furnish any such information, in respect of his election, which is not required to be disclosed or furnished under this Act or the rules made thereunder.

16. In view of such facts, the issue No.1 is decided in favour of petitioner and against the respondent.

17. As regards issue No.2, Section 33(1) of the Act provides for presentation of nomination paper and requirements for a valid nomination. It prescribes that on or before last date for making nomination, each candidate shall, either in person or by his

proposer, between eleven in the forenoon and 3 O' Clock in the afternoon deliver a complete nomination paper in the prescribed form to the returning officer at the specified place. The proviso appended to it provides that no nomination paper shall be delivered to the returning officer on a day which is a public holiday. Sub-section 4 further prescribes that on presentation of a nomination paper the returning officer shall satisfy himself that the names and electoral roll number of the candidate and his proposer as entered in the nomination paper are same as those entered in the electoral rolls.

18. Sub-Section (1) and (2) of Section 36 of the Act provides for scrutiny of nomination, on the date fixed for scrutiny of nomination papers delivered within the time and in the manner laid down in Section 33 and after examination decide all objections which may be made or on his own motion, after summary enquiry, if necessary and reject any nomination of any of the grounds that :-

- (a) *that on the date fixed for the scrutiny of nominations the candidate either is not qualified or is disqualified for being chosen to fill the seat under any of the following provisions that may be applicable, namely:--
Articles 84, 102, 173 and 191, [***].*

[Part II of this Act, and sections 4 and 14 of the Government of Union Territories Act, 1963 (20 of 1963)]

*[***]; or*

- (b) *that there has been a failure to comply with any of the provisions of section 33 or section 34; or*
- (c) *that the signature of the candidate or the proposer on the nomination paper is not genuine.]*

19. Section 9-A of the Act provides that a person shall be disqualified if, and for so long as there subsists a contract entered into by him in the course of his trade or business with appropriate Government for the supply of good to or for the execution of any works, undertaken by that government.

20. Chapter 5 of the Hand Book of Election Commission of India deals with and prescribes the procedure to be followed by the Returning Officer. Clause 7.2 of Chapter 5 provides that nomination paper with all relevant and necessary documents and deposit proof etc. may be presented any time between 11 A.M. and 3.00 P.M., either before the Returning Officer or Assistant Returning Officer on or before the notified date at the place specified and not at any other time or at any other place. The Returning Officer or the Assistant Returning Officer has no right to accept the nomination paper etc. outside prescribed hours for that purpose. He may however, point out to the intended candidates that the same may be filed out of the prescribed hours

the following day provided it is one of the day notified for presenting nomination papers.

21. Clause 5.11 provides for Preliminary examination of nomination papers. Sub-clause 5(1) requires that at the time of filing of nomination papers, the Returning Officer or Assistant Returning Officer, is required by law to examine it then and there from the technical standpoint as required under Section 33(4) of the Act of 1951, but the Returning Officer is not required to hold any formal scrutiny of any nomination paper at this stage. This preliminary examination is restricted to entries relating to the name and electoral roll details relating to the candidates and the proposer(s) as given in the nomination paper(s) and those as entered in the electoral roll.

22. Sub clause (c) provides that the copy of the check list, which is handed over to candidate serves the purpose of acknowledging the receipt of the documents submitted as well as of notices for submitting the relevant documents. Therefore, no separate notice is required to be given to the candidates in respect of the items mentioned in this check list. Sub clause (f) provides that if and when a document is filed subsequent to filing of nomination, an acknowledgment to that effect be issued to the candidates, clearly mentioning the date and time at which it is filed. This should also be indicated in the appropriate place in the original check list retained by the Returning Officer.

23. Chapter 6 of the hand book provides for the procedure for scrutiny of the nomination papers by the Returning Officer. Clause 6.8 provides for crucial date for determining qualification and disqualifications. Sub-clause 2 of Clause 6.8 prescribes that Returning Officer shall notice that sub-section (2) (a) of Section 36 of the Act 1951 clarifies that the qualification or disqualification of a candidate should be related to the date fixed for scrutiny of nominations. The Returning Officer should therefore see whether the disqualification subsists and whether the candidate fulfills the qualifications, as on the date fixed for the scrutiny.

