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मध्यप्रदेश राजपत्र

(असाधारण)

प्राधिकार से प्रकाशित

क्रमांक 65] भोपाल, गुरुवार, दिनांक 23 फरवरी 2023—फाल्गुन 4, शक 1944

विधि और विधायी (निर्वाचन) कार्य विभाग

भोपाल, दिनांक 22 फरवरी 2023

फा.क्र. EP.16, 07, 25, 26—2019 and 01—2014—चार—16.— माननीय उच्च न्यायालय द्वारा निर्वाचन याचिका संख्या 16—2019, 01—2014, 07—2019, 25—2019 एवं 26—2019 के संबंध में पारित निर्णय बाबत् भारत निर्वाचन आयोग की अधिसूचना क्र. 82—म.प्र. —(16 / 2019)—2023, क्र. 82 / म.प्र.—(01 / 2014) / 2023, क्र. 82—म.प्र.—(07 / 2019) / 2023, क्र. 82—म.प्र.—(25 / 2019) / 2023 एवं क्र. 82—म.प्र.—(26 / 2019) / 2023, दिनांक 2 फरवरी 2023 सर्वसाधारण की जानकारी हेतु प्रकाशित की जाती है.

राजेश कुमार कौल, सचिव.

भारत निर्वाचन आयोग

निर्वाचन सदन, अशोक रोड, नई दिल्ली—110 001

नई दिल्ली, तारीख 02 फरवरी 2023—12 पौष, 1944 (शक)

अधिसूचना

सं.—82—म.प्र.—(16 / 2019)—2023.—लोक प्रतिनिधित्व अधिनियम, 1951 (1951 का 43) की धारा 106 के अनुसरण में, भारत निर्वाचन आयोग वर्ष 2019 की निर्वाचन याचिका सं. 16 में मध्यप्रदेश उच्च न्यायालय के दिनांक 7 सितम्बर 2022 के निर्णय / आदेश को एतद्द्वारा प्रकाशित करता है (श्री नरेश ज्ञानचंदान विरुद्ध श्री रामेश्वर शर्मा).

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

ELECTION COMMISSION OF INDIA

Nirvachan Sadan, Ashoka Road, New Delhi—110 001

New Delhi, Dated 02nd February, 2023-12 Pausa, 1944 (Saka)

NOTIFICATION

No. 82-MP-(16/2019)-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 07th September 2022 of the High Court of Madhya Pradesh in the Election Petition No. 16 of 2019 (Sh. Naresh Gyanchandani *Vs.* Sh. Rameshwar Sharma).

IN THE HIGH COURT OF MADHYA PRADESH
AT JABALPUR
BEFORE
HON'BLE SHRI JUSTICE VISHAL DHAGAT
ON THE 7th OF SEPTEMBER, 2022

ELECTION PETITION No. 16 of 2019

BETWEEN:-

NARESH GYANCHANDANI S/O LATE SHRI THADHARAM GYANCHANDANI, AGED ABOUT 54 YEARS, R/O 390, NEW A-37, BAIRAGARH, BHOPAL (MADHYA PRADESH)

.....PETITIONER

(BY SHRI ANKIT SAXENA - ADVOCATE)

AND

SHRI RAMESHWAR SHARMA S/O SHRI PARMANAND SHARMA, AGED ADULT, R/O 65, PATRAKAR COLONY, BHOPAL (MADHYA PRADESH)

.....RESPONDENT

(BY SHRI AMIT DAVE- ADVOCATE)

This election petition coming on for hearing this day, the court passed the following:

ORDER

Heard on I.A. No.7058/2019 and I.A. No.8031/2019 and two preliminary issued framed by this Court vide order dated 14.02.2022.

2. Heard.

3. Counsel appearing for petitioner and respondent were heard on pending preliminary issues and on pending I.As. This Court has framed

two preliminary issues vide order 14.02.2022 as under:-

1.Whether there is non-compliance of Section 83 of the Representation of People Act, 1951, and petition may be dismissed?

2. Whether there is defect in affidavit due to non-compliance of Section 83(1) of the Representation of People Act, 1951 and Rule 94-A of the Conduct of Election Rules, 1961?

4. Respondent had filed an application i.e. I.A. No.7058/2019 for dismissal of election petition and petitioner had filed I.A. No.8031/2019 under Order 6 Rule 17 for proposed amendment.

5. Brief facts of the case is that election notification was issued on 02.11.2018 and polling was conducted on 28.11.2018. Counting of votes and result was declared on 11.12.2018. Petitioner namely Naresh Gyanchandani who is candidate of Indian National Congress secured 91563 votes and respondent namely Rameshwar Sharma, who is candidate of B.J.P., secured 107288 votes. After declaration of result, petitioner filed election petition on 25.01.2019 making a prayer for declaration of election result to be null and void. It was pleaded that there was breach of "Moral Code of Conduct" by creating religious and sectional conflict between Sindhi and Hindu community by giving speeches. Audio recorded in voice of respondent was made viral. By adopting such practices, respondent gain more votes than petitioner. Along with election petition audio CD, transcript and complaint made at Police Station Bairagarh was filed. Respondent had filed I.A.

No.7058/2019 for dismissal of election petition. It is averred in I.A. for dismissal of election petition that full particulars of corrupt practices along with specific date and place is not pleaded. Due to want of same, no cause of action accrues to petitioner. Affidavit under Section 94-A in Form-25 has also not been filed. Petitioner has mentioned in his petition that there is violation of Moral Code of Conduct, but petition has been filed for corrupt practices made by respondent. Since full particulars has not been given and affidavit has not been filed, therefore, petition be dismissed.

6. After filing of application for dismissal of election petition, petitioner has filed an application i.e. I.A. 8031/2019 for proposed amendment by which date and place and cause of action has been mentioned in the application. Petitioner has also filed I.A. by which an affidavit as per Section 94-A is filed by him.

7. Counsel appearing for petitioner has relied on para 65 of judgment of Apex Court passed in ***Civil Appeal Nos.2250-2251 Of 2013, G.M. Siddeshwar Vs. Prasanna Kumar.*** Para 65 of said judgment which is quoted as under:-

> *"65. Applying these principles to the facts of the present case, it seems quite clear that the affidavit filed by Prasanna Kumar in compliance with the requirements of the proviso to Section 83(1) of the Act was not an integral part of the election petition, and no such case was set up. It also seems quite clear that the affidavit was in substantial compliance with the requirements of the law. Therefore, the High Court was quite right*

in coming to the conclusion that the affidavit not being in the prescribed format of Form No.25 and with a defective verification were curable defects and that an opportunity ought to be granted to Prasanna Kumar to cure the defects."

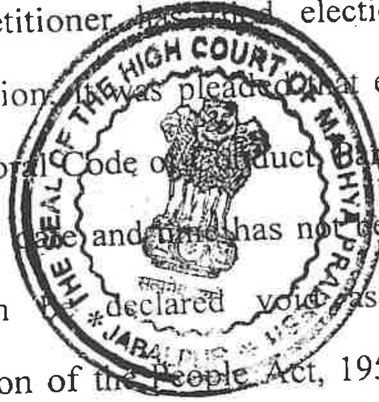
In view of same, it is submitted by him that requirement of proviso 83(1) of the Representation of the People Act, 1951 is not integral part of the election petition and same can be supplied and affidavit filed was in substantial compliance of requirement of law. It is also argued that better particulars giving date and place is mentioned in application under Order 6 Rule 17 of CPC. Application is filed not to fill lacuna but to give details of facts already pleaded. Petitioner is not making out a new case by filing application under Order 6 Rule 17 of CPC, therefore, prayer is made to allow his applications for proposed amendment and taking affidavit on record.

8. Counsel appearing for respondent on the contrary relied on judgments reported in ***(2009) 9 SCC 310; Anil Vasudev Salgaonkar Vs. Naresh Kushali Shigaonkar, (2000) 8 SCC 191; Ravinder Singh Vs. Janmeja Singh and others, (1999) 9 SCC 386; Jeet Mohinder Singh Vs. Harminder Singh Jassi, 2009 (4) M.P.L.J. 292; Shushil Kumar Vs. Sartaj Singh and (2005) 5 SCC 46; Harmohinder Singh Pradhan Vs. Ranjeet Singh Talwandi and others***. Relying on said judgments, counsel appearing for respondent submitted that petitioner ought to have given full particulars of corrupt practices and how election was vitiated. Petitioner cannot be permitted to file affidavit after filing of election

petition. Election petition ought to have been accompanied by affidavit and same is mandatory. Court should not rightly interfere with election of returned candidate and it should have regard to serious consequences of such interference. Since material particulars had not been given, therefore, election petition is liable to be dismissed. On strength of said judgments, it is further submitted that amendment application filed beyond period of 45 days after expiry of limitation cannot be permitted to be allowed. In these circumstances, application filed for dismissal of election petition be allowed and application for proposed amendment be dismissed and preliminary issue framed by this Court may be answered in his favour. Defect in election petition is not curable, therefore, election petition be dismissed.

9. Heard the counsel appearing for petitioner as well as respondent.

10. Petitioner has filed election petition on 25.01.2019. In election petition it was pleaded that election be declared void due to breach of Moral Code of Conduct. Particular of corrupt practices along with specific date and time has not been mentioned. Pleading is made that election be declared void as per Section 100 (1) (a) of Representation of the People Act, 1951. Section 100 (1) (a) of Act of 1951 relates to disqualification of a candidate, if the returned candidate is disqualified then election be declared void. No ground in election petition has been raised regarding disqualification. Petitioner in election petition has made a pleading under Section 100(1) (d) (ii) of



Representation of the People Act, 1951. Petitioner has not made any pleading regarding 'corrupt practices' and has submitted that respondent election be declared void for breach of 'Moral Code of Conduct'. Ground raised in election petition is not a ground in Section 100 of Representation of the People Act, 1951 for declaring election void. Court has framed preliminary issue whether there is non-compliance of Section 83 of Representation of the People Act, 1951.

11. Section 83 of Representation of the People Act, 1951 is quoted as under:-

> "[**83. Contents of petition.**-(1) An election petition-
>
> (a) shall contain a concise statement of the material facts on which the petitioner relies;
>
> (b) shall set forth full particulars of any corrupt practice that the petitioner alleges, including as full a statement as possible of the names of the parties alleged to have committed such corrupt practice and the date and place of the commission of each such practice; and
>
> (c) shall be signed by the petitioner and verified in the manner laid down in the Code of Civil Procedure, 1908 (5 of 1908) for the verification of pleadings:
>
> [Provided that where the petitioner alleges any corrupt practice, the petition shall also be accompanied by an affidavit in the prescribed form in support of the allegation of such corrupt practice and the particulars thereof.]
>
> (2) Any schedule or annexure to the petition shall also be signed by the petitioner and verified in the

same manner as the petition.]"

12. On going through pleadings made in election petition, it is found that petition is not filed on grounds of corrupt practices by respondent, but for violation of Moral Code of Conduct. Since petitioner has not made any pleading regarding corrupt practices, therefore, it cannot be said that there is violation of Section 83 of Representation of the People Act, 1951. Concise statement of material facts has been given and petition has been verified as per Section 83 (1) (c).

13. Second preliminary issue was in respect of defect in affidavit due to non-compliance of Section 83 (1) of Representation of People Act, 1951 and Rule 94-A.

14. Rule 94-A provides that affidavit accompanying election petition shall be in Form 25 in case of averment of corrupt practices. Affidavit in Form No.25 of Rule 94-A is regarding corrupt practices. There is no pleading regarding corrupt practices in election petition, therefore, it cannot be said that election petition be dismissed for violation of Conduct of Election Rules, 1961.

15. Respondent had filed I.A. No.7058/2019 for dismissal of election petition and petitioner had filed an application for amendment i.e. I.A. No.8031/2019 are taken into consideration. Petitioner has made vague and general pleadings in election petition. He has not given date on which cause of action arises for filing of election petition. Period of limitation allowed for filing of election petition is 45 days. Election

result was declared on 11.12.2018 and election petition ought to have been filed on 25.01.2019. Election petition was filed on 25.01.2019, but no cause of action has been described in election petition. To remove said defect, application for amendment was filed on 02.07.2019. Said application is filed beyond the limitation prescribed in law.

16. Since proposed amendment sought to be introduced in election petition is barred under Limitation Act, therefore, application for amendment cannot be allowed. Application for amendment i.e. **I.A. No.8031/2019** is **dismissed.**

17. Apex Court in case of ***Anil Vasudev Salgaonkar (supra)*** has held that material fact is to be completed before expiry of period of limitation for filing election petition. Since date when cause of action arises has not been mentioned in election petition, therefore, in absence of date of accruing of cause action to petitioner, election petition cannot be permitted to continue.

18. Election petition can be filed on grounds mentioned in Section 100 of Representation of the People Act, 1951. Section 100 of the Act of 1951 does not mention violation of Moral Code of Conduct as one of the ground for declaring election as void.

19. Pleadings in election petition is to be construed strictly. Election petition is not a common law but statutory right and court in absence of precision and fatal defects in petition will dismiss the same. Petitioner failed to show accrued date of cause of action and petition on grounds not mention in Section 100 of the Representation of People

Act, 1951.

20. Resultantly, **I.A. No.7058/2019** is **allowed**. Election petition filed by petitioner is **dismissed** for want of ground under Section 100 of Representation of the People Act, 1951 and in absence of pleadings giving cause of action to petitioner for filing of election petition.

Sd./-
(VISHAL DHAGAT)
JUDGE.

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

भारत निर्वाचन आयोग

निर्वाचन सदन, अशोक रोड, नई दिल्ली—110 001

नई दिल्ली, तारीख 02 फरवरी 2023—12 पौष, 1944 (शक)

अधिसूचना

सं.—82—म.प्र.—(01/2014)—2023.—लोक प्रतिनिधित्व अधिनियम, 1951 (1951 का 43) की धारा 106 के अनुसरण में, भारत निर्वाचन आयोग वर्ष 2014 की निर्वाचन याचिका सं. 01 में मध्यप्रदेश उच्च न्यायालय के दिनांक 23 अगस्त 2022 के निर्णय/आदेश को एतद्द्वारा प्रकाशित करता है (श्री शरदेन्तु तिवारी विरुद्ध श्री अजय अर्जुन सिंह एवं अन्य).

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

ELECTION COMMISSION OF INDIA

Nirvachan Sadan, Ashoka Road, New Delhi—110 001

New Delhi, Dated 02nd February, 2023—12 Pausa, 1944 (Saka)

NOTIFICATION

No. 82-MP-(01/2014)-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 23rd August 2022 of the High Court of Madhya Pradesh in the Election Petition No. 01 of 2014 (Sh.Sharadendu Tiwari *Vs.* Sh. Ajay Arjun Singh & Others).

IN THE HIGH COURT OF MADHYA PRADESH

AT JABALPUR

BEFORE

HON'BLE SHRI JUSTICE SANJAY DWIVEDI

ON

ELECTION PETITION NO.01 of 2014

Between:-

Shardendu Tiwari, S/o Shri Padmapani Tiwari, Aged about 40 years, R/o Villae Beldah, Post Hanumangarh, Police Station Churhat, District Sidhi (MP).

......**PETITIONER**

(By Shri Vikash Upadhyay, Advocate and Shri Prakash Upadhyay, Advocate)

And

1. Ajay Arjun Singh S/o Late Arjun Singh, Aged about 58 years, R/o H.No.225, Village Sada Post Office, Tehsil Churhat, District Sidhi (MP)
2. Ramnaresh Saket S/o Shri Rajbhan Saket, Aged About not Known, R/o Gram Khariya Post Badagaun, Tehsil Gudh, District Rewa (MP)
3. Chandrabhan Jaiswal, S/o Budhimaan, Aged about 36 years, R/o Gram Post Teeka Kala, Tehsil/P.O.-Churhat, District Sidhi (MP)
4. Dadan Singh S/o Surya Prasad Singh Aged about 55 years, R/o Gram Moura Post Office Moura Tehsil Rampur Naikin, Police Station Rampur Naikin, District Sidhi (MP)

5. Daddulal S/o Vanshgopal Aged about 43 years, R/o Gram Dhakri Post Office Kamarji, District Sidhi (MP)
6. Ramakant Pandey S/o Mudrika Prasad Pandey, Aged about 67 years R/o Gram Mamdar, Post Office Mamdar, Police Station/Tehsil Rampur Naikin, District Sidhi (MP)
7. Sampati Kumar Choudhary S/o Vishram Aged about 43 years R/o Shivpurva Tehsil Gudh, District Sidhi (MP)
8. Hameed Raja Ansaari S/o Sheikh Mohd. Raja Ansaari Aged About 48 years R/o Near Hanuman Mandir Amhiya Rewa Tehsil Hujur Police Station Civil Line, District Rewa (MP)
9. Rampratap Yadav S/o Sobhai Yadav Aged about 42 years R/o Choufaal Kothar District Sidhi (MP)
10. Raghunandan Singh S/o Ramkaran Singh Aged about 34 years Post Office Dihlee Police Station Kamarji Tehsil Churhat District Sidhi (MP)
11. Mahendra Bhaiya Dixit S/o Lalmani Dixit Aged about 41 years R/o Gram Post Tala Tehsil Majouli Police Station Majhouli District Sidhi (MP)
12. Anand Pandey S/o Bhaiyalal Pandey Aged about 44 years R/o Busi Post Office Badokhar Police Station Churhat District Sidhi (MP)
13. Ramsiya Kol S/o Jalim Kol Aged Not Known R/o Gram Churhat Ward-4 Tehsil/Police Station Churhat District Sidhi (MP)
14. Anurag Singh S/o Chandrabhan Singh, Aged about 26 years R/o Bichiya Dhoba Tola Ward No.39 H.No.104/New H.No.117 Tehsil Hujur

District Rewa (MP)

......**Respondents**

(By Shri P.D. Gupta, Advocate and Shri Rashid Suhail Siddiqui, Advocate)

Reserved on : 12.05.2022

Delivered on : 23.08.2022

This petition coming on for final hearing this day, the court passed the following:

(J U D G M E N T)

(23.08.2022)

Invoking Section 80 read with Section 100 of the Representation of People Act, 1951 (in short the 'Act'), this petition has been filed by the petitioner questioning the election of respondent No.1 namely Ajay Arjun Singh - a returned candidate for Constituency No.76 Churhat, District Sidhi in general election of Madhya Pradesh Legislative Assembly held in 2013.

2. In the election of State Legislative Assembly held in 2013, respondent No.1 - an official candidate of Indian National Congress (INC) secured 71796 votes and declared 'elected' by a margin of 19356 votes. It is noted that the petitioner being an official candidate of Bhartiya Janta Party (BJP) secured 52440 votes and was closest rival-candidate of respondent No.1.

3. The petitioner's whole pyramid of calling in question the election is based on the following three pillars:-

(i) Respondent No.1 incurred expenditure in contravention of Section 77(3) of the Act and as such, adopted a corrupt practice as per Section 123(6) of the Act.

(ii) Respondent No.1 appealed for votes focusing particular religion, which also comes within the definition of corrupt practice as per Section 123(3) of the Act.

(iii) Respondent No.1 distributed demand drafts during the course of election and as such, adopted the corrupt practice of bribery as per Section 123(1)(A)(b) of the Act.

4. In the election petition, the petitioner has articulated the facts including as to in what manner, respondent No.1 adopted corrupt practice by undervaluing the campaign material; concealing campaign material; its non-disclosure in the accounts and non-accounting the expenses made in public meeting of Shri Rahul Gandhi. As per the petitioner, it exceeded expenditure limit of Rs.16 lakh as fixed by the Election Commission. Averred further that admitted/declared expenses of election of respondent No.1 were Rs.13,67,560/- and it ran short of Rs.2,32,441/- and as per the allegations made by the petitioner, the amount spent in the election by respondent No.1

was more than the maximum limit of Rs.16 lakh and as such, his election is liable to be set aside by declaring it 'void' on the ground of corrupt practice. However, according to petitioner, with the passage of time, the relief for declaring the election of respondent No.1 'void' has rendered infructuous, but the petition does survive pertaining to allegation of corrupt practice (being the electoral offence) pronouncing disqualification for a period upto six years.

5. In combat, respondent No.1 in his written-statement has refuted all adverse allegations made in the election petition by furnishing details supported by relevant documents and also submitted that the allegations made by the petitioner against respondent No.1 of corrupt practice are ill-founded as unsupportive of material evidence. Ergo, as per respondent No.1, the election petition being bereft substance, deserves dismissal.

6. At trial, this Court framed as many as 26 issues. Both the parties produced their witnesses, in that, the petitioner produced eight witnesses whereas respondent No.1 chose to examine six witnesses. Apt it is to reproduce the issues framed earlier, as under:-

> 1.(a) Whether the Poster (Large) mentioned under Paragraph 14(A) of the petition did not cost less than Rs.5/- per poster?
>
> (b) If yes, its expense of Rs.7500/- should have been included in the election expenses of respondent no.1?

2. Whether the Plastic Badge mentioned in Paragraph 14(C) of petition has been used by the respondent No.1 after filing his nomination and even till the date of election in the year 2013?

3. (a) Whether the minimum rate of the Orange Cap mentioned in Paragraph 14(D) of petition was Rs.30/- per Cap?

(b) If yes, whether Rs.4,50,000/- - 75,000/- =Rs.3,75,000/- more should have been added to the election expense of respondent no.1?

4. (a) Whether the dark Orange Cap/Red Cap (2000 pieces) mentioned in Paragraph 14(D) of petition was used by the respondent no.1 after filing his nomination and even till the date of election in the year 2013?

(b) If yes, whether its estimated cost of Rs.60,000/- should have been added to the election expenses of the respondent no.1?

5.(a) Whether the minimum rate of the Pocket Calender mentioned in paragraph 14(E) of petition was Rs.2/- per piece?

(b) If yes, whether its estimated cost of Rs.50,000/- - 12,500/-=Rs.37,500/- should have been added to the election expense of respondent no.1?

6. (a) Whether the minimum rate of questioned Sticker mentioned in paragraph 14(F) of petition was Rs.2/- per piece?

(b) If yes, whether its estimated cost of Rs.20,000 – 5000 = Rs.15,000/- more should have been added to the election expenses of respondent no.1?

7. (a) Whether the minimum rate of questioned Face Mask (Mukhauta) mentioned in paragraph 14(G) of petition was Rs.5/- per piece?

(b) If yes, whether its estimated cost of Rs.50,000 – 5000=Rs.45,000/- more should have been added to the election expense of respondent no.1?

8. (a) Whether the above mentioned Face Mask (Mukhauta) was used by the respondent no.1 after filing his nomination and even till date of election in the year 2013?

(b) If yes, whether its estimated additional cost of Rs.60,000 should have been added to the election expense of respondent no.1?

9. (a) Whether the minimum cost of Poster mentioned in Paragraph 14(H)(i) of petition was Rs.3 per piece was incurred by the respondent no.1?

(b) If yes, whether its additional estimated cost of Rs.75,000 should have been added to the election expense of respondent no.1?

10. (a) Whether the Poster mentioned in Paragraph 14(H)(ii) of petition was used by the respondent no.1 in the questioned election held in November, 2013?

(b) If yes, whether its additional estimated cost of expense of Rs.50,000/- should have been added to the election expense of respondent no.1?

11.(a) Whether the Poster mentioned in Paragraph 14(H)(iii) of petition was used by the respondent no.1 in the election expense of respondent no.1?

(b) If yes, whether its additional expense should have been added to the election expense of respondent no.1?

12. (a) Whether the minimum rate of questioned Calender mentioned in Paragraph 14(I) of petitioner was Rs.30/- per calendar?

(b) If yes, whether its additional expense of Rs.20,000 x 30=Rs.6,00,000/- -1,00,000 = Rs.5,00,000/- more should have been added to the election expense of respondent no.1?

13. (a) Whether the Party Symbol mentioned in Paragraph 14(J) of petition was used by the

respondent no.1 in the election held in November, 2013?

(b) If yes, whether estimated cost of Rs.5700/- should have been added to the election expense of respondent no.1?

14. Whether expense of Rs.37,128, Stationary expenses related to voter list of Rs.29,780/-, fuel expenses of three vehicles of Rs.2,682.45 on the polling day and expenses of Rs.3750/- towards stationary and travel on the counting day (total estimated expense Rs.73,340/) was incurred by respondent no.1?

15. (a) Whether the respondent no.1 had held a victory rally?

(b) If yes, whether its estimated expense of Rs.45,700/- should have been additionally added to the election expense of respondent no.1?

16. Whether the expenses Rs.13,88,073/- incurred in meeting dated 20.11.2013 of Mr. Rahul Gandhi should have been added to the election expense of respondent no.1?

17.(a) Whether the respondent no.2 Ramnaresh Saket and respondent no.13 Ramsiya Kol were dummy candidates of respondent no.1?

(b) If yes, whether the expenses shown by them which is Rs.2,18,560/- would be added to the election expense of respondent no.1?

18. Whether respondent no.1 made an additional estimated expenditure of Rs.1,56,150/- in public meeting at Kapuri Kothar?

19.(a) Whether the respondent no.1had put-up 2 hoardings mentioned in paragraph 14(P) of election petition?

(b) If yes, whether the estimated amount of Rs.18,000/- should have been added in the election expenses of respondent no.1?

20.(a) Whether respondent no.1 on 05.11.2013 and 23.03.2013 had made a vote appeal in the premises of Jhadwa Devi Mandir, Churhat in the name of Goddess Durga?

(b) If yes, whether it would amount to a corrupt practice in terms of S.123(3) of the Act?

21. (a) Whether respondent no.1 through his Vidhyak Pratinidhi, Bharat Singh had distributed Demand drafts to voters as bribe between the date of filing nomination and the date of counting?

(b) If yes, whether it would amount to a corrupt practice in terms of S.123(1)(A)(b) of the Act?

22. (a) Whether the respondent no.1 had exceeded the limit of Rs.16,00,000/- in his election expenses?

(b) If yes, whether the respondent no.1 is guilty of corrupt practice as per Rule 90 of conduct of Election Rules read with S.77(3) and 123(6) of the Representation of People Act?

23.(a) Whether the result of the election so far as it relaters to the respondent no.1, is materially affected by the corrupt practices, if any, adopted by him?

(b) If yes, whether his election is liable to be declared as null and void under S.100(1)(ii) of the Act?

24. (a) Whether but for the votes obtained by the respondent no.1 by corrupt practices, if any, the petitioner would have obtained a majority of valid votes?

(b) Whether the petitioner is entitled to be declared elected from 76, Churhat Vidhan Sabha?

25. Whether the respondent no.1 has not filed correct and true account of expenses before the District Election Officer? If yes, effect?

26. Relief and Costs?

7. Juxtaposing the issues framed with the pleadings and evidence adduced by the parties, to evade repetitiveness, I find it profitable to club and decide certain issues in the following manner:-

Accordingly, issue Nos.1, 9, 10 and 11 related to Posters are being clubbed and decided conjointly.

Issue No.1 relates to Ex.P/3. As per the admission of respondent No.1, the quantity of posters used in the election campaign was 2500 and cost of poster was Rs.2/- each and total expense shown in that regard was Rs.5,000/-. Whereas, it is alleged by the petitioner that the cost of Ex.P/3 was not Rs.2/- each, but it was Rs.5/- each and as such, respondent No.1 has undervalued the expenditure. According to the petitioner, total cost of these posters was Rs.12,500/- and the difference amount according to the petitioner was Rs.7,500/-.

So far as issue No.9 is concerned, it relates to Ex.P/15 and as per the admission of respondent No.1, the quantity of those posters was 25000 costing one rupee each, the total cost shown was as Rs.25,000/- whereas as per the petitioner, it was also undervalued because cost of per poster was Rs.3/- and accordingly the expenditure made over these posters was Rs.75,000/- and the difference amount came to Rs.50,000/- which according to the petitioner has to be added in the expenditure made in the election of 2013 by respondent No.1.

Likewise, Issue No.10 relates to Ex.P/16 and according to the petitioner, the quantity of posters used in the election held in

2013 was 10000 and cost of per poster was of Rs.5/- and as such, the total cost comes to Rs.50,000/-, but it was put behind the curtain, therefore, Rs.50,000/- has to be added in the head of expenditure of respondent No.1 in the election held in 2013.

Similitude is with Ex.P/17 which relates to issue No.11 and as per the petitioner, the quantity of posters used in the election was 10000 and per poster costed Rs.3/-. The cost and expenditure made in the election over these posters was of Rs.30,000/-, but it was concealed by respondent No.1 and as such, Rs.30,000/- has to be added in the head of expenditure made by respondent No.1 in the election of 2013.

All these four issues are related to campaign material where the petitioner is claiming that the rates more than the minimum rate prescribed in rate-list i.e. Ex.D/1 should be charged and added in the expense register of respondent No.1.

The pleadings relatable to Ex.P/3 are made in paragraph-14-A of the election petition whereas the reply to it is available in paragraph-24 of the written-statement. As per the pleadings made by the petitioner, he has given the size of posters and compared it with the rate of handbill of Ex.P/4. The price of Ex.P/4 was shown as 50 paise each and according to the petitioner, Ex.P/3 was nine-times bigger than the size of the handbill, therefore, the rate of Ex.P/3, according to the petitioner, was Rs.4.50 each and 50 paise was further added for clear printing and as such, the calculated cost of Ex.P/3 is Rs.5/- each. As per the petitioner, he has calculated the cost of Ex.P/3

moderately as did not add anything additional towards thickness of paper, its quality or even the photographic printing which according to him can be compared with naked eyes, which itself would speak of its superiority than Ex.P/4.

In that context, respondent No.1 in his written-statement has only stated that he had shown the minimum rate as fixed by the District Returning Officer (DRO) in Ex.D/1.

According to the petitioner, respondent No.1 failed to justify the price of Ex.P/3 as Rs.2/- each by not producing any material evidence.

The evidence in this regard has been produced by the petitioner by examining himself as PW/1 and in paragraph-6 of his statement, he has supported the pleading, but according to him nothing was asked in his cross-examination. The petitioner has also examined PW/6 who, according to him, was a Printman and has stated in paragraph-2 of his statement that cost of Ex.P/3 would be around Rs.5.50 to Rs.6/- each in 2013 and for Ex.P/15, he has estimated the cost at around Rs.3.75 each and for Ex.P/16 around Rs.4/- each and Ex.P/17 at around Rs.5.50 to Rs.6/- each. In paragraph-3 of his cross-examination, he said that he oversees the accounts and does the work in preparation of quotation and negotiation of rates. According to the petitioner, PW/6 was erudite having good estimating capability of then current rates. The petitioner has also submitted that in the cross-examination of PW/6, no question was put-forward to him about the cost of Ex.P/15, Ex.P/16 and Ex.P/17 whereas it

was solely about Ex.P/3, therefore, according to the petitioner, the testimony of PW/6 with regard to Ex.P/15 to Ex.P/17 remained unchallenged.

Respondent No.1 examined himself as DW/1 and he has admitted the usage of Ex.P/3 but he has also stated that he was unsure as to whether Ex.P/3 was used in 2008 or 2013 election. According to him, Gulab Singh (DW/2) could disclose this fact. However, DW/2 in paragraph-5 of his statement has admitted the usage of Ex.P/3 but disputed the assessment of cost of Ex.P/3 made by the petitioner as improper. He has also clarified about Ex.P/15, Ex.P/16 and Ex.P/17.

DW/3 was also examined who is an Manager of Box Corrugators Company, the print-man from where certain campaign material got printed by respondent No.1. DW/3 has admitted about printing of Ex.P/3, Ex.P/11, Ex.P/18 and Ex.P/15. He has also admitted that all these posters were for 2013 election. As regards Ex.P/16, he submitted that it was not for 2013 elections, probably it was of preceding election.

DW/6 was also examined who is a seller of campaign material and running his shop at Bhopal in the name and style 'Kartikey Enterprises' and he has admitted that the cost of campaign material must have increased from 2008 to 2013.

Likewise, the pleadings in respect of Issue No.9 which relates to Ex.P/15 are in paragraph-14(H)(i) of election petition whereas its reply is in paragraph-32(i) of the written-statement.

The petitioner in respect of this issue has adduced himself as PW/1 and also PW/6, the print-man. Respondent No.1 examined himself as DW/1 and also examined DW/2, DW/3 and DW/6.

As per the petitioner, PW/6 being a print-man has assessed the cost of Ex.P/15 at around Rs.3.75/- and Ex.P/16 at around Rs.4/- and Ex.P/17 at around Rs.5.50 to Rs.6.00 each. According to the petitioner, PW/6 was having extreme knowledge of printing cost and as such, he was not cross-examined in a proper manner and no specific question was asked which could shaken his testimony and as such, the same remained unchallenged.

DW/3 in his statement has clarified that Ex.P/16 and Ex.P/17 were used in 2008 election, but not in 2013 election. DW/3 has also admitted that Ex.P/3 and Ex.P/15 were printed by him. Ex.P/16 was ordered probably in 2008, but not in 2013. As per the petitioner, DW/3 has not answered the specific question of costing of the posters and similarly about Ex.P/16 and Ex.P/17 that the respondent No.1 had taken a stand that these posters were used in 2008 election, but not in 2013 election. As per the stand taken by the petitioner with regard to these issues, it is not required for the petitioner to bring the elaborate evidence regarding actual expenses. The obligation is on a returned candidate to prove actual expenses as it was in his consciousness. The petitioner is only supposed to bring home the requirement of certain direct material facts or circumstances

from which such inference could be drawn. Thereafter, the wisdom of the Court can scale the probative value of the fact and circumstances of the case. According to the petitioner, once the actual expenditure is established and doubt is created relating to disclosure, the burden is on the returned candidate to lead evidence justifying the disclosure of his expenses. As per the petitioner, actual proof of expenses is not required and once it is found that the given expenses by a returned candidate is found to be incorrect, the Court can assess the expenditure on the basis of evidence on record to determine the actual expenses.

Sitting on the other side of barricade, respondent No.1 has submitted that the evidence produced by the petitioner is insufficient to determine that the expenditures shown by respondent No.1 under these heads were incorrect. The assessment of petitioner is highly presumptive in absence of documentary proof, whereas respondent No.1 has shown the expenditures which were duly supervised by the Election Supervisor and, therefore, there arises no question of doubt merely because it did not appeal to the petitioner. It is further contended by respondent No.1 that with regard to Ex.P/16 and Ex.P/17, the witnesses produced by him have categorically said that these posters were used in 2008 elections, but not in 2013 elections. In the shadow expense register of 2013, there is no reference of these two posters Ex.P/16 and Ex.P/17 for the reason that these have been used in 2008 election. Dinesh

(DW/3) of Box Corrugators Company has also specifically stated that these items were not related to 2013 elections. The petitioner only on the basis of oral statement is asking that the expenditure since not shown in the shadow expense register of 2013 by respondent No.1, therefore, these expenses have been concealed. Sheer uttered statement cannot be made basis for adding these campaign material in the expenses of 2013 election.

After hearing the submissions made by the learned counsel for the parties and perusal of pleadings and evidence produced in support thereof it is clear that the aforesaid issues are relating to the cost of posters and according to the petitioner it has been assessed by the respondents on a lower side whereas the actual cost of those posters is much higher than the cost shown by the respondents in the shadow register and expenses register. According to the petitioner, if actual value of campaign material used by the respondents is assessed, the same would cross the maximum limit of expenses prescribed by the Election Commission. The petitioner, therefore, has tried to substantiate that the value of campaign material assessed by the respondent No. 1 is improper and on the contrary he has tried to establish that his assessment is perfect and further the manner in which the petitioner is trying to dislodge his stand and value of campaign material is not sufficient to hold that respondent No.1 has undervalued his campaign material and as such his actual expenses in election were not as such which are shown by him.

Considering the material available on record in respect of these issues this Court opines as under:-

The petitioner has placed reliance upon a judgment of Supreme Court reported in ***(2016) 15 SCC 219-Ajay Arjun Singh vs Sharadendu Tiwari And Ors***. For the purpose, the Supreme Court has observed that "the values fixed by the Election Commission or its functionaries are not conclusive" and, therefore, the High Court being an Election Tribunal is authorized to adjudicate about the issues relating to allegations contained under Section 123(6) of the Act and is competent to scrutinize expenses and the rate of campaign material used. According to the petitioner, in case of ***Shri Kanwar Lal Gupta vs. Amar Nath Chawla and others*** reported in ***(1975) 3 SCC 646***, the Supreme Court has observed as to how the rate could be calculated and inference can be drawn comparing with the material available on record. Learned counsel for the petitioner has emphasized much upon the observation made by the Supreme Court in the case of ***Kanwar Lal Gupta (supra)***. However, respondent No.1 has denied this aspect and objected that the law laid down in the case of ***Kanwar Lal Gupta (supra)*** has already been declared as 'no longer a good law' by the subsequent judgment of the Supreme Court and as such has been overruled and, therefore, any observations of the Supreme Court made in the said judgment cannot have the binding effect and for determining any issue, the Court should not rely upon the said observation.

Shri Gupta appearing for respondent No.1 has gone to the extent that it is not a good practice by a lawyer to rely upon the

observation made in a case which has already been overruled by the subsequent judgment of the Apex Court.

Shri Upadhyay although submitted that the law laid down by the Supreme Court in the case of ***Kanwar Lal Gupta (supra)*** still holds the field. He submitted that the said law has not been overruled till date. According to him, if the subsequent judgment of the Supreme Court rendered in the case of ***Smt. Indira Nehru Gandhi vs. Shri Raj Narain and another*** reported in ***1975 (Supplementary) SCC 1*** in which the case of ***Kanwar Lal Gupta (supra)*** has been considered is examined, it would be clear that the Supreme Court in paragraph 113 has observed that "Kanwar Lal Gupta's case is no longer a good law because of the legislative changes".

As per Shri Gupta, whatever mechanism prescribed by the Supreme Court in the case of ***Kanwar Lal Gupta (supra)*** to determine the value of campaign material cannot be used in the present case and those observations cannot be treated to be a guiding principle for the Election Commission of India to control the election expenses.

This Court is of the opinion that entering into the issue whether ***Kanwar Lal Gupta's*** case still holds the field or not or the observations made by the Supreme Court in the said case for determining the value of campaign material used by the respondents is not required to be decided here. However, on the basis of other judgments relied upon by the parties and general principles of law this Court can decide the issues framed by the

Election Tribunal and, therefore, I am not inclined to decide the sanctity of judgment of Shri Kanwar Lal Gupta (supra).

Learned counsel for the petitioner has also placed reliance upon the judgment of the Supreme Court reported in ***(1996) 3 SCC 624-R. Puthunainar Alhithan and others vs. P.H. Pandian and others*** in which the Supreme Court has observed that "for determining the issue of corrupt practice the burden lies upon the election petitioner, but after adducing evidence in support of allegations, the onus would shift on the returned candidate to rebut the evidence".

Shri Upadhyay appearing for the petitioner submits that the Supreme Court has observed that the trial of the election petition is not a criminal trial in strict sense like an accused, the election petitioner cannot keep mum, he has to give rebuttal otherwise adverse inference would be drawn against him from the proved facts. In the judgment relied upon by him it is also observed by the Supreme Court that the petitioner is not required to bring meticulous evidence regarding actual expenses. The obligation is on the returned candidate to prove actual expenses as it were in his exclusive knowledge. What is required from the election petitioner is that he should bring on record "some direct material facts or circumstances from which such an inference could be drawn". The Court can gauge the probative value from the facts and circumstances in a given case.

The petitioner although also adduced the evidence of himself and also of some other witnesses with regard to campaign material used in the election and its value, which, according to

him, is shown much lesser than the actual value. In number of judgments the Supreme Court has observed that in the available material election petitioner successfully shifts the burden upon the returned candidate to disclose the proper material and value of the used campaign material in rebuttal.

Shri Gupta appearing for the respondents has denied the submission made by the learned counsel for the petitioner and placed reliance upon several judgments of the Supreme Court saying that whatever evidence adduced by the petitioner is not so specific, but the same is based upon surmises and conjecture. The petitioner is in fact presuming that the value of campaign material used by the returned candidate is more than the value which is shown by him. He has also submitted that mere oral evidence for seeking declaration that the returned candidate has adopted corrupt practice is not enough. He has further submitted that the petitioner has determined the value of campaign material only on the basis of self assessment and has not adduced evidence of any expert so as to substantiate that the assessment which was being made by the petitioner is not without any foundation and not based on presumption. He submitted that in absence of any such opinion of expert, only on the basis of presumption and adducing oral evidence by the election petitioner is not enough to set aside the election of the returned candidate on the ground of corrupt practice. He has relied upon a decision of Supreme Court reported in ***AIR 2000 SC 256-Jeet Mohinder Singh vs. Harminder Singh Jassi*** in which the Court has observed as under:-

> "The charges when put to issue should be proved by clear, cogent and credible

> evidence. To prove the 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 hilt, the standard of proof being the same as in criminal trial."