24. A conjoint reading of all the aforesaid provisions and chapters/clauses of the hand book reveals that the Returning officer shall only accept the nomination papers between 11.00 A.M. to 3.00 P.M. till the date fixed for submitting nomination papers. Further on receiving the nomination papers, he shall make a preliminary enquiry with regard to the details as mentioned in Section 33(1) and (4) of the Act and point out if affidavit is incomplete in any aspect. He is not required to hold a scrutiny at that stage, which should be held at a later date fixed for the same. After the preliminary enquiry, which is to be made then and there, he is required to fill the check list and mention the documents submitted by the candidate, if any and hand over to the candidates against a proper receipt while keeping a copy on his

record. It is pertinent to note that as per the procedure, the Returning Officer is not required to give a separate notice.

25. Vandana Rajput (C.W.-1), Returning Officer in para 1 of her deposition has admitted that the last date of submission of nomination paper was 09.11.2018 till 3.00 P.M and on 10.11.2018 and 11.11.2018, nomination papers could not have been accepted. In para 2 she has stated that Rahul Singh Lodhi filed two nomination papers, first on 08.11.2018 at 12.04 P.M. (Ex.C-1) and second on 09.11.2018. She has further stated that Ex.C-2 on page 54 of the nomination paper form, mentioned the documents to be submitted alongwith the nomination papers. According to her, Ex.C-3 is the check list of the nomination paper filed by Rahul Singh Lodhi on 08.11.2018, which mentions the documents submitted by the candidate. She has further stated that the check list is given to the candidate irrespective of the fact that he has filed all the documents or not. Clause (क) of the check list shows that the Returning Officer had given time to file the documents relating to the partnership firm till the time of scrutiny, despite the fact that in the column of the check list no where it has been mentioned that any relevant document has not been filed. Further in para 13, she has admitted that after preliminary enquiry of the nomination form (Ex. C.-1) after noticing that the returned candidate/Rahul Singh Lodhi has given the details regarding his being a member of the firm having a contract with the

government, she issued a notice (Ex. C-4) asking him to submit the documents regarding the firm, though there is no procedure for giving separate notice to the candidate as per the Act of 1951 or the hand book.

26. In para 12 of her deposition, the Returning Officer has admitted that she was aware that Rahul Singh Lodhi is a relative of Ex. Central Minister Uma Bharti, though she has denied the suggestion that she accepted the nomination form of Rahul Singh Lodhi due to her influence. She has further stated that nomination form can only be accepted or rejected at the time of scrutiny.

27. In para 2 of her cross-examination, she admitted that Rahul Sing Lodhi submitted more documents on 12.11.2018 at 10.35 A.M. (Ex. C-7). These documents contained the photocopy of the unregistered new partnership deed, amended form (under Rule 4A) (संशोधित प्रारूप) etc. She has further admitted that she has not conducted any enquiry to determine the validity or genuinity of the documents nor she has issued any notice or got the same verified before accepting and relying on the same.

28. Rahul Singh Lodhi (D.W.-1) in para 6 of his deposition has admitted that he has submitted his declaration form (Ex.D-3) alongwith his nomination papers. In para 14 of his

cross-examination, he has admitted that he has submitted second nomination paper (Ex.D-5) on 09.11.2018, wherein column 9 (ख), sub clause (ड) he has disclosed that he is a partner of partnership firm M/s R.S. Constructions, Tikamgarh having contract with MPRRDA. In para 10 of his deposition, he has stated that he has resigned on his own from M/s R.S. Constructions, Tikamgarh partnership firm and submitted an affidavit (Ex. D-10) in this regard. Further a news item was also published in this regard in the news paper dated 11.11.2018. He has further stated that the entire proceedings regarding his resignation from the firm was done between the date 09.11.2018 to 11.11.2018. In para 15, he has admitted that new partnership deed (Ex.D-8) is not registered from the Registrar office. This information was then published in the government gazette notification dated 23.11.2018 (Ex.D-12) that his resignation and inclusion of name of his father as partner in the said partnership firm will be effective from 10.11.2018.

29. The aforesaid reveals that two nominations were submitted by Rahul Singh Lodhi. Both these nominations (Ex. C-1 & C-5), disclosed the fact in column 8 and 9 (ख)(ड) that he was a partner in M/s R.S. Constructions in contract with State Government. A perusal of the second nomination (Ex.D-5) reveals that Rahul Singh Lodhi has purportedly annexed the partnership deed, contract with MPRRDA dated 26.12.2017, registration etc.