The Supreme Court in that case also considering the evidence adduced by the parties and issues involved has observed that no inference can be drawn that the statement of expenses and the vouchers as filed by the returned candidate/respondent were false or that the expenditure incurred on the posters had resulted into crossing the prescribed limit of expenditure.

Shri Gupta has further relied upon the judgment reported in ***AIR 1996 SC 1109-S. Baldev Singh Mann vs. S. Gurcharan Singh, MLA and others*** in which the Supreme Court in para-8 has observed as under:

> "**8.** It is well settled that an allegation of corrupt practices within the meaning of sub-sections (1) to (8) of Section 123 of the Act, made in the election petition are regarded quasi criminal in nature requiring a strict proof of the same because the consequences are not only very serious but also penal in nature. It may be pointed that on the proof of any of the corrupt practices as alleged in the election petition it is not only the election of the returned candidate which is declared void and set aside but besides the disqualification of the returned candidate, the candidate himself or his agent or any other person, as the case may be, if found to have committed corrupt practice may be punished with

> imprisonment under Section 135-A of the Act. It is for these reasons that the Court insists upon a strict proof of such allegation of corrupt practice and not to decide the case on preponderance or probabilities."

Likewise in the case of ***Tukaram S. Dighole v. Manikrao Shivaji Kokate*** reported in ***AIR 2010 SC 965*** in an election petition alleging corrupt practice done by the returned candidate, the Supreme Court has observed in paragraph -11

> "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 heave onus lies on the election petitioner to prove the charge of corrupt practice in the same way as a criminal charge is proved."

The Supreme Court in the case of ***Tukaram (surpa)*** has also observed that :

> "To prove the 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."

Shri Gupta has also relied upon a judgment of High Court of Madhya Pradesh rendered in ***Election Petition No. 51/2009- Chandrabhan Singh Choudhary vs. Kamal Nath*** reported in ***2013 (II) JLJ 345***. As per the High Court, the election accounts of expenses if submitted by the candidate before the Election Commission and that has been accepted by the Election Commission then the said accounts cannot be challenged in an election petition.

Shri Gupta has submitted that in ***Uma Ballav Rath vs. Maheshwar Mohanty and others*** reported in ***AIR 1999 SC 1322*** again the Supreme Court has observed:

> "To avoid an election, it is necessary that cogent evidence is led in support of the charge. An election cannot be set aside on "presumption", surmises or conjecture. Clear and cogent proof in support of the allegations is essential."

Shri Gupta submits that in case of ***Gajanan Krishnaji Bapat and another v. Dattaji Raghobaji Meghe and others*** reported in ***AIR 1995 SC 2284*** the Supreme Court in paragraph 16 has observed:

> "The election law insists that to unseat a returned candidate, the corrupt practice must be specifically alleged and strictly proved to have been committed by the

> returned candidate himself or by his election agent or by any other person with the consent of the returned candidate or by his election agent. Suspicion, however, strong cannot take the place of proof, whether the allegations are sought to be established by direct evidence or by circumstantial evidence. Since, pleadings play an important role in an election petition, the legislature has provided that the allegations of corrupt practice must be properly alleged and both the material facts and particulars provided in the petition itself so as to disclose a complete cause of action."

And further in paragraph 18 the Supreme Court observed as under:

> "18. A petition levelling a charge of corrupt is required, by law, to be supported by an affidavit and the election petitioner is also obliged to disclose his source of information in respect of the commission of the corrupt practice. This becomes necessary to bind the election petitioner to the charge levelled by him and to prevent any fishing or roving enquiry and to prevent the returned candidate from being taken by a surprise."

The Supreme Court in case of ***Surinder Singh vs. Hardial Singh and others*** reported in ***AIR 1985 SC 89*** has observed as under:

> "The onus of establishing corrupt practice is undoubtedly on the person who sets it up, and the onus is not discharged on proof

> of mere preponderance of probability, as in the trial of the civil suit the corrupt practice must be established beyond reasonable doubt by evidence which is clear and unambiguous."

Considering the law laid down by the Supreme Court in regard to election petition whereunder the election was assailed on the ground of corrupt practice, it is clear that there must be some strong and clear evidence to annul the election or to declare the returned candidate disqualified on the ground of adopting corrupt practice.

From assessing the evidence adduced by the petitioner, it is clear that nothing has been produced by the petitioner indicating that the cost of used campaign material shown by the returned candidate and the accounts submitted to the Election Commission was less than the actual cost. On the petitioner's side, no expert was called who could substantiate that the cost of a particular article used by the returned candidate was not so as was being shown and the cost of the same was less than the actual cost. On the contrary in number of occasions petitioner in his statement has said **"Mere Hisab se iska mulya kam se kam itna hona chahiya."** (मेरे हिसाब से इसका मूल्य कम से कम इतना होना चाहिये)

Shri Upadhyay on the basis of used campaign material with a comparative assessment has tried to establish the value of used campaign material, but, in my opinion and taking note of the law laid down by the Supreme Court only an oral evidence that too on its probative value based on presumption is not enough and as such in the present case onus lies upon the petitioner has not been

shifted upon the returned candidate. In the present case, the Election Commission has also accepted the cost of the campaign material used by the returned candidate and in some of the occasions objection raised by the Election Commission about the cost of the material and that was rectified by the returned candidate and then revised cost was accepted by the Election Commission. However, Shri Upadhyay by showing judgments of the Supreme Court tried to establish that in absence of specific denial by the respondents in their written statement, it is presumed to be admitted and in such a circumstance burden shifted upon the returned candidate to rebut the submission made by the election petitioner and adverse inference can be drawn against the returned candidate, if he fails to rebut the said submission.

Here in this case respondent No.1 has also produced a witness, who was an employee of Box Corrugators Company and was a Print-man where certain campaign material got printed by respondent No.1. DW-3 Dinesh has admitted about the campaign material used in the election of 2013 and also of 2008. He has also produced certain vouchers with regard to payment of campaign material, but, that fact was not denied by the petitioner. The statement of DW-1 and DW-2 to some extent are corroborated with the statement of DW-3, an employee of the company from where the campaign material got printed. On the contrary, the petitioner did not produce any such witness or an expert in the field so as to determine the actual value of the used campaign material. Although PW-3 claimed himself to be a worker of Printing Press but in cross-examination, his testimony is shaken

comparatively with the witnesses of respondent i.e. DW-3 and DW-6. PW-3 is rsident of Churhat, familiar with petitioner. Press in which he worked is an unregistered and does not any licence. As such he cannot be a trustworthy nor can he be considered to be an expert. In absence of any expert evidence it is not proper for this Court to rely upon the oral evidence that is based upon the presumption of the election petitioner.

Counsel for the petitioner has also placed reliance upon a decision of the Supreme Court in case of **Common Cause (A Registered Society) v. Union of India and others (1996) 2 SCC 752** saying that as per the Supreme Court the political party has to maintain audit and account and they are required to lead evidence in election petition and should also disclose everything in their Income Tax return. It is not proper for a candidate to say that the expenditure is actually made by the political party and not by him. If any such expense in connection with the election of the candidate has been incurred by a political party shall be presumed to have been authorised by the candidate or his election agent. However, in the present case, this Court has to consider all aspects as to what expenses incurred by the candidate and have to be added in the election expenses. Ergo, said case has no application in the case at hand.

Likewise, in case of **R.M. Seshadri v. G. Vasantha Pal (1969) 1 SCC 27**, the Supreme Court has observed that while investigating the corrupt practice and to maintain purity in election, the Court can also summon witnesses as court witnesses to establish such corrupt practice. Albeit, this Court while dealing

with the facts and circumstances of the case and considering the evidence adduced by the parties, did not find any occasion to call any witness because primarily by adducing evidence, it is the duty of the election-petitioners to create suspicion in the mind of the court so as to call the witness to ascertain the actual expenses incurred by the candidate. In the present case, looking to the evidence adduced by the parties, the Court was *prima facie* of the opinion that the evidence adduced by the returned candidate cannot be ignored as he called the witnesses who were related to the field of campaign material and their version cannot be ignored comparing with the evidence adduced by the election-petitioner.

The learned counsel for the petitioner has also placed reliance on a decision in case of **Satrucharla Vijaya Rama Raju v. Minnaka Jaya Raju and others (2006) 1 SCC 212** so as to draw attention of the court that the trial of election petition is not a criminal trial in strict sense. Like an accused the election petitioner cannot keep mum, he has to give rebuttal, otherwise adverse inference would be drawn from proved facts. It is observed by the Supreme Court that it is for the returned candidate to prove facts which are in his exclusive knowledge. The facts of the case in **Satrucharla Vijaya Rama Raju** (supra) are altogether different wherein the issue with regard to caste of the candidate was involved, but in the present case, the basic issue involved is with regard to corrupt practice that too on the ground that returned candidate has shown lesser value of campaign material but spent money more than Rs.16 lac, which is a permissible limit. In the present case, the election petitioner has produced the evidence but

that was based on surmises and conjectures and did not create any such situation, under which, the burden, as is on the head of the petitioner, got shifted on the returned candidate.

Considering the overall circumstances and the evidence adduced by the parties and submissions made thereof I am not convinced with the evidence adduced by the election petitioner to hold that the value of campaign material shown by the returned candidate was much less than the actual cost. The evidence produced by the petitioner is not so clear and unambiguous for reaching the conclusion that the value of material used by the returned candidate and accounts submitted by him to the Election Commission was on lower side and if actual cost of the used campaign material is assessed then the expenses incurred in the election by the returned candidate exceeds the maximum limit determined by the Election Commission i.e. Rs.16 lakh. Therefore, these issues, in my opinion, are decided in negative.

ISSUE NO.2

Issue no.2 relates to Ex.P/6 plastic badge (billa). The respondent no.1 (returned candidate) has admitted the use of plastic badge i.e 50000+10000=60000 and its costing as per the respondent no.1 is 50 paise each, but later on the respondent no.1 has admitted that only 10000 badges were used in 2013 election, but remaining 50000 is of 2008 elections and as per disclosed cost Rs.5000/-, however as per the petitioner, per badge costs Rs.2/- and total cost is Rs.1,20,000/-and as such difference amount is

Rs.1,15,000/-which is required to be added in the cost expenditure of election of respondent No.1.

Pleading with regard to issue no.2 is made at para 14 of Election Petition and its reply in the written statement is at paragraph 33.

The petitioner has fathomed plastic badges and given calculation determining the cost after comparing it with the cutout as the material in both the items were same and the cost of cutout as per the rate-list prepared by District Election Officer, Sidhi shown to Rs.50/- per square feet and calculation was accordingly made by the petitioner showing that the plastic badge costing Re.1/- each and as per total quantity printed was of Rs.50,000/- and it is also calculated by the petitioner that the badge also contained a printed sticker and involved manual labour for affixing sticker on plastic portion of the badge, Re.1/- was additionally added and cost of Rs.1,00,000/- came for 50,000 badges. As per the petitioner, neither in the expenditure register of respondent no.1 nor Shadow expense register maintained by respondent no.1 any entry was made and as such amount of Rs.1,00,000/-be added in the expenses of respondent No.1.

The respondents have denied this averment in their written-statement saying that these plastic badges have not been used in the election of 2013 and therefore there was no entry of these badges in the shadow expense register, but they have taken a stand that in the election of 2013 badges Ex.D/4 and Ex.D/5 were used and they were shown in a composite purchase voucher i.e Ex.D/16.

The evidence was adduced by the parties in that regard. The petitioner was examined as PW-1. He supported the pleading that PW-2 had stated that Ex.P/6 was seen by him during its circulation during the election of 2013. As per the petitioner, PW-2 was not cross-examined on this point nor any suggestion was given to him and as such his testimony remained unchallenged.

The respondent was examined as DW-1 and in his statement, he has stated that Ex.P/6 though related to him but used in 2008 election. Although, in his statement he was not sure as to which material has been used in 2008 or 2013 and disclosed that it was Gulab Singh DW-2 who knew everything about it. DW-2 has also been examined who stated that Ex.P/6 was not printed for 2013 election and as such DW-6 Hari Prakash Mishra has also given details of Article supplied to him i.e Ex.D/16. He has also denied about supply of Ex.P/6. He submits that print line "KE" was not used by him but according to him he used "Kartikeya Enterprises."

As per counsel for the petitioner in the written-statement, respondent no.1 in response to the pleading of the petitioner with regard to plastic badge, did not disclose that these badges have been used in 2008 election. In absence of any specific answer and denial to the usage of these plastic bags in 2013 election, adverse inference can be drawn against respondent No.1 as per Section 114(g) of the Evidence Act. It is also contended by counsel for the petitioner that the petitioner has already admitted that Ex.P/6 got printed for 2013 election.

Shri Gupta appearing for respondent No.1 has contended that nothing substantial evidence is adduced by the petitioner to bring home that the plastic badge Ex.P/6 has been used in 2013 election and no opinion of any expert was also taken about the actual cost as has been determined by the petitioner of Ex.P/6, but only on the basis of pleadings and oral statement, the assessment or determination of cost of Ex.P/6 is not acceptable inasmuch as on the basis of presumptive evidence, the charge of corrupt practice cannot be established.

Considering the material available on record in respect of this issue this Court finds as under:-

This issue relates to Ex.P/6 [Plastic badges (billa)]. The petitioner has claimed total 60000 plastic badges were used by respondent No.1 in the election of 2013 and cost of per badge was shown as 0.50 paise. However, as per respondent No.1 only 10000 badges were used in the election of 2013 whereas 50000 badges were used in 2008 election. As per respondent No.1, he has disclosed the cost of Rs.5000/- in the expense register. The petitioner has claimed that the cost of badges has been shown on lower side whereas actual cost was Rs.2/- each and as such total cost comes to Rs.1,20,000/- therefore, difference of Rs.1,15,000/- is required to be added in the expense of returned candidate.

I am not convinced with the submissions made by the learned counsel for the petitioner because the petitioner relied upon the evidence of PW-1 and PW-2, who have stated that they had seen that the badges were used as were in circulation in the election of 2013. Though Shri Upadhyay has submitted that these

two witnesses have not been cross-examined on this point nor any suggestion was given to them, therefore, their testimony remained unchallenged, but respondent No.1 examined himself as DW-1, who has stated that Ex.P/6 was used in 2008 election also. Although he was not sure on the point whether these badges have been used in 2008 or 2013 elections, but DW2 who was overseeing the affairs of the returned candidate in his statement has clearly stated that Ex.P/6 was not printed for 2013 election. DW-6 Hari Prakash Mishra has also stated and relied upon Ex.D/16 in which details of articles supplied by his company to the returned candidate were described. He has also denied about supply of Ex.P/6.

Shri Upadhyay, although, submitted that there is no specific denial in the written-statement of respondent No.1 and nothing has been disclosed that the badges were used in 2008 election. In absence of any specific denial, according to him, it be treated to be admission and as such an amount of Rs.1,15,000/- is required to be added.

The petitioner examined himself as PW-1 and witness PW-2, but except their oral statement, nothing substantial is produced by them. It is reiterated that oral statement so far as determining the value of the article is not sufficient whereas respondent No.1 examined DW-6, the employee of the company supplying the election material to the returned candidate. The petitioner has not produced any evidence which can be considered to be strong proof so as to assess the value of Ex.P/6. Neither any skilled person was examined to substantiate that the assessment

made by the petitioner is close to actual value of Ex.P/6. Under these circumstances, when DW-6 an employee of company supplying material to the returned candidate examined in the face of vouchers showing that only 10000 badges were used in the election of 2013, this Court has no reason to disbelieve his statement because in rebuttal nothing specific or strong evidence has been produced by the election petitioner. Though there is no specific denial by the respondents in their written-statement and no disclosure was made specifying as to what quantity of badges were used in 2008 election and 2013 election, but in evidence they have elaborated the stand taken by them in the written-statement and as such drawing an adverse inference and approval to oral statement of witnesses cannot be given weightage over the statement of witnesses came with the documentary evidence i.e. vouchers giving details of articles supplied to the returned candidate. Accordingly, in my opinion, the petitioner failed to prove this issue in his favour because he failed to produce any strong evidence in support of his stand.

ISSUE NO.3

This issue relates to costing of orange cap (Ex.P/7) and the quantity used and disclosed by respondent No.1 was 20000 showing cost of each cap as Rs.3/- but later on, the rates were augmented to Rs.5/- pursuant to the objection raised by election observer and as such total cost came to Rs.1,00,000/-. However, this cost is disputed by the petitioner saying that each cap costed Rs.30/- and as such total cost came to Rs.6,00,000/-and difference

amount of Rs.5,00,000/-is required to be added in the expenditure of respondent No.1.

In this regard pleading is available in paragraph 14 (D)(i) of Election Petition and its reply in paragraph 27 of written-statement. As per the pleading, the petitioner claimed the usage of 15000 caps and calculated its cost @ Rs.30/- each which valued to the tune of Rs.4,50,000/- against the disclosure made by respondent No.1 as Rs.75,000/-and as such it is claimed that an amount of Rs.3,75,000/- be also added in the expenditure of respondent No.1 of election 2013.

Respondent No.1 in his reply has stated that the assessment made is based on whims and fancies of the petitioner. The respondents have disputed the manner in which cost of cap has been determined by the petitioner. It is stated by the respondents whatever expenditures made over these articles have been shown in the shadow register and Rs.30/- is nothing but a hypothetical estimation.

Evidence in regard to this issue is available in paragraph 9 of statement of petitioner (PW-1) and (PW-2) and the defendant (DW-1) in paragraphs 32, 33, 51, 52 and 53. DW-2 in paragraph 9, 10 and 11 in which he has also stated that initially cost of cap was disclosed at Rs.2/- but later-on in pursuance to the objection raised by observer it was soared to Rs.5/-. So far as head strip is concerned, he had stated that it was used in 2008 election but not in 2013 and also disputed the calculation of price of cap as made by the petitioner.

Considering the available material and evidence in respect of issue no.3 this Court finds as under:-

This issue relates to Ex.P/7 (Orange Caps). As the petitioner has taken a stand that 20000 caps got prepared and used in the election and cost of each cap has been shown as Rs.3/-. The cost of caps shown by respondent No.1 was later-on increased to Rs.5/- each pursuant to objection raised by the election observer and total cost of Rs.1,00,000/- was shown in expense register, but the petitioner is not satisfied and according to him cost of each cap was Rs.30/- and as such total value of these caps should be Rs.6,00,000/- and therefore, the difference amount of Rs.5,00,000/- is required to be added in the expense of respondent No.1.

I have gone through the evidence produced by the petitioner examining PW-1 and PW-2 and defendant examined himself as DW-1 and another witness DW-2. Initially, cost of caps was shown @Rs.3/- each but pursuant to the objection raised by the election observer cost of caps was increased to Rs.5/- each. There is nothing produced by the petitioner except oral statement of election petitioner and one of his worker comparing material of Ex.P/7 with other articles assessing the tentative value of Ex.P/7 as Rs.30/- each. DW-1 and DW-2 have orally denied the assessment of the petitioner and stated that when the observer raised an objection about cost of the caps, then that has been augmented to Rs.5/- each.

This Court has no mechanism available to assess the actual value of the particular item and this Court cannot rely upon the

evidence adduced by the petitioner because his assessment is based on presumption. In absence of any expert opinion or an evidence of person related to the field of manufacturing of election articles, the value assessed by the petitioner cannot be said to be correct value. Therefore, in the absence of strong material and evidence produced by the petitioner, this issue cannot decided in favour of the petitioner. Accordingly, it is decided in negative.

ISSUE NO.4

Issue no.4 relates to Ex.P/10, which says about the quantity of these caps, as per the petitioner, was 2000 used in the election of 2013 and cost of these caps are Rs.60,000/-, but it is not shown to have been used in 2013 election by respondent No.1 and he claimed that this item was used in the election of 2008. The petitioner pleaded that these caps were also used in election of 2013, but in the expenditure of election of respondent no.1 it is not shown in the expense register and therefore cost of Rs.60,000/- has to be added in the expenditure of 2013 election of respondent No.1. Corresponding pleading to issue no.4 is available in paragraph 14 (D)(ii) and its disavowal in written-statement is in paragraph 28. PW-1 has supported the pleadings made in election petition. PW-2 has stated that Ex.P/10 was seen by him during circulation in Indian National Congress Campaign of election 2013. According to the petitioner, neither PW-2 was cross-examined on this point nor any suggestion was put to him and therefore his testimony remained unchallenged. Respondent

No.1 examined himself as DW-1 who remained unsure about the usage of Ex.P/10 in election 2008 or 2013. However, DW-2 claimed that it has been used in 2008 election and so far as costing is concerned, he reiterated that whatever cost shown in the expense register that has not been disputed by the petitioner and has also been approved by election observer. DW-6 has also been examined, who stated that it was difficult to differentiate two sorts of caps used in 2008 and 2013 elections, as were almost identical, but later-on he clarified that Ex.P/10 were used in 2008 election and Ex.P/7 were used in 2013 election.

Shri Upadhyay, learned counsel for the petitioner asserted that the calculation made by the petitioner aptly as was done in respect of Ex.P/7 underlying issue no.3. He further submitted that in view of the statement of witnesses of respondent No.1, they themselves were not sure as to which cap had been used in 2008 election and which had been used in 2013 election. The print-man DW-6 also remained unsure about it. Learned counsel for the petitioner submitted that in view of the statement made by the election petitioner, the cost of 2000 caps as has been shown Rs.60,000/- is required to be added in the expenditure of election of 2013.

Considering the submissions made by the parties and material available on record this Court is of the opinion as under :-

This issue relates to Ex.P/10 (caps). As per the evidence adduced, 2000 caps were used in the election of 2013 and cost of caps has been shown as Rs.60,000/-. In the expense register nothing has been shown, therefore, Rs.60,000/- has to added in the

expenditure of returned candidate. In support of the averments made in the petition, PW-1 and PW-2 have been examined. Respondent No.1 examined DW-1, DW-2 and DW-6, who specifically denied the usage of Ex.P/10 in the election of 2013. They stated that in the election of 2008 expense register contained the said entry was approved by the election observer. Although there was some misconception to the witnesses of respondent No.1 about use of caps Ex.P/7 and P/10 but considering the fact that the entry made in the expense register of 2008 election and as stated by the witnesses of respondent No.1 only on the basis of oral statement of PW-1 and PW-2 the issue cannot be decided in affirmative. The Supreme Court in number of cases has observed that for establishing corrupt practice against a returned candidate, strong evidence and proof is required. In the present case, the petitioner has not produced any strong evidence and therefore he failed to get the issue decided in his favour.

ISSUE NO.5

Issue no.5 relates to pocket calendars (Ex.P/11). Pleading in this regard is available in paragraph 14(E) of the election petition and its denial by respondent No.1 is in paragraph 29 of his written-statement. As per the election petitioner, the quantity of pocket calendars used in the election of 2013, as per admission of respondent no.1 was 25000 and the cost disclosed by them @50 paise each. Later on, it was increased to Re.1/- each and as such total cost shown in the expenditure register was Rs.25,000/- but as per the petitioner, the cost of pocket-calendar was Rs.2/- each,

total cost according to him was Rs.50,000/-. The difference of Rs.25,000/- therefore is required to be added in the expenditure of election of respondent no.1. As per the petitioner, the size, colour-printing with photo, finishing print on both sides and the thickness of the paper used in pocket-calendar cannot be determined as less than Rs.2/- each. In support of his pleading, PW-1 was examined. The defence witnesses DW-1 and DW-2 have stated that initially the cost of this material was shown 50 paise but pursuant to objection raised by election observer, it got increased to Re.1/- and that has been accepted by the election observer and therefore there is no reason to cast a shadow over the the cost and expenditure shown, which was duly approved by the election observer.

Considering the material available on record and submissions made by counsel for the parties this Court is of the view as under:-

This issue relates to Ex.P/11 (Pocket calendars). As per the petitioner, in 2013 election, 25000 pocket calendars were used costing 0.50 paise each, but later-on it was increased to Re.1/-. However, the petitioner is claiming that actual cost of pocket calendar was Rs.1.50/- each and as such difference amount of Rs.5,000/- is required to be added in the election expenses of returned candidate.

Nothing specific and strong proof has been produced by the petitioner that the cost as has been shown by the returned candidate does not appear to be feasible but only on his presumption, this Court cannot rely upon his stand when DW-1

and DW-2 have denied this fact and stated that initially cost of Ex.P/11 was shown as 0.50 paise each but that has been ameliorated pursuant to the objection of election observer to Re.1/- each and that has been approved by the election observer. I am, therefore, not inclined to interfere with the price of pocket calendars as same has been approved by the election observer and nothing strong evidence has been produced to rebut the stand of the returned candidate. This issue is accordingly decided in negative.

ISSUE NO.6

Issue No.6 relates to exhibit P-12 (Stickers). As per the petitioner the total quantity admitted to have been used was 10000 and as per respondent No.1 its costing is 50 paise each, whereas rate alleged by the petitioner was Rs.2/- each and as such total cost should have been shown by the returned candidate as Rs.20,000/- but he showed cost as Rs.5,000/-, therefore, difference amount of Rs.15,000/- has to be added in the expenditure of returned candidate.

Pleading in respect of this issue is available in election petition in paragraph 14(F) and its denial in paragraph 30 of written-statement. Evidence was adduced by the election petitioner of PW-1 who supported the pleading made in the election petition and also compared his stickers used in the election of inferior quality than that of respondent No.1 but still his sticker costed Rs.2/- each and therefore the cost of stickers used by the respondent was determined as Rs.2/- each.

Respondent No.1 was examined as DW-1 and he said nothing about this issue, whereas DW-2 stated that whatever the rate shown in that context cannot be doubted as is correct.

Counsel for the petitioner submitted that the stickers have also been used by the election-petitioner but his stickers quality was inferior than that of stickers of returned candidate and according to him his stickers' costing was Rs.2/-each then the cost of stickers of returned candidate cannot be assessed less than Rs.2/- and as such Shri Upadhyay submitted that difference amount of Rs.15000/- is also required to be added.

Considering the material available in this regard and the submissions made by the parties this Court is of the view as under :-

This issue relates to Ex.P/12 (stickers). Stickers, 10000 in quantity, were used in the election of 2013 showing cost of each sticker as 0.50 paise. As per the petitioner, the actual cost of sticker was Rs.2/- each and as such it is costing Rs.20,000/- but in the expense register returned candidate has shown only Rs.5,000/-, therefore, difference amount of Rs.15,000/- is required to be added in the expenditure of returned candidate. In support of the pleading, PW-1 has been examined, who supported the pleading and in rebuttal DW-1 and DW-2 were examined by respondent No.1.

Considering the material available and evidence adduced by the parties, there is no strong proof produced by the petitioner so as to draw a conclusion that the cost of stickers as has been shown by the returned candidate was not adequate and much lower price

has been shown. Only on the basis of oral evidence that too of election petitioner saying cost of stickers was Rs.2/- each is nothing but his presumption, therefore, cannot be accepted. This issue is accordingly decided in negative.

ISSUES NO.7 AND 8

Both the issues relate to face masks (Ex.P/13 and P/14). So far as Ex.P/13 is concerned, the quantity used by the returned candidate of Ex.P/13 was 10000 and cost shown as 50 paise each as expenditure in this regard to Rs.5,000/- whereas as per the petitioner its cost is Rs.5/- each and difference amount is Rs.45,000/- which was required to be added in the expenditure of respondent no.1. Exhibit P-14 was also used, 10000 in number, and cost alleged by the petitioner is Rs.6/- each, which comes to total cost as Rs.60,000/- and as per the petitioner this article has not shown in the expenditure register and therefore, total Rs.60,000/- was required to be added in the expenditure of respondent no.1 for the election of 2013. As far as Ex.P/13 is concerned, pleading in the election petition is available in paragraph 14(G) and its denial in written statement at paragraph 31.

The petitioner has examined PW-1 who has supported the pleading in his statement and PW-2 who has stated that Ex.P/13 and P/14 both were used and circulated during the election of 2013. As per the petitioner, PW-2 was not cross-examined on this point, nor any suggestion has been given to him, therefore, his testimony remained unchallenged. PW-6 was also examined who

has given rate as around Rs.6/- each of Ex.P/13 and P/14. According to the petitioner, no cross-examination in this respect has been done.

The witnesses of respondent No.1 were examined as DW-1 and DW-2 who have admitted the use of Ex.P/13, but denied the use of Ex.P/14 in 2013 election. DW-6, the Print-man was also examined but he has also not stated anything about the cost assessed by the election petitioner, but has stated that the material used in this article in 2008 and also in 2013 are same and also admitted that the cost from 2008 has timely soared.

As per Shri Upadhyay the masks which have been used in the year 2008 its costing as per respondent No.1 is Rs.1.50 each and as per their witness, cost has been increased till 2013 and accordingly in 2013 the cost which has been shown by the respondent in election of 2013 @50 paise each is beyond imagination and cannot be accepted at all. If there is an increase in the cost during five years then it must be more than Rs.1.50 paise each. He further submits that respondent No.1 has not disputed the comparative assessment made by the petitioner and the correct cost of Ex.P/13 and P/14 has not been shown and accordingly total sum of Rs.45,000/- with regard to Ex.P/13 and Rs.60,000/- regarding Ex.P/14 needs to be added in the expenditure of respondent no.1 in the election of 2013.

On the contrary, counsel for the respondent submits that the cost of Ex.P/13 has been mentioned in Ex.D/16. The supplier DW-6 has also approved the same in his statement. The expenditure observer has also approved the said rates. The

voucher has not been disputed by the petitioner. So far as Ex.P/14 is concerned, he submitted that none of the witnesses got produced to prove that Ex.P/14 was used in 2013 election. It is also not disputed or contradicted that the said exhibit was used after submitting the nomination paper. According to Shri Gupta the expense observer did not raise any objection about Ex.P/14, therefore, the statement of DW-1 and DW-2 cannot be discarded and these issues according to him need to be decided in his favour.

Considering the submissions made by the counsel for parties and available material this Court finds as under:-

These issues relate to Ex.P/13 and P/14 (face-masks). The cost of Ex.P/13 was shown as 0.50 paise each and 10000 face-masks were used in the election of 2013, but according to the petitioner actual cost of face-mask was Rs.5/- each and therefore difference amount of Rs.45,000/- is required to be added in the expense register to show that same has been incurred under the expense head of election of returned candidate. Likewise, Ex.P/14 was also used, 10000 in number, and cost as per the petitioner is Rs.6/- each whereas it is shown @0.50 paise each. The witnesses produced by the petitioner i.e. PW-1 and PW-2 have stated that looking to the quality of material used in both the articles, it cannot be prepared in 0.50 paise. PW-2 in his statement clearly stated that the face masks (Ex.P/13 and P/14) have been used and were circulated during the election of 2013. Shri Upadhyay submitted that PW-2 was not cross-examined on this point, therefore, his testimony remained unchallenged. Respondent No.1 examined DW-1 and DW-2 and they admitted the usage of

Ex.P/13 in the election of 2013 but so far as Ex.P/14 is concerned, its usage in the election of 2013 has been denied, however, according to them, this article was used in the election of 2008. As per Shri Upadhyay, DW-6 has admitted that from 2008 to 2013 there is increase in the cost and therefore it is clear that actual cost of Ex.P/13 and P/14 is not shown in the expense register. He submitted that in 2008, the cost of face mask is shown as Rs.1.50/- and therefore in 2013 after increase, it must be more than Rs.1.50 each. Respondent No.1 examined DW-1, DW-2 and DW-6. The supplier DW-6 has approved the stand taken by respondent No.1 in his written-statement and stated that cost shown in the expense register has been approved by the observer. So far as Ex.P/14 is concerned, none of the witnesses of petitioner has said that Ex.P/14 was used in 2013 election. The approval of observer has not been questioned and no objection raised before him. Merely oral evidence has been adduced by the parties. Nothing concrete is shown as to what extent increase in price is based and therefore accepting the assessment made by the petitioner saying the actual cost of Ex.P/13 and P/14 was Rs.5/- does not appear to be proper. The evidence of DW-1 and DW-2 can also not be ignored. In absence of any strong evidence, these issues are decided in negative.

ISSUE NO.12

As far as this issue is concerned, it relates to Ex.P/18. Pleading by the election petitioner in the election petition has been

made in paragraph 14(I) and by respondent No.1 in written-statement paragraph 33.

Ex.P/18 is a calendar and as per the averments made in the election petition, 20000 calendars shown to have been used in the election of 2013 by the returned candidate i.e. respondent No.1 showing cost of each calendar as Rs.2/-. But later on, in pursuance to the objection raised by the Election Expense Observer, the cost of Ex.P/18 has been enhanced to the tune of Rs.7/- each and as such, total cost of Ex.P-18 in the expense register of respondent No.1 was mentioned as Rs.1,40,000/-.

As per the election petitioner lower price has been shown by respondent No.1 because the actual cost of Ex.P/18 came to Rs.30/- each and as such, total cost of expenditure over Ex.P/18 was Rs.6,00,000/- and as such, difference amount i.e. Rs.4,60,000/- is required to be added in the expense of respondent No.1-returned candidate.

The election petitioner has alleged that Ex.P/18 was made of Flex which is quite expensive than the plastic, but since the closest available material in District Returning Officer's list was plastic, therefore, it has been used for comparison with available material and as such, the cost of calendar was assessed and determined by the election petitioner at the rate of Rs.30/- each.

In written-statement, respondent No.1 has specifically denied this fact and submitted that Ex.P/18 got printed from Box Corrugators, Bhopal at the rate of Rs.2/- per calendar and this amount has been shown in the expense register. However, the Election Expense Observer was unsatisfied with the value of

Ex.P/18 and therefore pursuant to his objection, it has been increased to Rs.7/- and total expense has been shown as Rs.1,40,000/- in the expense register. The value assessed by the Election Expense Observer of Ex.P/18 was not objected at the relevant point of time and thus, according to respondent No.1 assessment made by the election petitioner is hypothetical.

The election petitioner in support of his stand, produced himself as PW-1 and supported the pleading of election petitioner, but according to the petitioner in cross-examination it was not disputed that the used material in Ex.P/18 was Flex or something else. It is also not disputed that Flex is expensive than plastic and thus this point according to the petitioner in the testimony of PW-1 remained unchallenged.

Respondent No.1 examined himself as DW-1 and has very categorically stated that determining cost of a particular material used in the election was upon the District Returning Officer and according to him the cost of Ex.P-18 was shown as Rs.7/- each and that has been accepted by the respondents and as such, the expenditure is shown in the expense register.

DW-2 was also examined. He has also supported the pleading made in written-statement and denied the allegation made by the election petitioner. He stated that the District Returning Officer has given the rate of Ex.P-18 and accordingly, it was shown in the expense register.

DW-3 has also been examined, who has also supported the stand taken by DW-1 and also stated that the calendar was not

made by Flex but was printed on a paper. However, he was not in a position to demonstrate the cost of Ex.P/18.

As per the counsel for the petitioner, rate of Ex.P/18 was not specified by the committee constituted by District Returning Officer but since the calendar was made by Flex, therefore, valuing the nearest possible material to flex as plastic, calculation of price of Ex.P-18 was considered to be Rs.30/- per calendar. Thus, the assessment has been made by the petitioner taking the minimal possible rate.

According to the petitioner, there is no specific denial about the material used for making Ex.P-18 and as such, the statement of PW-1 that it was made of Flex and comparing the cost of Flex, the price was determined by the election petitioner and that cannot be said to be arbitrary because it was the assessment taking note of relevant facts and price of material used. The election petitioner has also alleged that there is no overwriting in the expense register of respondent No.1 in respect of rates of caps and calendars that too without any counter-signature.

Respondent No.1, in response to the submission made by the counsel for the election petitioner has claimed that it is the paper used in Ex.P-18/calendar which was used in the election of 2013. According to respondent No.1, the assessment of Election Expense Observer cannot be said to be unjustifiable in absence of any contrary material placed by the election petitioner. The manner in which the assessment has been made by the petitioner is not approved by any skilled person and according to respondent No.1, the issue be decided in his favour.

Considering the submissions made by the counsel for the parties and perusal of available material, this Court is of the opinion as under:-

This issue relates to Ex.P/18 (Calendars). As per the averments made in the election petition, 20000 calendars were used in 2013 election and its cost was shown as Rs.2/- each but lateron, pursuant to objection of election observer, cost of calendars was increased to Rs.7/- each. According to the petitioner, the actual cost of calendar was Rs.30/- each and total cost came to Rs.6,00,000/- and thus difference amount of Rs.4,60,000/- is required to be added in the expenses incurred in the election of returned candidate. Except PW-1 no other witness was examined in support of this issue. The stand of the petitioner is based upon the fact that Ex.P/18 was flex or something else. Respondent No.1 examined himself as DW-1 and other witnesses as DW-2 and DW-3. The cost as has been estimated by the petitioner is only on his presumption but nothing concrete has been produced so as to give support to the stand about the price of calendars as assessed by the petitioner. DW-3 although examined and has stated that Ex.P/18 has not been prepared on flex but it was printed on the paper. DW-3 was the employee of Box Corrugators Company, which is printing the material, therefore, his evidence cannot be ignored only on the basis of oral evidence that too of a person not related to the field of manufacturing election materials, the value of article cannot be assessed on the basis of presumption, surmises and conjectures. Therefore, this issue is decided in negative.

ISSUE NO.13

This issue relates to Ex.P/19, the Party Symbol.

As per the petitioner, 500 party symbols have been used by respondent No.1 in the election of 2013, casting of one party symbol was assessed as Rs.11.40/- each. As per the election petitioner total expense was Rs.5,700/- but it has not been shown in the expenditure of respondent No.1 and therefore, in total amount of Rs.5,700/- is required to be added in the expense of election of 2013 of respondent No.1.

Pleading in this regard in election petition is available in paragraph-14(J) whereas in written-statement paragraph-34 the respondent No.1 has denied the allegation made in the election petition.

The plaintiff/petitioner has examined PW-1 and PW-2 whereas the defendant/respondent No.1 has examined DW-1.

As per the election petitioner, the cost of party symbols has been determined by comparing it with minimum rate of plastic flag as prescribed by the District Returning Officer. As per the petitioner, although plastic flag is very thin and party symbol is much thicker than it, but even otherwise assessing it minimally the cost came to Rs.11.40/- each and as such, Rs.5,700/- has to be added in the expense of respondent No.1.

The respondent No.1's counsel has denied this aspect saying that all the assessment has been made by the election petitioner with regard to campaign material ignoring the rate assessed by the Election Expense Observer whose assessment

according to respondent No.1 is final and binding upon the candidates. As per the respondents, if any expense is shown in the expense register, but the Election Expense Observer objected the same then the difference is added in the expenditure register maintained by the candidate as notionally incurred to bring it down with the schedule register. The correction entry according to respondent No.1 so made cannot be considered to be a malpractice, corrupt practice or offence. According to respondent No.1, the assessment of price of campaign material, as per the petitioner, is as per his assumption and presumption and without advice of any skilled person who is acquainted with this field. Therefore, such assessment cannot be termed authentic.

Considering the submissions made by the counsel for the parties and perusal of available material, this Court is of the opinion as under:-

This issue relates to Ex.P/19 (party symbol). As per the petitioner, 500 items were used in election of 2013 by respondent No.1 showing value of each as Rs.11.40/-, but this expense was not shown in the expense register and therefore total amount of Rs.5700/- is required to be added. Although this fact is denied by respondent No.1 not only in the written-statement but also in the statement of DW-1 and DW-2 saying that Ex.P/19 is also not mentioned in the shadow expenses register maintained by the observer because party symbol was available in open market and it has not got printed by the returned candidate and therefore assessment made by the petitioner is hypothetical. There is nothing adduced by the petitioner showing that stand taken by

respondent No.1 is not correct. No evidence except the statement of PW-1 that the party symbol has been used and got printed by returned candidate, such oral statement without there being any corroborative material cannot be decided in favour of the petitioner. Therefore, this issue is decided in negative.