alongwith it. However, these documents mentioned in Ex.D-5 were submitted alongwith an application Ex. D-6, which though is dated 09.11.2018 but received on 10.11.2018 at 5 P.M., as evident from acknowledgment and signature of Returning Officer on it. Rahul Singh Lodhi again submitted an amended form (संशोधित प्रारूप) under Rule 4A on 12.11.2018 at 10.25 A.M., mentioning his resignation from the partnership firm M/s R.S. Constructions and submitted new partnership deed, newspaper cutting and amended copy to show that he is no longer a part of firm in contract with the government. On the basis of such documents, without enquiring or verifying the same, the Returning Officer has accepted the first nomination of Rahul Singh Lodhi as valid, on 11.11.2018, which was not the date of scrutiny and again on 12.11.2018. This amended form (संशोधित प्रारूप) under Rule 4 A and sworn by the candidate is required to be delivered to the Returning Officer alongwith the nomination paper. Under the circumstances, after the last date of submission of nomination, the same could not have been accepted by the Returning Officer. Rule 4-A is reproduced as under :-

4A. Form of affidavit to be filed at the time of delivering nomination paper :- The candidate or his proposer, as the case may be, shall, at the time of delivering to the returning officer the nomination paper under sub-section (1) of section 33 of the Act, also deliver to him an

affidavit sworn by the candidate before a Magistrate of the first class or a Notary in Form 26.

30. Record has been called from the office of Registrar, Firms and Societies, Sagar. It shows that on 12.11.2018, to register the change in constitution of the partnership firm, the partners of the firm were asked to file the gazette notification so that further action may be taken. The gazette notification filed as Ex.D-12 and proved by D.W.-1 Rahul Singh Lodhi is dated 23.11.2018, which shows that on the date of submission of partnership deed and the second nomination paper, respondent was still a member of the partnership firm. Till then the notification was not published nor change in the constitution in the firm was registered with the Registrar, Firms and Societies.

31. Admittedly, Rahul Singh Lodhi was a partner in Firm having contract with government, when he submitted his first nomination paper. Though, he showed his intent to resign from the said partnership firm, but the said change in the constitution of firm is not valid till it is published in gazette notification and registered with the Registrar of Firms and Societies. It is an admitted fact that such information was published in gazette notification on 23.11.2018, i.e., after the date of scrutiny. Hence, effectively he was a partner in the said firm on the date of scrutiny also and not qualified to contest the election in view of the provisions of Section 9-A of the Act.

32. In view of the aforesaid, it is clear that the nomination papers of Rahul Singh Lodhi were illegally and improperly accepted. The issue No.2, is therefore, decided in favour of petitioner.

33. Vandana Rajput (C.W.-1), Returning Officer in para 2 of her deposition has stated that Rahul Singh Lodhi has submitted his second nomination on 09.11.2018 (Ex.D-5). In para 8, this witness has admitted that on 11.11.2018, she has accepted as valid the first nomination of Rahul Singh Lodhi on page 69 of second nomination paper, which is marked as Ex. C-5 in accordance with Section 36 of the Act of 1951, which shows that the nomination form of returned candidate Rahul Singh Lodhi was accepted on 11.12.2018 even before the date of scrutiny. The relevant part is reproduced as under :-

भाग--5

नामनिर्देशन-पत्र को प्रतिगृहीत या रद्द करने वाले रिटर्निंग
आफिसर का विनिश्चय।

मैंने इस नामनिर्देशन-पत्र को लोक प्रतिनिधित्व अधिनियम, 1951 की धारा 36 के अनुसार परीक्षित कर लिया है और मैं निम्नलिखित रूप में विनिश्चय करता हूँ--

अ" अभ्यर्थी विधिमान्य है एवं अभ्यर्थी का प्रथम नामांकन पत्र को स्वीकृत किया गया है। "अ

ब" तारीख 11.12.18 "ब

रा" रिटर्निंग आफिसर "रा

34. This witness has further admitted that documents mentioned in second nomination form dated 09.11.2018 were submitted on 10.11.2018 alongwith an application, pursuant to her notice dated 08.11.2018. This application is marked as Ex.D-6. Contrary to her earlier statement in para 8, she now stated in para 10 that the first nomination form was accepted as valid vide order dated 12.11.2018, passed under Section 36 of the Act (marked as Ex. C-6). Ex. C-6 is the order dated 12.11.2018 and reproduced as under :-

कार्यालय रिटर्निंग ऑफिसर, विधानसभा क्षेत्र 47-खरगापुर, जिला
टीकमगढ़ (म.प्र.)