The issues No.1 to 13 relate to the price of campaign material used by the returned candidate and the petitioner was not satisfied with the value of campaign material used by the returned candidate and shown in the expenses register, however, the election observer has approved the said price as and when objection was raised with regard to the price of material, the price was increased of that particular article and that increase is shown in the expense register and approved by the expenses observer. The Supreme Court in case of **Jeet Mohinder Singh** (supra) has observed that proving the charge of corrupt practice a mere preponderance of probabilities would not be enough. The same can be proved by clear, cogent and credible evidence. The charge shown has to be proved to the hilt, the standard of proof being the same as in criminal trial, a presumption of innocence available to the person charged. The election petitioner has not produced any expert so as to support his stand and assessment made by him with regard to the articles used as campaign material, but on the contrary respondent No.1 has produced the employee of company supplying the material, for proving the same. The view applied by Supreme Court in case of **Jeet Mohinder Singh** (supra) has also been approved and relied by the Supreme Court in subsequent judgment of **Tukaram** (supra) and this Court in case of

Chandrabhansingh Choudhary (supra). The petitioner relied upon a decision in case of **Shri Kanwar Lal Gupta** (supra) saying that if election petitioner creates a doubt with regard to expenses made by returned candidate in the election by adducing evidence then onus shifted upon the returned candidate to lead evidence to justify his disclosure of expenses. According to the petitioner, strict proof of actual expenses not required once declaration of expenses given by returned candidate found to be false, the Court can assess the expenditure on the basis of evidence on record because expenditure is within the specific knowledge of first respondent. The petitioner has also relied upon various other decisions, but in all the cases initial burden lies upon the petitioner to produce some cogent material so as to create doubt in the mind of the Court that returned candidate has not given the correct price of the material used in the election and his disclosure of expenses is not proper. But here in this case whatever evidence has been produced by the petitioner i.e. only oral evidence that too based upon the presumption of price of particular article and no witness was called in the witness-box relating to field of manufacturing of used articles or involved in the business of selling such articles so as to give strength to presumption of the petitioner. Thus, as has already been observed hereinabove, the assessment of price as determined by the petitioner so as to declare the returned candidate has used corrupt practice is not sufficient.

ISSUE NO.14

This issue relates to expense incurred by respondent No.1 on the polling day. There are various heads under this issue which have been pointed-out by the petitioner and he has also highlighted the expenses made thereof but did not show in the expense register. Accordingly, total amount i.e. Rs.73,340/- is required to be added in the expense of respondent No.1 in the election of 2013.

As per the pleading made in paragraph-14(K) of election petition, in the stationery head of each and every polling agent including cash amount to change identity of any voter or to raise any objection for which Rs.2/- for each objection calculated at Rs.20/- each and in this head Rs.9,520/- was shown by the petitioner to be added in the expenditure of respondent No.1. In another head i.e. with regard to vehicle used, as per the petitioner, three vehicles were used by respondent No.1 and as per the Election Expense Observer for one vehicle 15 liter diesel was shown to have been consumed and as such, cost of 45 liter of diesel on a polling day came to Rs.2,682/-. Though, voter list provided by respondent No.1 to each of his polling agent but cost of that voter list is not shown in the expense register which according to the petitioner came to Rs.20,260/- and travel expense of polling agents from Churhat to District Headquarters Sidhi according to the petitioner came to Rs.33,715/- and Rs.37,128/- has been spent on polling agents providing them food and refreshment items as whole day they sat as polling agent in the polling booth.

In paragraph-35 of written-statement, respondent No.1 has answered the pleading made in regard to this issue.

In the written-statement, it is stated by respondent No.1 that polling agents are the dedicated party workers and they feel honour to be selected as polling agents and they perform their duties considering their responsibility and if any expense is made by them for themselves only, it cannot be considered to be the expense of any political party and cannot be added in the expense of a particular returned candidate.

For consumption of 15 liter diesel, no material is made available to show whether any consumption of diesel has been made or not or that too by a candidate.

The election petitioner to substantiate the pleading made in relation to this issue examined PW-1, PW-2 and PW-3. Respondent No.1 examined DW-1 and DW-2.

The counsel for respondent No.1 submitted that the polling agents are local persons, they arrange meals from their home and as such, any expense under this head is made by the polling agent, cannot be included in the expense of a returned candidate.

As far as the voter list is concerned, Shri Gupta submitted that two copies of voter list are made available free of cost in terms of Section 78A of the Act, 1951 and polling agents get the same photocopied by their own expenditure. Therefore, it cannot be included as expense in the head of a returned candidate.

Likewise, for fuel consumption as per respondent No.1 a consolidated voucher prepared and submitted before the Election Expense Observer and therefore nothing is required to be added in

this head. As per Shri Gupta, the charge of corruption can be proved only on the basis of documentary evidence or any strong evidence but not only on the basis of presumptive oral evidence.

Considering the submissions made by the counsel for the parties and perusal of material available, this Court is of the opinion as under:-

This issue relates to the expenses made by respondent No.1 on polling day. According to election petitioner, Rs.73,340/- are required to be added in the expenses of respondent No.1 for the election 2013. In support of the pleading made in the election petition, the petitioner examined PW-1, PW-2 and PW-3 whereas respondent No.1 examined DW-1 and DW-2. Although the petitioner is claiming that total sum of Rs.73,340/- be added in the expenditure of respondent No.1 and on the basis of oral evidence he tried to establish that the expenditure made by returned candidate in stationery, fuel used for the vehicle engaged in election work, the price of voter list, travelling expenses of counting agents from Churhat to District Head Quarter Sidhi and expenses made in food provided to the polling agents. But, no documentary proof has been produced.

The respondent took a stand that it is all based upon presumption and explained that so far as providing meals to the workers engaged in counting or working as polling agents, is concerned, since they were all local persons, therefore, they got meals from their respective homes. So far as the voter list is concerned, respondent No.1 has drawn attention of this Court towards the provisions of the Act 1951 where Section 78A read

with Rule 85D of the Conduct of Election Rules clearly provides that each candidate shall be provided two copies of voter list free of cost. One copy of the same was supplied to the polling agents as per the statement of PW-1 and if agents so required get the same photocopied and as such, no expenditure incurred in that regard. As regards fuel expenses, consolidated voucher produced by the returned candidate but as there were some objections, therefore, additional notional value was provided and that has been approved by the Election Observer. By way of oral evidence, the witnesses tried to prove their stand taken in the election petition and also in written statement. However, taking note of the judgment of the Supreme Court in case of **Uma Ballav Rath v. Maheshwar Mohanti and others** reported in **AIR 1999 SC 1322**, in which the Supreme Court has observed that for setting aside an election, clear and cogent proof in support of allegation is essential but only on the basis of presumption election cannot be set aside, I am also of the view that unless any strong proof is produced by the election petitioner, it is difficult to rely upon oral stand of witnesses. Both the parties have contradicted the oral statements made by them and therefore, in absence of any strong material produced by the election petitioner, I am not inclined to give approval to the statement of the witnesses of the election petitioner and, therefore, this issue is decided in negative.

ISSUE NO. 15

This issue relates to the expenses made in a victory rally because in the expense register nothing has been shown under this

head, whereas as per the election petitioner estimated expense i.e. Rs.45,700/- was required to be added in this head.

Pleading with regard to this issue is available in paragraph-14(K) sub-para-(E) of election petition and in paragraph-35 of written statement.

The plaintiff/petitioner has examined PW-1 and PW-5 whereas the defendant/respondent No.1 has examined DW-1 and DW-2.

The counsel for the petitioner Shri Upadhyay submitted that since the victory rally was held on the day of declaration of result, therefore, expenses are included in the expenses of respondent No.1. According to Shri Upadhyay the evidence of election petitioner corroborates by independent witness which shows that the victory rally was held on the suggestions given by respondent No.1.

However, respondent No.1 has denied this fact and submitted that there is no material available indicating that any such rally was held and whatever collected by the petitioner, that is based on CD and that CD is not made part of evidence.

According to Shri Gupta, the election petitioner did not disclose the name of any person who witnessed that rally and can be considered to be a source of information. The evidence adduced by PW-1 is not trustworthy and expenditure of Rs.45,700/- is nothing but an imaginary figure of election petitioner and in absence of any strong material with regard to victory rally, this issue should to be answered in negative.

Considering the submissions made by the counsel for the parties and perusal of available material, this Court is of the opinion as under:-

This issue relates to the expenses made by the returned candidate in the victory rally. As per the election petitioner nothing has been shown under this head in the expense register and according to the petitioner a sum of Rs.45,700/- was required to be added. In support of the pleadings made in the election petition, the petitioner examined PW-1 and PW-5 whereas respondent examined DW-1 and DW-2.

Perusal of evidence adduced by the parties, PW-1 was not claiming himself to be the eyewitness seen the victory rally. PW-5 does not disclose his source of information and as per the respondent, the returned candidate left for Bhopal immediately after declaration of result of election. The respondent has also stated that conducting a victory rally is a post election event because election ends after declaration of result.

In view of the Supreme Court's decision i.e. **Gajanan Krishnanji Bapat and other v. Dattaji Raghobaji Meghe and others** reported in **AIR 1995 SC 2284**, in which the Supreme Court has observed that the expenses incurred after declaration of result of election can possibly have no nexus with the purity of electoral process. The same is not required to be included in the expenses of returned candidate.

It was a case in which it was claimed that after declaration of result advertisements were published and the expenses incurred thereof claimed to be included in the election expenses but the

Supreme Court has observed that the expenses incurred till the declaration of result of election has relevance to the expenses incurred in election but after declaration of result if any expense is made, it has no significance for connecting the same with the election expenses. Accordingly, in my opinion, only on the basis of oral information or in view of the Supreme Court as expressed in case of **Gajanan Krishnaji Bapat (supra)** victory rally and expenses incurred thereof is a post election event and therefore, that expense cannot be included in the election expenses of returned candidate. Accordingly, this issue is decided in negative.

ISSUE NO.16

This issue relates to the expenses incurred in a meeting dated 20.11.2013 spearheaded by Shri Rahul Gandhi and the expenses, as per the petitioner, came to Rs.13,88,073/- which required to be added in the expense of respondent No.1.

With regard to this issue, pleading in election petition is available at paragraph-14(L) whereas in written-statement, it is available at paragraph-41.

The petitioner in his election petition has given a detailed description of meeting and expenses made in organizing the same and further alleged that the vote appeal was made for respondent No.1 and, therefore, incurred expenses were required to be added in the expense of election of 2013 of respondent No.1.

Respondent No.1 denied the fact regarding any expense incurred in the said meeting and also denied that it was required to be added in the expense of respondent No.1.

According to respondent No.1, he being a star campaigner was present in the said meeting and the said meeting, according to respondent No.1, was held outside of his constituency and expenses of that meeting, therefore, cannot be added in his expenditure. The meeting was organized in favour of a candidate at Sidhi from where Shri Kamleshwar Prasad Dwivedi was contesting the election. He submitted that four candidates of Sidhi District had shared the podium with Shri Rahul Gandhi and his presence on the podium was as a star campaigner.

The witnesses namely, PW-1, PW-4 and PW-5 have been examined on behalf of the election petitioner and on behalf of respondent No.1, it were DW-1 and DW-4 who have been examined.

Learned counsel for the petitioner submitted that the presence of respondent No.1 in the said meeting is not disputed. He submitted that Shri Rahul Gandhi made vote appeal in favour of returned candidate and respondent No.1 has also made address in the meeting and in the said meeting people from Churhat constituency were also available, therefore, merely because this meeting has been held out of the constituency of respondent No.1, therefore, expenses incurred in the said meeting should not be added in the expense of respondent No.1, is not proper.

Shri Upadhyay submitted that in view of case of **Keshavlal Gupta** since benefit of that meeting had to go to respondent No.1, therefore, said expense should be equally divided amongst all the candidates present in the meeting and as such, there were four

candidates then 25% of the expense was to be added in the expense of respondent No.1.

Shri Gupta on the other hand has submitted that the evidence adduced by the petitioner is precarious because the witnesses are not the strong evidence because none of them have admitted the fact that in the meeting he was present. According to Shri Gupta, the meeting was organized by the District Congress Committee of Sidhi Constituency which was out of the constituency of respondent No.1, but he was present there in the capacity of star campaigner. He further submitted that DW-4 namely Vinod Mishra has stated that the expenditure was Rs.80,000/- and three candidates who had shared the podium, the expenses divided in three parts and even shown in their expense register.

Considering the submissions made by the counsel for the parties and perusal of material available, this Court is of the opinion as under:-

This issue relates to expenses incurred in a meeting dated 20.11.2013 headed by Shri Rahul Gandhi and expenditure came thereon was assessed by the election petitioner as Rs.13,88,073/- and, therefore, asked to be added in the expenses of respondent No.1 because in the expense register nothing has been shown.

Considering the pleadings made by the parties and the evidence adduced thereof, the said meeting was conducted out of the constituency of returned candidate as it was at Sidhi Constituency and that meeting was organized by the District Congress Committee for making appeal to the voters of Sidhi

Constituency. The returned candidate being the President of State Congress shared the dais in the said capacity and also as a star campaigner of Congress Party. The election petitioner on the basis of oral submission has assessed the expenses made in the said meeting and also claimed that appeal of vote had also been made in favour of returned candidate and, therefore, the expenses made in the said meeting is required to be added in the election expenses of returned candidate.

The respondent's witness i.e. DW-4 namely Vinod Mishra in his statement has stated that total expenditure made in the meeting was a sum of Rs.80,000/-. Ex.D/12 is a document asking DW-4 who was the Election In-charge, the Returning Officer requested him to submit the expenditure made in the meeting and Ex.D/3 is a document showing expenditure made in the said meeting and that was Rs.79,934/-.

In rebuttal, noting has been produced by the election petitioner and, therefore, only on the basis of oral submission made by the election petitioner whereas the document Ex.D/3 showing the total expenditure in the said meeting, the stand of the petitioner cannot be relied upon. Although, the petitioner relied upon the judgment of Supreme Court in case of **Kanwarlal Gupta (supra)** but in my opinion, the oral evidence adduced by the election petitioner is a weak piece of evidence and as such that does not approve the stand taken by the election petitioner especially when the Supreme Court in case of **Ram Awadesh Singh v. Smt. Sumitra Devi and others** reported in **AIR 1972 SC 580** has observed in the following manner:-

> "This takes us to the appeal filed by the respondent. As mentioned earlier, the High Court has rejected the charges of corrupt practices levelled by the respondent against the appellant. Those charges were sought to be established only by oral evidence. The learned trial judge was unable to accept the evidence adduced in support of the alleged corrupt practices. Ordinarily this Court does not reappropriation Oral evidence. Our attention has not been ,invited to any exceptional circumstances in this case requiring us .to go into the evidence afresh. It is well known that the factious feelings generated during elections continue even after the election and hence the contesting parties are able to produce before court large (number of witnesses, some of whom may be seemingly disinterested' But that by itself is no guarantee of the truth of the .evidence adduced. Mr. Tarkunde, learned Counsel for the respondent put forward three broad contentions in support of the (1)[1955] S.C.R. 509. appeal preferred by the respondent. They are : (1) that the High Court failed to take an overall view of the evidence adduced; it merely contented itself by examining evidence relating to each one of the instances, (2) the High Court erred in not relying on the evidence relating to an instance when the same is spoken to by a single witness and (3) the High Court erred in rejecting the testimony of some of the witnesses on the ground that they were chance witnesses. None of these contentions appear to have any merit. Each instance of a corrupt practice pleaded had to be established separately. If every one of those instances are not proved, all of them put together cannot be accepted as true because of the volume of evidence."

Further, in case of **Surinder Singh v. Hardial Singh and others** reported in **AIR 1985 SC 89**, the Supreme Court has observed as under:-

> "By a catena of decisions of this Court it has by now been very well settled that allegations of corrupt practice are quashi-criminal charges and the proof that would be required in support of such allegations would be as in criminal charge."
> "The onus of establishing a corrupt practice is undoubtedly on the person who sets it up, and the onus is not discharge of proof of mere preponderance of probability, as in the trial of a civil suit; the corrupt practice must be established beyond reasonable doubt by evidence which is clear and unambiguous."

And also in a case of **Thakur Sen Negi v. Dev Raj Negi and another** reported in **AIR 1994 SC 2526**, the Supreme Court has observed as under:-

> "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 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. The election result shows that both the contesting candidates were influential persons having strong hold on large numbers of people of the constituency."

The Supreme Court has also observed that "mere suspicion was not enough, positive proof was required which was not forthcoming".

The Supreme Court in case of **Navjot Singh Sidhu v. Om Prakash Soni** reported in **AIR 2016 SC 4965** has observed as under:-

> "12. In paragraphs 12 to 15 of the Election Petition, the respondent- election petitioner, by giving details of expenditure incurred by the appellant in connection with public meetings held on different dates and in different venues, has contended that the expenses incurred on these public meetings is much more than what has been shown in the return of election expenses under the said head (Rs.1,83,466/-). While the details of the meetings i.e. the time, date and venue are mentioned and so is the number of persons who are claimed to have attended the meetings, we do not find any basis as to how the election petitioner had arrived at the quantum of expenses which he alleges to have been incurred by the returned candidate in holding each of the said meetings. What are the source(s) of information of the election petitioner with regard to the details furnished; whether he has personal knowledge of any of the said meetings; who are the persons who informed him of the details of such meetings; what is the basis of the estimate of the number of persons present and the facilities (chairs etc.) that were hired and the particulars of the refreshments served are nowhere pleaded. All such particulars that are an integral part of the allegation of corrupt practice alleged are absent. In the absence of the aforesaid particulars, there can be no doubt that insofar as the allegations made in paragraphs 12 to 15 of the Election Petition is concerned, the same do not disclose any triable issue so as to justify a regular trial of the said allegations. The allegations mentioned in paragraphs 12 to 15, so far as commission of corrupt practice of submission of false/incorrect return of election expenses is concerned, are, therefore, struck off."

In view of the aforesaid, it is clear that the stand taken by the election petitioner for including the expenditure of meeting as has been assessed by the election petitioner to the tune of Rs.13,88,073/- is nothing but a suspicion and without any strong material or evidence in support, this issue is decided in negative.

ISSUE NO.17

This issue relates to expense made by respondent No.2 Ramnaresh Saket and respondent No.13 Ramsiya Kol, but according to the petitioner, they were dummy candidates of respondent No.1 and total expenditure shown by them Rs.2,18,560/- should be added in the election expense of respondent No.1.

The pleading made in the election petition in paragraph-14(N) and in written-statement, the said pleading is available in paragraph-43.

The plaintiff has examined PW-1 whereas respondent No.1 examined DW-1, DW-2 and DW-5.

As per the petitioner, respondent Nos.2 and 13 namely Ramnaresh Saket and Ramsiya Kol were dummy candidates of respondent No.1 and, therefore, whatever expense is made by them has to be added in the expense of respondent No.1 because they have contested the election just to support respondent No.1.

Respondents have denied this allegation and submitted that there is nothing like dummy candidate. Every candidate contested the election for his own win.

Shri Gupta appearing for the respondents has submitted that there is nothing available on record and no evidence is made available to ascertain this fact merely because some of the agents of Congress Party were also the agents of dummy candidates that cannot be considered to be proved that respondent Nos.2 and 13 have contested the election just to support respondent No.1. He submitted that DW-5 has been examined who has categorically stated that since the Congress Party has not given any weightage to him, therefore, he became the agent of other candidates. Shri Gupta submitted that in absence of any strong evidence, this issue be decided in negative.

Considering the submissions made by the counsel for the parties and perusal of available material, this Court is of the opinion as under:-

This issue relates to expense made by respondent No.2 Ramnaresh Saket and respondent No.13 Ramsiya Kol as according to the election petitioner, they were the dummy candidates of respondent No.1 and total expenditure shown by them to tune of Rs.2,18,560/- should be added in the election expenses of respondent No.1.

After examining the statement made by the witnesses and the stand taken by the counsel during the course of argument, there is no strong material available on record adduced by the election petitioner indicating that these two persons spent money with the consent and permission of respondent No.1 just to support him and to make future prospect in his favour. In fact, I am not convinced with the submission made by learned

counsel for the petitioner that these two candidates though contested election, but they were dummy candidates and supporting the returned candidate and, therefore, whatever expenses shown by them in their election should be added in the expenses incurred by respondent No.1 in the election. Taking note of the view of the Supreme Court in number of occasions, only on oral submissions pointing out few circumstances which in fact are nothing but a suspicion created by the petitioner, allegation of corrupt practice made against the returned candidate cannot be relied upon. The Supreme Court in the case of **Uma Ballav Rath** (supra) has very categorically observed that to avoid an election, it is necessary that cogent evidence is led in support of the charge. An election cannot be set aside only "presumptions", surmises and conjectures. Clear and cogent proof in support of allegations is essential. As such, the material produced by the petitioner and submission advanced, do not attract this Court to hold the expenses of two candidates who according to the petitioner were dummy candidates, be added in the expenses of the returned candidate. The issue is accordingly decided in negative.

ISSUE NO.18

This issue relates to the meeting held in the village Kapuri Kothar and the expense of Rs.1,56,150/- was although made but not shown in the election expense.

The respondents in paragraph-44 of written-statement denied this averment. They submitted that the only witness namely Vikash Upadhyaya who claimed himself to be eyewitness was not examined, therefore, adverse inference should be drawn against him. PW-1 was not the eyewitness and in absence of any material about said meeting and without disclosing the fact and source of information in the election petition, the evidence adduced is of valueless. Shri Gupta submitted that DW-1 had denied the presence of Bharat Singh and further stated that he did not ask Bharat Singh to do any work for him in the election. This issue accordingly deserves to be decided in negative.

Considering the submissions made by the counsel for the parties and perusal of available material, this Court is of the opinion as under:-

This issue relates to the meeting held in the Village Kapuri Kothar and the expenses of Rs.1,56,150/- which was though made, but not shown in the election expenses incurred by respondent No.1.

The respondent in his written-statement denied the averments made in the petition. In support of this issue though PW/1 was examined, but he was not the eyewitness to the meeting. Though Vikash Upadhyay was said to be an eye witness, but he was also not examined. DW/1 denied the presence of Bharat Singh in the meeting and stated that Bharat Singh was never asked to do any work in the election. The actual expenditure made is shown in the register and that has been accepted after adding some notional expenditure. In

absence of any strong material and considering the fact that the Supreme Court in number of occasions has observed that in absence of any specific material not disclosing the source of information about the details furnished, the same cannot be used against the returned candidate against whom charge of corrupt practice is levelled, I am of the opinion that whatever evidence has been adduced by the election petitioner is not enough and sufficient to decide this issue in favour of petitioner and as such, it is decided in negative.

ISSUE NO.19

With regard to this issue i.e. for putting-up two hoardings, expenditure of Rs.18,000/- is required to be added.

In paragraph-14(P) of election petition pleading with regard to this issue is available and its denial in paragraph-45 of written-statement.

Shri Gupta appearing for the respondents submitted that the pleading with regard to this issue is based upon a CD and that CD is not taken note of in evidence, therefore, nothing corroborative evidence is available, whereas DW-2, the election agent of respondent No.1 has specifically denied the use of these hoardings and also denied that any expenditure made for it and submitted that this issue deserves to be answered in negative.

This issue relates to hoardings and as per the pleadings made by the petitioner, two hoardings were placed in the main market of Churhat, but, their cost was not added and as per the calculation made by the petitioner applying minimum rate

prescribed by the DRO vide Annexure D-1, the claim of Rs. 18,000/- was made for those two hoardings, therefore, in the expenditure of election of respondent No.1 of 2013 this amount has to be added, as it has not been shown in his expenditure register. Pleadings in this regard is available in paragraph 14(P) of the election petition.

The respondent/defendant in the written-statement paragraph 45 denied the allegation and submitted that he has not used these hoardings in 2013 election and these hoardings do not reveal vote appeal for respondent No.1, therefore, it was not added in the expenditure made by him for his election and hence in the expenditure register it was not shown. In this regard, respondent No. 1 has relied upon the statement of PW-1.

As per the respondents, the source of information is based on CD, which remained uncorroborated with any other available evidence. It is also stated that there was no appeal to vote in the hoardings and DW-2, the Election Agent, in his statement categorically stated that the hoardings were not used in the election and, therefore no expenditure can be said to have been incurred by respondent No. 1 for the said hoardings.

Considering the submissions made by the learned counsel for the parties and the available material, this Court is of the view as under:-

This issue relates to hoardings expenditure amounting to Rs.18,000/- which has been asked to be added in the expenses incurred by respondent No.1 in the election.

As per the pleadings and evidence adduced by the parties, the information with regard to hoardings is CD based and there is no other evidence and material produced in support of this allegation. The hoardings do not reveal that any vote appeal was being made. The election agent (DW/2) in his statement denied this fact that the said hoardings were used in election or any election expenditure was made thereon and therefore, neither in the expenditure register nor in shadow register maintained by the Election Observer these hoardings found place. The Supreme Court in a case reported in **AIR 1999 SC 3655 [Narender Singh Vs. Mala Ram and another]** has observed as under:-

> "**15.** In the matter of appreciation of evidence in election disputes certain principles have been stated by this Court. The general principle is that the onus to prove the essential facts which constitute the cause of action in an election petition is upon the person making it, namely, the election petitioner. What evidence would be sufficient to prove a particular fact depends upon the circumstances of each case. When the evidence adduced is capable of drawing an inference either way, the view that is favourable to the returned candidate will have to be preferred. In Ram Singh v. Col. Ram Singh [1985 Supp SCC 611] the principle set out by this Court, by majority, is as follows: (SCC p. 616, para 3)
>
> > "In borderline cases the courts have to undertake the onerous task of, 'disengaging the truth from falsehood, to separate the chaff from the grain'. In our opinion, all said and done, if two views are reasonably possible — one in favour of the elected candidate and the other against him — courts should not interfere with the expensive electoral process and instead of setting at naught the election of the winning candidate should uphold his election giving him the benefit of doubt. This is more so where allegations of fraud or undue influence are made."

16. In election disputes emotions of the public are raised and opinions are sharply divided between groups. In such circumstances oral testimony in favour of one or the other party is easy to be adduced but the same will have to be critically examined and, therefore, oral evidence is to be assessed with a great deal of care. In Rahim Khan v. Khurshid Ahmed [(1974) 2 SCC 660 : (1975) 1 SCR 643] it was observed by this Court: (SCC pp. 671-72, para 21)

> "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 disinterested, 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."

17. Again in Thakur Sen Negi v. Dev Raj Negi [1993 Supp (3) SCC 645] it was observed: (SCC p. 648, para 3)

> "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.""

Thus, in absence of proper material, this issue is decided in negative.

Issue No. 20:

This issue relates to the vote appeal made by respondent No.1 on 05.11.2013 and also on 23.11.2013.

As per the petitioner, respondent No. 1 on both these days visited the temple of 'Goddess Jhadwa Devi', organized meeting over there and made vote appeal in the name of deity. However, respondent No.1 in his written-statement has denied this fact and also denied that any vote appeal was made by him and he has also denied the meeting of 05.11.2013. As per the respondent, a meeting was held on 23.11.2013 for which required permission was obtained and that permission is also available on record as Ex.D/20. It is also denied that any vote appeal was made in the name of 'Goddess Jhadwa Devi' and no evidence in this regard is produced by the petitioner. As per the respondent, visit to temple on 05.11.2013 before filing of nomination was nothing but a reverred visit and he had also gone to tomb (Samadhi) of his father. In absence of any evidence about vote appeal, this issue, as per the respondent, has to be decided in negative.

As per the petitioner holding a meeting in courtyard of temple of 'Goddess Jhadwa Devi' and making vote appeal in the name of idol and also in the name of 'Goddess Durga' is just to attract votes of Thakur community.

The plaintiff has examined PW-1 and PW-4 whereas the defendant examined DW-1 and DW-2.

Considering the submission made by the learned counsel for the parties and material available on record, this Court is of the view as under:-

This issue relates to vote appeal made by respondent No.1 on 05.11.2013 and also on 23.11.2013.

As per the election petitioner, respondent No.1 on the said dates visited the temple of 'Godess Jhadwa Devi', organized a meeting over there and made a vote appeal in the name of deity. However, this fact has been denied by respondent No.1 in the written-statement. The respondent produced Ex.D/20 which is a permission sought from the authority with respect to the meeting held on 23.11.2013 and according to respondent, no vote appeal was made in the name of 'Godess Jhadwa Devi'. So far as the meeting held on 05.11.2013 is concerned, on the said date, the respondent visited the temple and tomb (samadhi) of his father before filling of nomination paper. However, nothing was adduced by the petitioner saying that any vote appeal was made in both the occasions. Even PW/1 in his statement has admitted that no vote appeal was made in the courtyard. In absence of any material indicating that any vote appeal was being made by respondent No.1 while visiting the temple which in fact situated in an open private land, nothing adverse can be drawn against him about violating any of the provision of the Act and that cannot be considered to be a corrupt practice as per Section 123(3) of the Act. In a case reported in **AIR 2002 KARNATKA 377 [Prabhakar Rane Vs. Asnatikar Vasant**

Kamlakar], it was contended before the Court that by arranging the meetings in the community halls or temples of each of the community, wherein the achievements of the returned candidate were highlighted and even promises were made for future help if elected and especially when the respondent was present in most of these meetings, according to the petitioner therein this was not an act to promote the candidature of any particular person only on the ground of caste, religion, community etc. The Karnatka High Court has observed that this does not fall within the purview of Section 123(A) amounting to promoting or attempt to promote communal hatred. In view of the aforesaid, I am of the opinion that nothing contrary in any of the provision of the Act is found against respondent No.1 and as such, this issue is decided in negative.

Issue No. 21:

This issue relates to distribution of demand drafts to the voters as bribe during the period of filling up nomination and on the day of vote-counting. According to the petitioner, it tantamount to corrupt practice in terms of Section 123(1)(A)(b) of the Act.

Pleading in this regard is available in paragraph 19 of the election petition and the document exhibited by the petitioner as Ex. D/11.

In written statement, paragraph 48 is relevant.

The election petitioner examined PW-1 whereas respondent examined DW-1 and DW-4. As per the petitioner, respondent No.1 through his agent Bharat Singh distributed demand drafts to the voters and according to the petitioner, it comes under the definition of corrupt practice. Conversely, respondent No.1, in his written-statement has denied this fact and submitted that the said demand drafts bearing signature and seal of his Vidhayak Pratinidhi, but, it was not used or distributed for the purpose of attracting the voters. He has submitted that visage of the demand drafts speaks for itself that it was not valid at the time of election, precisely, the date mentioned on the demand drafts, itself nullifies the validity of demand drafts. He has submitted that there is no evidence available on record that the demand drafts had any relevance on the day of election because they were antedated and were valid prior to the election. According to the respondent, the demand drafts had no significance for the election of 2013 and no case of bribe as per Section 123(1) of the Act is made out.

Considering the submission made by the learned counsel for the parties and material available on record, this Court is of the view as under:-

This issue relates to distribution of demand drafts to the voters as bribe during filling of nomination form and also on the date of counting of votes and as such, conduct of respondent No.1 tantamount to corrupt practice in terms of Section 123(1)(A)(b) of the Act.

In view of the evidence adduced by the election petitioner, it is not clear as to who distributed the demand drafts.

As per the date contained in the demand draft, it is difficult to co-relate it with the election because it was antedated demand draft i.e. 08.03.2013 and also Rajkumari Saket to whom demand draft was said to have been given, was not brought to the Court so as to examine her. However, DW/1 denied the allegation and also the fact that the demand draft was distributed for gaining the votes whereas it was distributed by the Collector or SDM providing Swekchha Anudan Rashi (स्वेच्छा अनुदान राशि). According to respondent No.1, Bharat Singh was never authorized by him for distribution of demand drafts and the work of election was not at all entrusted to Bharat Singh.

In absence of any strong material connecting Bharat Singh with the returned candidate and also considering the date contained in the demand draft which in fact was not relevant with the election date, nothing adverse can be drawn against the returned candidate and therefore, this issue is decided in negative.

Issue No.22

This issue is in respect of exceeding the limit of Rs.16,00,000/- by respondent No.1 in the election which is a corrupt practice as per Rule 90 of the Conduct of Election Rules read with S.77(3) and 123(6) of the Representation of People Act.

In view of the submissions advanced by learned counsel for the parties, this issue is decided in negative because the

election petitioner failed to establish that the expenditure made by the returned candidate in the election of 2013 exceeded the limit of Rs.16,00,000/- and as such, he cannot be held guilty of corrupt practice as per Rule 90 of the Conduct of Election Rules read with S.77(3) and Section 123(6) of the Act.

Issue Nos. 23, 24 and 25:

These issues are inextricably linked to each other. Although there is no pleading in this regard, but as per the allegation made, the result of the election materially affected by corrupt practice adopted by the respondent No.1 and as such it is claimed that the election be declared as null and void as provided under Section 100 (1)(ii) of the Act.

The respondent has denied this aspect and submitted that there is no pleading showing his consent to any of his agents for doing corrupt practice and as a consequence of which, the result of election so far as respondent No.1 is concerned, got materially affected. According to the respondent, no evidence is available substantiating that he was indulged in any corrupt practice. He has relied upon several decisions and submitted that these issues deserve decision favourable to him. It is also denied by the respondent that he did not file a correct and true account of expenses before the District Election Officer.

Shri Gupta appearing for the respondent submitted that the charge of maintaining incorrect account or furnishing untrue account by itself does not amount to corrupt practice and as such it does not fall within the ambit of Section 123(6) read with

Section 77(3) of the Act of 1951. He submitted that the Election Commission had examined this aspect and when no objection had been raised about furnishing incorrect information, the same cannot be questioned again. As per the respondents, Bharat Singh, the election agent, did not produce himself as a witness, therefore, in absence of any evidence, especially of the witness, who could prove the pleading, adverse inference should be drawn because best available evidence could not be produced. Shri Gupta, therefore, submitted that the issue regarding corrupt practice is not established by adducing cogent and proper evidence by the witnesses produced.

Considering the submissions made by the parties and available material, this Court is of the following view:

So far as these issue Nos.23, 24 and 25 are concerned, they are intrinsic and in view of the discussions made hereinabove while deciding the other issues framed by this Court, it is found that the returned candidate was not involved in any corrupt practice. It is also not found that respondent No.1 had filed incorrect account of expenses before the District Election Officer and as such, his conduct cannot be said to be contrary to the provisions of Section 123(6) read with Section 77(3) of the Act. Accordingly, these issues are decided in negative.

Considering the view taken by the Supreme Court in number of cases discussed hereinabove, I have no hesitation to say that levelling a charge of corrupt practice is easy, but to prove the same is difficult. The Supreme Court consistently has

observed that election petition levelling a charge of corrupt practice as per the meaning of sub-sections (1) to (8) of Section 123 of the Act, claiming to set aside the election of the returned candidate is regarded quasi-criminal in nature requiring a strict proof of the same because the consequences are not only very serious but also penal in nature. It may be pointed that on the proof of any of the corrupt practice as alleged in the election petition it is not only the election of the returned candidate which is declared void and set aside but besides the disqualification of the returned candidate, the candidate himself or his agent or any other person, as the case may be, if found to have committed corrupt practice may be punished with the imprisonment under Section 135-A of the Act. It is for these reasons that the Court insists upon a strict proof of such allegation of corrupt practice and not to decide the case on preponderance of probabilities. The evidence has, therefore, to be judged having regard to these well settled principles.

The election petitioner tried to establish by adducing oral evidence comparing the material used in campaign material to substantiate that the returned candidate has shown the lesser price value just to be within the outer limit of prescribed election expenses, but actually the value of those campaign material was much higher and, therefore, according to him, the difference amount as per his calculation was required to be added in the expenses incurred by the returned candidate in the election of 2013. However, considering the material produced

by the election petitioner, this Court is of the opinion that the view taken by the Supreme Court in respect of corrupt practice is very specific whereas the evidence adduced by the election petitioner is not of that standard so that the returned candidate can be brought within the clutches of guilt for adopting corrupt practice.

8. Before parting with the case, an aspect of contemplating over the pending application is also required to be dealt with. In that, an application (I.A.No.2238/2017) was filed by respondent No.1 under Order VI Rule 16 of CPC r/w Section 86 and 87 of the Representation of People Act, 1950 and this Court by order dated 21.04.2022 had observed that this application would be decided at the time of final decision of the election petition. The respondent is basically seeking a direction from this Court that the pleadings of election petition and facts relating to the information extracted from a CD, annexed with the petition, may be deleted and removed from the petition. As per respondent No.1, since the electronic evidence i.e. CD annexed with the petition has been found inadmissible, therefore, the application seeking for striking out the pleadings may be allowed and appropriate direction may be issued to the petitioner for deleting those pleadings as has been claimed by respondent No.1 in his application.

In repartee, a reply has been filed by the petitioner to the said application and submitted that it is nothing but a delaying tactics. It is submitted by the petitioner that the order passed by

the High Court on earlier application filed by respondent under Order VI Rule 16 of CPC, was questioned before the Supreme Court by way of filing SLP and even after examining all the pleadings, it was observed by the Supreme Court that the pleadings made in the election petition do not warrant striking out by invoking the provision of Order VI Rule 16 of CPC. According to the petitioner, the application is misconceived and in the light of the order passed by the Supreme Court in earlier application, this application deserves to be dismissed.

Considering the submissions made by the learned counsel for the parties and perusal of the application and discussion made hereinabove dealing with the issues involved in the case, I am also of the opinion that the application submitted by respondent No.1 is sans substance and even without deleting the respective portion of pleadings, which is sought to be deleted from the election petition, proper adjudication can be made. Accordingly, finding the application to be meaningless, it is hereby rejected.

9. Resultantly, the election petition fails and is hereby dismissed.

The record called earlier by this Court, be returned to the District Election Officer, Sidhi.

Sd./-
(SANJAY DWIVEDI)
JUDGE.

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

भारत निर्वाचन आयोग

निर्वाचन सदन, अशोक रोड, नई दिल्ली—110 001

नई दिल्ली, तारीख 02 फरवरी 2023—12 पौष, 1944 (शक)

अधिसूचना

सं.—82—म.प्र.—(07 / 2019)—2023.—लोक प्रतिनिधित्व अधिनियम, 1951 (1951 का 43) की धारा 106 के अनुसरण में, भारत निर्वाचन आयोग 2019 की निर्वाचन याचिका सं. 07 में मध्यप्रदेश उच्च न्यायालय के दिनांक 28 सितम्बर 2022 के निर्णय / आदेश को एतद्द्वारा प्रकाशित करता है (श्री राम किशन पटेल विरुद्ध श्री देवेंद्र सिंह एवं अन्य).

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

ELECTION COMMISSION OF INDIA

Nirvachan Sadan, Ashoka Road, New Delhi—110 001

New Delhi, Dated 02nd February, 2023—12 Pausa, 1944 (Saka)

NOTIFICATION

No. 82-MP-(07/2019)-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 28th September 2022 of the High Court of Madhya Pradesh in the Election Petition No. 07 of 2019 (Sh. Ram Kishan Patel *Vs.* Sh. Devendra Singh & Others).

IN THE HIGH COURT OF MADHYA PRADESH AT JABALPUR

BEFORE

HON'BLE SHRI JUSTICE VISHAL DHAGAT

ELECTION PETITION No.07 of 2019

Between:-

1. **RAM KISHAN PATEL S/O SHRI BHAIYA LAL PATEL, AGED ABOUT 69 YEARS, R/O VILL. KOTPAR GANESH TEH. BARELI DISTT. RAISEN M.P. (MADHYA PRADESH)**

.....PETITIONER

(BY SHRI MRIGENDRA SINGH – SENIOR ADVOCATE WITH SHRI RISHABH SINGH AND SHRI NARUNADITYA SINGH - ADVOCATE)

AND

1. **DEVENDRA SINGH S/O LATE SHRI RAGHURAJ SINGH, AGED ABOUT 55 YEARS, R/O H.NO. 126 VILL. AND POST GADARWAS TEH. BADI DIST. RAISEN M.P. (MADHYA PRADESH)**

2. **RETURNING OFFICER RAISEN 140, UDAIPURA, DIST. RAISEN (MADHYA PRADESH)**

....RESPONDENTS

(SHRI SANJAY KUMAR AGRAWAL – ADVOCATE)

Reserved on	:	14.09.2022 (FH)
Delivered on	:	28.09.2022

This petition has come up for hearing on this day, the Court passed the following:

ORDER

Petitioner has filed this election petition challenging election of respondent No.1 namely Devendra Singh who is returned candidate from Constituency-140, Udaipura, District-Raisen (MP) on ground as contained under Sections 100(1)(d)(i) & (iv) of Representation of Public Act, 1951.

2. It is averred in election petition that last date of filing nomination form was on 09.11.2018. Scrutiny of nomination paper took place on 12.11.2018. Date of polling was fixed on 28.11.2018 and result was declared on 11.12.2018. Respondent No.1 was declared elected by margin of 8001 votes. On perusal of nomination form of respondent No.1 which was affixed on notice board in accordance with Section 33-A(3) of Act of 1951, petitioner learnt that affidavit annexed along with form was not signed by respondent No.1 and respondent No.1 was not identified in affidavit. Affidavit also did not contain signature of Notary on the seal affixed by him in all pages, therefore, there is non-compliance of mandatory provision and nomination form ought to have been rejected at threshold under Section 36(2) of Representation of People Act, 1951. Petitioner raised objections before Returning Officer on 12.11.2018. Respondent No.1 filed its reply to said objection. Returning officer rejected objection vide order dated 13.11.2018. Defect of non-verification of affidavit and non-identification of deponent in affidavit is defect of

substantial character. Affidavit furnished was not in prescribed format i.e. form-26 and same was in violation of Section 33-A of Act, 1951 and Rules 4-A of the Conduct of Election Rules, 1961. Acceptance of defective affidavit by returning officer has affected election of petitioner materially. Affidavit filed was also in violation of Sections 8(1)(c) and 8(2) of Notaries Act, 1952. If affidavit of respondent No.1 was rejected then petitioner would have been elected among remaining 9 candidates. Petitioner examined himself as PW-1 and Dinesh Singh as PW-2. Petitioner exhibited document (Ex-P/1), Ex-P/1/A certified copy of Ex-P/1, Ex-P/2, Ex-P/3 and Ex-P/4.