20/वि.स.निर्वा/47-खरगापुर/2018 दिनांक - 12.11.2018

लोकप्रतिनिधित्व अधिनियम 1951 की धारा 36 अंतर्गत कार्यवाही

विधानसभा निर्वाचन 2018 अंतर्गत विधानसभा क्षेत्र 47-खरगापुर में अभ्यर्थियों के द्वारा प्रस्तुत नामनिर्देशन पत्रों की संवीक्षा आज दिनांक 12.11.2018 को समय 11.00 बजे प्रारंभ की गई।

श्री राहुल लोधी, भारतीय जनता पार्टी के द्वारा नाम निर्देशन के साथ संलग्न दस्तावेजों का दिनांक 12.11.2018 समय दोपहर 12:35 पर अवलोकन किया गया। भारतीय जनता पार्टी के प्रत्याशी श्री राहुल सिंह के द्वारा दिनांक 08.11.2018 को अपना नामनिर्देशन कार्यालय में जमा किया गया, जिसमें प्रारूप 26 के भाग-क अंतर्गत बिन्दु क्रमांक 9(ख)(ड) में भागीदारी फर्मों द्वारा की गई संविदाओं के ब्यौरे, जिसमें अभ्यर्थी या उसका पति या पत्नी या आश्रित भागीदार हो, में उल्लेख किया गया था कि MPRRIDA, PIU, TKG अनु.क्र. 08/GM/MP-42WB03/17-18 दिनांक 26.12.2017 द्वारा अनुबंध किया गया है, जिसके संबंध में कार्यालयीन पत्र क्रमांक/12/वि.स.निर्वा/47-खरगापुर/2018 दिनांक 08.11.2018 द्वारा

भागीदारी फॉर्मों के संबंध में जानकारी प्रेषित करने हेतु लेख किया गया। जिला के परिपालन में संबंधित अभ्यर्थी के द्वारा दिनांक 10.11.2018 को फॉर्म से संबंधित समस्त दस्तावेज प्रस्तुत किये। दिनांक 12.11.2018 समय प्रातः 10.25 बजे समक्ष में उपस्थित होकर पार्टनरशिप से पृथक होने संबंधी शपथ पत्र एवं पार्टनरशिप से पृथक करने हेतु आवेदन, पार्टनरशिप डीड प्रमाणित प्रति, समाचार पत्र में आम सूचना का प्रकाशन, पृथक करने हेतु आवश्यक चालान तथा फॉर्म-5 प्रस्तुत किये। साथ ही संशोधित प्रारूप की प्रति भी संलग्न की गई। अभ्यर्थी ने प्रस्तुत किये गये दस्तावेजों के आधार पर यह प्रमाणित किया है कि अभ्यर्थी वर्तमान में सरकार के साथ किसी भी प्रकार की संधि में नहीं है। प्रस्तुत दस्तावेज इस तथ्य की पुष्टि करते हैं कि संधि की तिथि को अभ्यर्थी समुचित सरकार के साथ किसी संधि में नहीं है। अतः लोकप्रतिनिधित्व अधिनियम, 1951 की धारा 36 के अनुसार उक्त अभ्यर्थी को विधानसभा निर्वाचन 2018 हेतु विधिमन्य अभ्यर्थी होने का विनिश्चय करती हूँ।

(वंदना राजपूत)
रिटनिंग ऑफिसर
47- खरगापुर

35. The order dated 12.11.2018 (I.x. C-6) mentions that petitioner was asked to submit documents relating to partnership firm vide letter dated 08.11.2018, pursuant to which Rahul Singh Lodhi had already submitted documents on 10.11.2018. Under such circumstances, the Returning Officer ought not to have accepted the amended form (संशोधित प्रारूप) (under Rule 4A) and accompanying documents (I.x.P-2) filed by Rahul Singh Lodhi on 12.11.2018 at 10.25 A.M.

36. Clearly there is failure of duty and violation of statutory provisions in terms of Section 134 of the Act of 1951 by the Returning Officer, who went out of her way to accept the nomination paper to favour Rahul Singh Lodhi.

37. Resultantly, this petition is allowed. The election for Legislative Assembly of Madhya Pradesh 2018 of respondent Rahul Singh Lodhi as Member of Legislative Assembly from 47 Khargapur Assembly constituency, is set aside and declared void. As the election of respondent Rahul Singh Lodhi is being declared void, he therefore, must not be allowed any benefits of this election.

38. For non-compliance and violation of the procedure and Rules, strict action must be taken against the Returning Officer and in future she must not be assigned any duty of similar nature.

39. A copy of this order be placed before the State Election commission and the Election Commission of India.

Sd./-
(NANDITA DUBEY)
Judge.

By order,
Sd./-
(AMIT KUMAR)
Secretary,
Election Commission of India.