3. Respondent No.1 filed its written statement and denied the pleadings in election petition. It was pleaded that affidavit filed along with nomination paper in form-26 was duly signed by respondent No.1. Affidavit was duly sworn before notary public and duly attested as required in law. Failure of notary public to put initial on seal at all pages of affidavit would not render affidavit nonest in eye of law. Defect is only of clerical omission and not substantial in character. First page of affidavit contained affirmation by notary public Smt. Reshu Jain. Returning Officer has disallowed the objection in accordance with instruction contained in handbook, 2018. As per said handbook, affidavit must contain signature of deponent on each page and should contain seal of notary oath Commissioner on each page. Person swearing affidavit was personally known to notary, therefore, no separate identification was required. Seal of identification was affixed by notary and name of respondent No.1 was mentioned by notary in his own hand. There is no

defect in identification of respondent No.1. Defect pointed out is not of substantial character. Respondent No.1 made full and complete disclosure about his assets, liabilities, educational qualifications, past and present criminal case, if any. Complete and truthful disclosure is made by respondent No.1. Affidavit filed fulfills purpose and objective of Section 33-A of Act of 1951 and Rule 4-A of Conduct of Election Rules, 1961. It is pleaded that respondent as per instruction issued by Election Commission, can file fresh affidavit to remove defect. Respondent No.1 expressed inclination or intention to submit fresh affidavit in case any defect is found in affidavit. Answering respondent acted *bonafidly* and there was no mischief of improper verification and identification in affidavit. Defect made by notary public could not be attributed to respondent No.1. Voters of Constituency were completely informed in respect of information required in form-26 and they took decision to vote in favour of answering respondent. Affidavit was not left blank or unsigned by respondent No.1 and election result was not materially affected by defect in affidavit. Notary public had signed at the bottom of the affidavit and merely not signing verification clause will not make affidavit defective. Affidavit was filed in form-26 and to prove said pleading, respondent No.1 examined himself as DW-1 and Vishal Singh as DW-2 and exhibited document as Ex-D/1.

4. On basis of pleadings made in election petition following issues were framed:-

"1. Whether nomination form submitted by respondent no.1 is liable to be rejected under Section 36(2)(b) of the Representation of Peoples Act, 1951 due to non compliance of Rule 4-A of Conduct of Election Rules, 1961 ?

2. Whether non signing of affidavit to be filed along with nomination paper amounts to violation of Rights to Information under Section 33-A of the Representation of Peoples Act, 1951 ?

3. Whether non-compliance of Section 8(1)(e) and Section 8(2) of Notaries Act, 1952 makes affidavit a nullity?

4. Whether election of respondent no.1 is void as result of election is materially affected by improper acceptance of nomination paper?

***4A. Whether alleged deficiencies in the affidavit filed** by the returned **candidate** as **pointed out by the** petitioner are not of substantial nature and could not have been rejected by virtue of the provisions contained under Section 36(4) of the Representations of Peoples Act, 1951?*

5. Whether election of respondent no.1 is void as result is materially affected by non compliance of

Constitution and Acts and Rules made under the Representation of the Peoples Act, 1951?

6. Relief to which petitioner is entitled ?

7. Cost to be awarded if any?"

5. Petitioner examined himself as PW-1. He has stated that he contested election for Member of Legislative Assembly from Udaipura Constituency. He was given ticket from Bhartiya Janta Party and respondent No.1 Devendra Singh got ticket from Indian National Congress. Nomination form of Devendra Singh was displayed on notice board. On going through the nomination paper, it was found that same suffers from defects. After seeking legal advice objection was filed. Said objection was exhibited at Ex-P-अ. Original of objection was marked as Ex-P/1, reply to said objection as Ex-P/2. Election Officer dismissed the objection by order dated 13.11.2018. PW-1 stated that affidavit at page no.19 was same affidavit which was displayed on notice board. Objection was raised that affidavit was not notarized and illegal. Seal of notary Smt. Reshu Jain is affixed on page nos.7 to 21 but notary did not put her signature on seal affixed on aforesaid pages. Witness could not recollect whether Devendra Singh/respondent No.1 has mentioned details of movable or immovable property and criminal cases. No objection was raised before returning officer that description of movable and immovable properties and of criminal cases was not given. Election Officer did not inform the PW-1 regarding dismissal of objection on

ground that there was seal of notary on every page and respondent No.1 has signed on every page of nomination papers.

6. Petitioner examined Dinesh Singh as PW-2. Said witness stated that he was SDM, Bareli, District-Raisen (MP) and was Election Officer at relevant time. Nomination form dated 05.11.2018 was filed before him. He exhibited original nomination form as Ex-P/4 which has 48 pages. He has signed in Part-4 of nomination paper at 'A..........A'. Said nomination form has affidavit of Devendra Singh. Devendra Singh has identified himself in affidavit before notary. Affidavit was executed by deponent. Order dated 13.11.2018 was passed by him and exhibited as Ex-P/3. In cross-examination, it was stated by him that Election Commission sent handbook giving directions. In said handbook format of affidavit is given and requirement of affidavit was also mentioned. In said handbook, it has been mentioned that every page of affidavit must bear seal and name. He produced handbook before the Court. He relied on Clause-5.16.1 and document was taken on record. He submitted that affidavit in format-26 was displayed on notice board. He admitted that objection was filed by petitioner and respondent No.1 had filed its reply. After receiving objection, nomination paper and affidavit was scrutinized. Devendra Singh had signed on each page and there was notarial seal on each page. Devendra Singh had filed reply stating therein that he can file fresh affidavit as per election commission guidelines. There was no substantial defect in affidavit. If there was defect in affidavit then same can be cured within time limit prescribed. As there was no material defect, therefore, objection was dismissed.

7. Learned counsel appearing for petitioner to establish his case relied on judgment reported in ***(2022) 1 SCC 115 {V. Prabhakara Vs. Basavraj K. (dead) by legal representatives and Another}***. It is submitted that pleading is defined in Order 6 of the Code of Civil Procedure. Relief can only be based on pleadings alone. There is exception to said rule when parties know each other's case very well and pleading is implicit in an issue then Court can take judicial notice of a fact when it is apparent on face of record. Reliance is also place on ***paragraphs No.17*** and ***18*** of judgment reported in ***(1999) 1 SCC 47 {Virendra Kashinath Ravat and Another Vs. Vinayak N. Joshi and Others}*** which is quoted as under:-

> *"17. The object of the Rule is two-fold. First is to afford the other said intimation regarding the particular facts of his case so that they may be met by the other side. Second is to enable the court to determine what is really the issue between the parties. The words in the sub-rule "a statement in a concise form" are definitely suggestive that brevity should be adhered to while drafting pleadings. Of course brevity should not be at the cost of setting out necessary facts, but it does not mean niggling in the pleadings. If care is taken in the syntactic process, pleadings can be saved from tautology. Elaboration of facts in pleadings is not the ideal measure and that is why the sub-rule embodied the words "and contain only" just before the succeeding words "a statement in a concise form of the material facts".*
>
> ***18.** This Court has indicated the position in Manphul Singh vs. Surinder Singh (AIR 1973 SC 2158). On a subsequent*

occasion this court has again reiterated the principle in M/s. Genesh trading Co. vs Moji Ram (AIR 1978 SC 484). Following observations made in the said decision are useful in this context:

> *"2. Procedural law is intended to facilitate and not to obstruct the course of substantive justice. Provisions relating to pleadings in civil cases are meant to give to each side intimation of the case of the other so that it may be met to enable Courts to determine what is really at issue between parties, and to prevent deviations from the course which litigation on particular causes of action must take.""*

8. Petitioner placed reliance on ***Baghele Narottam Gendalal Vs. State of Maharastra and others*** reported in *{2016 SCC Online Bom 4464}* and submitted that Sub-rule (4) of Rule 25 of the CPC does not restrict the power of Returning Officer to reject nomination paper. Failure to comply with mandatory requirement goes to root of the mater and therefore, it is defect of substantial character. In absence of signature, nomination paper is as good as nomination paper not being submitted at all.

9. Learned counsel appearing for the petitioner also placed reliance on judgment passed by Apex Court in case of ***Resurgence India Vs. Election Commission of India and Another*** reported in ***(2014) 14 SCC 189***. It is submitted that Apex Court has held that voter has elementary

right to know full particulars of candidate who will represent him in Parliament. Right of information t\o a voter flows from Article 19(1)(a) of the Constitution of India. In absence of information about candidate to be selected rights guaranteed to citizen under Article 19(1)(a) of the Constitution of India is violated. To safeguard such right Supreme Court in case of ***Union of India Vs. Association of Democratic Reforms*** reported in ***(2002) 5 SCC 294***, had issued direction. Considering said directions, Section 33-A in Representation of Peoples Act, was enacted in 2002. Filing blank affidavit violates fundamental rights under Article 19(1)(a) and it renders affidavit of no value and importance. Petitioner has also relied on judgment reported in ***AIR 1966 SC 735 {Bhagwati Prasad Vs. ChandramMaul}*** and submitted that if fact is not specifically pleaded and yet it is covered by an issue by implication, and the parties knew that the said plea was involved in the trial then mere fact that plea was not expressly taken in the pleadings would not necessarily dis-entitle a party from relying upon it, if it is satisfactorily proved by evidence.

10. Respondent No.1 examined himself as DW-1. He stated that he had filed nomination paper from Constituency-Udaipura, Bareli in November, 2018 as candidate of Indian National Congress. He had filed his affidavit along with nomination paper on stamp of Rs.100/-. He had signed on part 'A.............A' on Ex-P/4 at page-16 and also signed on page-17 to 30. Affidavit has been notarized by Smt. Reshu Jain. Notary was known to respondent No.1 personally. There was no defect in affidavit. Ramkrishna Patel/petitioner raised objection before Returning Officer and Returning Officer dismissed objection after hearing him. Returning Officer gave

him option to file fresh affidavit if defect is found in affidavit. As no defect was found by returning officer, respondent No.1 had not filed fresh affidavit. It is admitted by him in cross-examination that seal has been affixed on page-16 but same has not been signed by notary. It is submitted that in seal of identification name of respondent No.1 is mentioned but he had not signed over words signature mentioned in seal as he is not knowing procedural nicety of executing affidavit. Witness admits that his name is mentioned as identifier. It is further admitted that he had only signed at page-16 but has not been identified by any other person. No witness has signed affidavit. Clause-9(1) of Ex-P/4 at page-14 is left blank.

11. It has been stated that deponent is known to notary for last ten years. It was also stated that he went to the Office which is situated at Malviya Nagar, Bhopal and affidavit was prepared at Malviya Nagar. Witness denied suggestion that notary was not present in Office and seal was affixed by employee and not by notary. It is also denied that since notary was not present in office, therefore, signature of notary was not there on seal. Respondent No.1 examined Vishal Singh S/o Sahib Singh as DW-2. He is an Advocate by profession. Said witness is known to respondent No.1-Devendra Singh. Witness filed nomination form of 2018. He admitted that objection was raised by petitioner. He had signed vakalatnama (Ex-D/1) and his name is entered on Ex.D/1 on part 'B...............B'. He had also filed reply to objection. DW-2 admitted that as per check list there was no defect in affidavit. Returning Officer found nomination form correct, therefore, there was no reason to file

fresh affidavit. There is provision that if there is defect in affidavit then fresh affidavit can be filed. Said witness has denied suggestion that no instruction has been received from respondent No.1. It has been stated by him that notary has signed on first page of affidavit. It is also stated by him that if deponent is known to notary then he can identify him on affidavit but deponent cannot identify himself in affidavit. If notary identifies deponent then he will mention it in seal and sign the same and will put his signature over words identified by him. Notary has singed only on page-1 and rest of the pages had not been signed. It is admitted that he had not filled any column in Clause-9(1) but information has been given in Clause-9(2).

12. Learned counsel appearing for the respondent relied on judgment reported in ***(1989) 4 SCC 773 {Lata Devi (Mali) Vs. Haru Rajwar}***. On strength of said judgment, it was submitted that mere assertions in election petition is not enough. There has to proof that result of election will be materially affected and in absence of same, it is not permissible to set aside election of a returned candidate merely on surmises and conjuncture. Reliance was also placed on ***paragraph*** *Nos. 7* and *8* of judgment reported in ***(2002) 4 SCC 631 {Rajankumar Shankarrao Teware Vs. Ajit Anantrao Pawar}*** which are quoted as under:-

> *"7. While interpreting clause (d) of sub-section (1) of Section 100 of the Act, this Court has consistently held that in view of clear language of the provision even if the allegations in the election petition are found to be*

proved, the election petitioner should also establish that the result of the election was materially affected.

*8. **Drawing our attention to paragraph 30 of the impugned judgment, Mr. Lalit, learned counsel for the appellant has submitted that the High Court proceeded on a wrong legal proposition. In the said paragraph the learned Judge took the view that in order to succeed in the election petition, the appellants have at least to create a genuine doubt** in the mind of the Court by establishing circumstances alleged in the election petition beyond all reasonable doubt. This approach was wrong in view of the settled position of law but we find from the impugned judgment that subsequently, the learned Judge after discussing various decisions of this Court recorded the finding that after going through the records it could not be said that even a genuine suspicion about alleged mal practice of substituting the valid votes with spurious votes could be established. We have also perused the impugned judgment and we find after discussing law and evidence on record, the election petition was dismissed holding that the appellants failed to make out a prima facie case and could not be allowed to embark upon a fishing inquiry."*

13. Learned counsel appearing for respondent submitted in judgment reported in ***(2014) 5 SCC 312 {Arikala Narasa Reddy Vs. Venkata Ram***

Reddy Reddygari and Another} Apex Court held that Court cannot go beyond pleadings of the parties. Parties have to take proper pleadings and establish the facts by adducing evidence with particular irregularities and illegalities result of election has been materially affected. Further reliance was placed on judgment reported in ***1985 (supp) SCC 111 {Umed Singh Rao Vs. Mani Ram Godara and others}*** wherein Apex Court held that there is a presumption that official acts have been regularly performed and the burden was on the person who pleaded to the contrary and sought a conclusion to be reached.

14. Learned counsel appearing for respondent placing reliance on judgment reported in ***(2009)10 SCC 541 {Ram Sukh Vs. Dinesh Aggarawal}*** submitted that success of a candidate who has won at an election can not be lightly interfered with and any petition seeking such interference must strictly conform to the requirements of the law. Counsel for respondent also placed reliance on ***paragraphs No.17 to 20*** of judgment reported in ***(2012) SCC Online Kerala 20029 {Prahladan Vs. Varkala Kahar}***. Said paragraphs are reproduced as under:-

> *"17. Another material aspect to be taken note of is the relevancy and significance of the check list prepared at the time of the submission of the nomination papers. Duplicate of the check list forms part of the nomination paper and original thereof is given to the candidate/petitioner who submits the nomination paper. The issuance of the check list to a candidate filing a nomination paper has been introduced by a notification*

*issued by the Election Commission. The nomination papers, both of them, filed by the candidate/proposer contain the check list prepared by the Assistant Returning Officer. That check list demands primary satisfaction of the Returning Officer over the documents required to be produced with the nomination paper. If **any of the documents has not been filed**, it requires the **Returning Officer to clearly state in the bottom of the check list fixing the time limit by which such documents can be submitted. Such check list is required to be signed both by the Returning Officer receiving the nomination paper and also the candidate/proposer as to receiving it. Notification issued by the Election Commission dated 10th February, 2009 in that regard states that the check list serves dual purpose acknowledging the receipt of the document as well as notice as directed in the Hand Book. If a document is filed subsequent to the filing of the nomination an acknowledgment to that effect is issued to the candidate mentioning the date and time and that is also to be indicated appropriately in the check list.*

18. Going through the check list forming part of the nomination paper filed by the petitioner, it is seen that no defect was noticed by the Returning officer who received the nomination; and, production of every document including the affidavit in Form No.26 has been duly acknowledged without noticing any defect at

all, leave alone, directing any rectification of defect in such document.

19. The question whether the rejection of the nomination paper of the petitioner for the reason that Form No.26 affidavit produced with the nomination paper sworn to before a Notary was not stamped for notarization was proper or improper has to be adjudged and examined with reference to the provisions covered by Sections 33(1) and 36(1) of the Act, Rules 4 and 4-A of the Conduct of Election Rules, Form 2B and paragraph 10.1 (viii) of the guidelines issued to the Returning Officers in the Hand Book. In the context, it is also to be pointed out that the Returning officer examined as PW2, when his attention was drawn to the guidelines given in the Hand Book, particularly, paragraph 10.1(viii) that a defect in the affidavit should not be a ground for rejection of the nomination conceding that guideline asserted that subsequently contra instructions have been given by the Election Commission. That assertion made by him that instructions conflicting with that covered by paragraph 10.1(viii) of the Hand Book is nothing but an explanation canvassed of, which has no merit, to justify the rejection of the nomination papers for not following the guidelines given in paragraph 10.1 (viii) of the Hand Book.

20. As already indicated Form No.26 affidavit was sworn to before a Notary Public, but, stamp for notarization however happened to be affixed in a different affidavit produced with the nomination paper. When that be so, it was clearly a case that non-affixing the stamp for notarization in Form No.26 affidavit was only a mistake, and such mistake was not a defect of substantial character. Rejection of the nomination papers of the petitioner on the ground that it was not duly attested by the Notary for the reason of non-affixing of stamp for notarization in Form No.26 affidavit was improper. When Form No.26 affidavit was filed with the nomination paper duly signed by a Notary even if stamp for notarization has not been affixed in such affidavit, but only in the other affidavit produced, still, it is a case where an opportunity for affixing of the required stamp for notarization of the affidavit should have been extended to the petitioner having regard to the instructions given under the guidelines in paragraph 10.1(viii) of the Hand Book issued to the Returning Officers. The Returning officer has rejected the nomination paper of the petitioner on a ground which is not sustainable under law. Having regard to the provisions of the Act, Rules and guidelines under the Hand Book it has to be concluded that the nomination papers of the petitioner have been improperly rejected."

In view of aforesaid submission, counsel for respondent prays for dismissal of election petitioner.

15. Heard the counsel for the petitioner as well as respondent.

16. First issue before this Court is "whether nomination form submitted by respondent No.1 is liable to be rejected under Section 36(2)(b) of Representation of Peoples Act, 1951 and also due to non-compliance of Rule 4-A of Conduct of Election rules, 1961?"

Section 36(2)(b) of Representation of Peoples Act, 1951 is quoted as under:-

> ***36. Scrutiny of nomination -***
>
> *(1) ****
>
> *(2) The returning officer shall then examine the nomination papers and shall decide all objections which may be made to any nomination and may, either on such objection or on his own motion, after such summary inquiry, if any, as he thinks necessary, reject any nomination on any of the following grounds*
>
> *(a) ****
>
> *(b) that there has been a failure to comply with any of the provisions of section 33 or section 34;*

Sections 33 (1) and 33 (4) of Representation of Peoples Act, 1951 are quoted as under:-

33. Presentation of nomination paper and requirements for a valid nomination -

(1) On or before the date appointed under clause (a) of section 30 each candidate shall, either in person or by his proposer, between the hours of eleven O'clock in the forenoon and three O'clock in the afternoon deliver to the returning officer at the place specified in this behalf in the notice issued under section 31 a nomination paper completed in the prescribed form and signed by the candidate and by an elector of the constituency as proposer:

*(2) ****

*(3) ****

(4) On the presentation of a nomination paper, the returning officer shall satisfy himself that the names and electoral roll numbers of the candidate and his proposer as entered in the nomination paper are the same as those entered in the electoral rolls:

Rule 4-A of Conduct of Election Rules, 1961 is quoted as under:-

*"**4-A. 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."

17. From perusal of aforesaid provisions of law, it is clear that Section **36(2)(b)** gives power to returning officer to examine nomination paper and to decide objections and can reject nomination paper, if there has been failure to comply with provision of Section 33 of the Act of 1951. Section 33 prescribed presentation of nomination paper and requirements of valid nomination. On presentation of nomination paper, returning officer satisfies himself regarding name of candidate and his electoral number and also that of proposer. If there is any error in description which may be clerical, technical, printing or any other error in name. place etc. same will not affect full operation of nomination paper and returning officer shall permit errors to be corrected and can also direct for overlooking said defect. For aforesaid defects, nomination paper cannot be rejected. Returning officer can reject when there is failure to comply with provision of Section 33 and not otherwise.

18. Devendra Singh (DW-1) in its deposition has stated that as per election manual, 2018, defect in affidavit can be removed within the time prescribed. Returning officer has not pointed any defect, therefore, there was no requirement to file fresh affidavit. Handbook, 2018 lays down following guidelines:-

5.11 नामांकन पत्रों की प्रारंभिक जांच

5.11.1 जैसे ही प्रत्येक नामांकन पत्र दाखिल किया जाता है रिटर्निंग ऑफिसर या विनिर्दिष्ट सहायक रिटर्निंग ऑफिसर द्वारा यथास्थिति अधिनियम 1951 की धारा 33(4) के अधीन यथापेक्षित तकनीकी

दृष्टिकोण से उसी समय उसकी जांच किया जाना विधि द्वारा अपेक्षित **है। किन्तु** रिटर्निंग ऑफिसर से इस स्तर पर किन्हीं नामांकन पत्रों की **कोई** औपचारिक संवीक्षा करना अपेक्षित नहीं है। यह प्रारंभिक जांच नामांकन पत्र(त्रों) मे दिए गए अनुसार तथा निर्वाचन नामवलियो मे यथा प्रविष्ट अभ्यर्थी एवं प्रस्तावक(कों) के नाम एवं निर्वाचन, नामवलियो से संबंधित प्रविष्टियों तक सीमति है। इस चरण में निम्नलिखित पहलुओं की जांच की जानी चाहिए।

5.11.1(v) यह जांच कर लें कि क्या शपथ पत्र के सभी स्तंभों को भरा गया है, क्योंकि अपूर्ण शपथ पत्र अस्वीकार किए जाने की संभावना है जिससे नामांकन पत्र को अस्वीकार कर दिया जाएगा। यदि किसी अभ्यर्थी द्वारा कोई स्तंभ खाली छोड़ा जाता है तो रिटर्निंग ऑफिसर/या विनिर्दिष्ट सहायक रिटर्निंग ऑफिसर जांच सूची में नोट करेगा जैसा कि माननीय उच्चतम न्यायालय के आदेश के परिपालन में और भारत निर्वाचन आयोग के निर्देश नं. 576/3/ECI/LET/FUNC/JUD/SDR/2013 दिनांक 12.01.2017 तथा उसे अभ्यर्थी को सौंपकर उससे समुचित रसीद लेगा। ऐसे मामलो में उम्मीदवार को जांच शुरू होने के लिए निर्धारित समय तक एक नया एफिडेविट जो सब तरह से पूर्ण है, को फाइल करने का अवसर मिलेगा।

5.16 अभ्यार्थियों द्वारा प्रस्तुत किया जाने वाला शपथ पत्र

5.16.3 यदि कोई अभ्यर्थी अपने नामांकन पत्र के साथ उक्त शपथ पत्र दाखिल नहीं कर पाता है, यदि इसमें कोई त्रुटि हो तो रिटर्निंग ऑफिसर इस अपेक्षा को उसके ध्यान में लाना चाहिए। अभ्यार्थियों या प्रस्तावकों को सौंपी गई जांच सूची के माध्यम से अभ्यर्थी को नामांकन दाखिल करने की अंतिम तारीख को अधिकतम 3 बजे अपरान्ह तक सम्यक रूप से शपथ लिए गए शपथ पत्र को दाखिल करने के लिए कहा जाना चाहिए।

5.16.5 शपथ पत्र के किसी भी स्तंभ को खाली नहीं छोडा जाना चाहिए या केवल निशान/डैश चिन्ह द्वारा भरा नहीं जाना चाहिए। चूंकि फोन नंबर, ई–मेल आई. डी. सोशल मीडिया अकाउन्टस से संबंधित जानकारी फार्म 26 में सम्मिलित की गई है, अतः इस संबंध में सूचना प्रस्तुत करना आवश्यक है।

5.16.5 माननीय उच्चतम न्यायालय ने कहा है कि अपने नामांकन पत्र के साथ अभ्यार्थियों द्वारा दाखिल शपथ पत्रों में अभ्यार्थियों से उसमें सभी स्तंभों को भरा जाना अपेक्षित है। तथा किसी भी स्तंभ को खाली नहीं छोड़ा जा सकता है। इसलिए शपथ पत्र दाखिल करने के समय ऑफिसर को यह जांच करनी होती है कि क्या नामांकन पत्र के साथ दाखिल शपथ पत्र के सभी स्तंभ भरे गए हैं यदि नहीं तो रिटर्निंग ऑफिसर अभ्यार्थियों को खाली स्तंभो में सूचना प्रस्तुत के लिए अनुस्मारक देगा। माननीय न्यायालय ने कहा है कि यदि किसी मद के लिए प्रस्तुत किए जाने हेतु कोई सूचना नहीं है तो ऐसे स्तंभ में उपयुक्त अभियुक्तियों "शून्य या लागू नहीं" या 'ज्ञात नहीं' को यथाप्रयोज्य दर्शाया जाएगा। उनको किसी स्तंभ को खाली नहीं छोड़ना चाहिए। यदि अनुस्मारक के बाद भी अभ्यर्थी खाली स्थानों को नहीं भर पाता है तो नामांकन पत्रों की समीक्षा के समय यह नामांकन पत्र रिटर्निंग ऑफिसर द्वारा अस्वीकार किए जाने के लिए दायी होगा।"

19. Returning officer has no power to examine the contents of affidavit given by a candidate. He has to examine name, electoral number and to see affidavit is properly signed and no place is left blank and if there is some formal defect then opportunity is to be given to a candidate to correct the same. In present case, objection was filed and returning officer after hearing the parties has dismissed the objection. Non-signing by notary or by a candidate in some place or defect of identification are to be taken care of during scrutiny of returning officer and said defects are

required to be pointed out to a candidate so that defect can be removed but no such defect was pointed out to respondent No.1. Objection was rejected, therefore, there was no occasion for respondent No.1 to correct the defect or to file fresh affidavit. Respondent No.1 has deposed that he had shown his willingness to file fresh affidavit if there is any defect. In these circumstances merely because defect of non-signing which was overlooked by returning officer and no opportunity was given to returning candidate to correct the same. Election of a democratically elected candidate cannot be declared void nor it can be said that there was improper acceptance of nomination paper.

20. Next question to be considered is "whether there is non-compliance of Rule 4-A of Conduct of Election Rules, 1961 for which nomination paper ought to have been rejected. On going through format-26 under Rule 4-A, which is part of Ex-P/1/A, it is found that column-9 (1) of part-B was left blank. Column-9(1) is regarding dues to Government. During cross-examination of DW-1, question was put to him whether he had left column-9 (1) blank. Objection was raised that said question could not be asked from witness as there is no pleading regarding it. Objection was reserved to be decided at the time of passing of judgment.

21. On going through the pleadings in election petition, it is found that there is no pleading that column-9(1) has been left blank. If there is no pleading then party is not permitted to give evidence to prove the same. In view of same, objection is sustained and therefore, question

and its answer i.e. "प्रदर्श पी0—4 .... वाकिफ नहीं हूं।" is not to be read in evidence in election petition. It is established law that proof and pleading in election petition is to be construed strictly.

22. Petitioner has relied in case of ***(2022) 1 SCC 115 {V. Prabhakara Vs. Basavraj K. (dead) by legal representatives and Another}; (1999) 1 SCC 47 {Virendra Kashinath Ravat and Another Vs. Vinayak N. Joshi and Others}; AIR 1973 SC 2158; 1978 SC 484*** and stated that when both parties were aware of the issue and they have adduced evidence then issue raised can be considered by Court and decided in accordance with law. Said issue cannot be defeated only on ground that there is no pleading on facts regarding it. There is no quarrel to the proposition made by Apex Court in aforesaid cases. It is to be seen by Court that respondent is not prejudiced. Since, there is no pleading regarding leaving column-9(1) blank, therefore, respondents does not have any chance to explain it in its written statement. Respondent No.1 will be taken by surprise if said question is permitted. In view of same, in absence of pleading, petitioner is not permitted to question respondent No.1 regarding leaving column-9(1) blank. In view of aforesaid discussion, there is no non-compliance of Rule 4-A of Conduct of Election Rules, 1961. Resultantly, ***issue No.1 is answered in negative***. Nomination paper of respondent No.1 is not liable to be rejected because of defect under Section 36(2)(b) of the Representation of Peoples Act, 1951 and Rule 4-A of Conduct of Election Rules, 1961.

23. Issue No.2 is regarding non-signing of affidavit filed along with nomination paper amounts to violation of right to information under **Section 33-A of** Representation of Peoples Act, 1951 and same is quoted **as under:-**

> "***Section 33-A Right to Information***- *(1)A candidate* ***shall****, apart from any information which he is required to furnish, under this Act or the rules made thereunder, in his nomination paper delivered under sub-section (1) of section 33, also furnish the information as to whether-*
>
> *(i) he is accused of any offence punishable with imprisonment for two years or more in a pending case in which a charge has been framed by the court of competent jurisdiction;*
>
> *(ii) he has been convicted of an offence [other than any offence referred to in sub-section (1) or sub-section (2), or covered in sub-section (3), of section 8] and sentenced to imprisonment for one year or more.*
>
> *(2) 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, also deliver to him an affidavit sworn by the candidate in a prescribed form verifying the information specified in sub-section (1).*

(3) The returning officer shall, as soon as may be after the furnishing of information to him under sub-section (1), display the aforesaid information by affixing a copy of the affidavit, delivered under sub-section (2), at a conspicuous place at his office for the information of the electors relating to a constituency for which the nomination paper is delivered."

24. Section 33-A lays down that candidate shall furnish affidavit along with his nomination paper furnishing information of his criminal antecedent which includes pending and decided cases and also information regarding his conviction and sentence. Section 33-A does not lay down for providing any other information. Information which has been left blank is in respect of Government dues has not been provided in Section 33-A of the Act of 1951.

25. Learned counsel appearing for petitioner has relied on judgment passed in case of ***Union of India Vs. Association of Democratic Reforms*** reported in ***(2002) 5 SCC 294*** and submitted that it is mandatory on part of candidate to furnish affidavit in prescribed format-26 stating his assets and liabilities. There is statutory liability to file affidavit regarding the same. Respondent No.1 had left particulars blank, therefore, there is violation of Rights of Information. Legislature has enacted Section 33-A and same was inserted by Act 72 of 2002 on 24.08.2008. Legislature had omitted information regarding property in Section 33-A.

26. Apex Court in paragraph-48 of its judgment passed in ***Union of India (supra)*** has issued following directions:-

*"**48.** The Election Commission is directed to call for information on affidavit by issuing necessary order in exercise of its power under Article 324 of the Constitution of India from each candidate seeking election to Parliament or a State Legislature as a necessary part of his nomination paper, furnishing therein, information on the following aspects in relation to his/her candidature:*

(1) Whether the candidate is convicted/acquitted/ discharged of any criminal offence in the past if any, whether he is punished with imprisonment or fine?

(2) Prior to six months of filing of nomination, whether the candidate is accused in any pending case, of any offence punishable with imprisonment for two years or more, and in which charge is framed or cognizance is taken by the Court of law. If so, the details thereof:

(3) The assets (immovable, movable, bank balances etc.) of a candidate and of his/her spouse and that of dependents.

(4) Liabilities, if any, particularly whether there are any over dues of any public financial institution or Government dues.

(5) The educational qualifications of the candidate.

27. After passing of judgment dated 02.05.2002, Legislature has amended the Representation of Peoples Act, 1951 and has incorporated Section 33-A. In Section 33-A, directions given in points-3, 4 and 5, were not included and omission by Legislature was intentional. Since description of movable and immovable property was not included in Section 33-A of Act of 1951, therefore, it cannot be said that leaving particulars blank in column-9(1) violates right to information. Resultantly, ***issue No.2 is answered in negative.***

28. Issue No.3 "whether non-compliance of Section 8(1)(e) and Section 8(2) of the Notaries Act, 1952 makes affidavit a nullity?

Section 8(1)(e) of Notaries Act, 1952 is quoted as under:-

> "*8.* ***Functions of notaries*** *- (1) A notary may do all or any of the following acts by virtue of his office; namely:-*
>
> *(a)* ***
>
> *(b)* ***
>
> *(c)* ***
>
> *(d)* ***
>
> *(e) administer oath to, or take affidavit from, any person*"

29. Petitioner has not pleaded that oath has not been administered to deponent. Petitioner also does not have a case that respondent No.1 had not signed the affidavit. Petitioner's case is that notary has not identified

the deponent and has not put his signature on place for identification. Seal has been affixed on affidavit but notary has not put his signature over the seal. Respondent No.1 had examined himself as DW-1. He was questioned that no witness has identified him in affidavit. Respondent No.1 had replied that he does not know about the procedure to be followed by notary. It has also been admitted that there is no signature of notary on page-16. It has been stated by DW-1 that notary Reshu Jain was known to him for ten years. It has also been stated that nomination paper and affidavit were prepared in Bhopal. Notary has affixed the seal in his Office. He had denied the suggestion that notary was not in office. Considering the deposition of DW-1, it is clear that, respondent No.1 was known to notary. It has been argued by respondent No.1 that identification by witness is not required if deponent is known to notary. Petitioner has not made out any case that affidavit is not of respondent No.1 and only technical defect has been pointed out in the affidavit.

30. As per Conduct of Election of Rules, 1961, Returning Officer ought to have given an opportunity to a candidate to remove technical defect if any in affidavit. No such technical defect was pointed out and objection was also dismissed. In view of aforesaid circumstances, it cannot be said that there was non-compliance of Sections 8(1)(c) and 8(2) of the Notaries Act, 1952 and nomination paper was illegally accepted. ***Issue No.3 is answered in negative.***

31. Issue No.4 is "whether election of respondent No.1 is void as result of election is materially affected by improper acceptance of nomination

paper?" Learned counsel for respondent No.1 had relied on judgement reported in ***(1989) 4 SCC 773 {Lata Devi (Mali) Vs. Haru Rajwar}; (2002) 4 SCC 631 {Rajankumar Shankarrao Teware Vs. Ajit Anantrao Pawar}; (2014) 5 SCC 312, 1985 (supp) SCC 111; (2009) 10 SC 541; (2012) SCC Online Kerala 20029*** and stated that to be successful in election petition for declaration of election of returned candidate to be void parties must plead and prove that result of election would have substantially and materially affected. No evidence has been adduced to show that vote casted in favour of respondent No.1 would have gone to petitioner if his nomination paper was not accepted. Only because petitioner has got second largest number of votes will not infer this Court to draw a prescription that in case of rejection of nomination paper of respondent No.1 votes would have gone in favour of petitioner. Petitioner has failed to adduced evidence that non-acceptance of nomination paper of respondent No.1 would have materially affected the result of election. There were other contesting candidates and if nomination paper of respondent No.1 was not accepted then said votes could have been casted in favour of petitioner or other contesting candidates. Court will not presume that all votes casted in favour of respondent No.1 could otherwise go in favour of petitioner. In view of same, petitioner has failed to adduced any evidence to show that result of election would have been materially and substantially affected if nomination paper of respondent No.1 was rejected. Resultantly, ***issue No.4 is also answered in negative.*** It has already been held that acceptance of nomination paper was not illegal.

32. Issue No.4-A and issue No.5 have already been answered while answering issues No.1 to 4. Resultantly, ***issue No.4-A is answered in positive*** and ***issue no.5 is answered in negative.***

33. In view of aforesaid discussion and circumstance of case, petitioner is not entitled to get any relief. Election petition, is ***dismissed*** without cost.

Sd./-
(VISHAL DHAGAT)
JUDGE.

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

भारत निर्वाचन आयोग

निर्वाचन सदन, अशोक रोड, नई दिल्ली—110 001

नई दिल्ली, तारीख 02 फरवरी 2023—12 पौष, 1944 (शक)

अधिसूचना

सं.—82—म.प्र.—(25/2019)—2023.—लोक प्रतिनिधित्व अधिनियम, 1951 (1951 का 43) की धारा 106 के अनुसरण में, भारत निर्वाचन आयोग, 2019 की निर्वाचन याचिका सं. 25 में मध्यप्रदेश उच्च न्यायालय के दिनांक 30 सितम्बर 2022 के निर्णय/आदेश को एतद्द्वारा प्रकाशित करता है (श्री पवन सिंह विरुद्ध श्री तुलसीराम सिलावट एवं अन्य).

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

ELECTION COMMISSION OF INDIA

Nirvachan Sadan, Ashoka Road, New Delhi—110 001

New Delhi, Dated 02nd February, 2023—12 Pausa, 1944 (Saka)

NOTIFICATION

No. 82-MP-(25/2019)-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 30th September 2022 of the High Court of Madhya Pradesh in the Election Petition No. 25 of 2019 (Sh. Pawan Singh *Vs.* Sh. Tulsiram Silawat & Others).

IN THE HIGH COURT OF MADHYA PRADESH
AT INDORE

BEFORE

HON'BLE SHRI JUSTICE RAJENDRA KUMAR (VERMA)

ELECTION PETITION No. 25 of 2019

Between:-
PAWAN SINGH (Age: 42) S/O SHRI KESHAR OCCUPATION AGRICULTURIST 115, GRAM KANADAIYA, VILLAGE KANADIA TEH. INDORE, INDORE, MADHYA PRADESH

.....PETITIONER

(BY SHRI RAVINDRA CHHABRA, SENIOR COUNSEL WITH SHRI AMAN ARORA, LEARNED COUNSEL FOR THE PETITIONER)

AND

1. SHRI TULSIRAM SILAWAT, S/O
SHRI THAKURDIN SILAWAT,
AGED ABOUT 63 YEARS,
R/O 80,AGRAWAL NAGAR,
TEHSIL AND DISTRICT-INDORE

2. SHRI DR.RAJESH SONKAR
S/O LATE SHRI NANAKCHAND SONKAR
AGED ABOUT 50 YEARS, R/O 21/6,
MURAI MOHALLA, CHAWNI,
INDORE, DISTRICT INDORE.

3. SHRI KAMAL CHOUHAN,
S/O SHRI BAPU CHOUHAN,
AGED ABOUT 43 YEARS,
R/O 30, VILLAGE-SOLSINDA,
TEHSIL SANWER, DISTRICT INDORE.

4. SHRI ANIL CHOUHAN,
S/O SHRI BALU CHOUHAN,
AGED ABOUT 26 YEARS,
R/O 238, VILLAGE BRAHMAN-PIPALYA,
P.O.TODI, TEH SANWER, DISTRICT INDORE, M.P.

5. SHRI BRAMHANAND MALVIYA,
S/O SHRI MANGILAL MALVIYA,
AGED ABOUT 65 YARS,
R/O 29, ASRAWAD BUJURG,
HANUMAN MOHALLA,
P.O. DUDHIYA, DISTRICT INDORE.

6. SHRI RAHUL KHARE,
S/O SHRI KISHORE KHARE,
AGED ABOUT 34 YEARS,
R/O 166, VILALGE-PACHOLA,
P.O. CHITTODA, TEH-SANWER,
DISTRICT INDORE, M.P.

7. SHRI SUBHASH CHOUHAN,
S/O SHRI RAMESH CHANDRA CHOUHAN,
AGED ABOUT 37 YEARS,
R/O 166, VILLAGE-ALWASA, P.O. ALWASA,
TEH-HATOD, DISTRICT INDORE.

8.NARENDRA BOURASI,
S/O SHRI NANKULAL, AGED ABOUT 62 YEARS,
R/O 103/1, MUKHERJEE NAGAR,
INDORE, DISTRICT-INDORE, M.P.

9. STATE ELECTION COMMISSIONER,
M.P.STATE ELECTION COMMISSION,
NIRVACHAN BHAWAN, 58, ARERA HILLS, BHOPAL.

10. DISTRICT ELECTION OFFICER,
INDORE, DISTRICT INDORE, M.P.

11. SHRI BIHARI SINGH, SDM/SDO/
RETURNING OFFICER,
211,SANWER CONSTITUENCY, INDORE, M.P.

12. SDM/SDO/RETURNING OFFICER,
211, SANWER CONSTITUENCY, INDORE, M.P.

.....RESPONDENTS

(SHRI VINAY SARAF, SENIOR ADVOCATE WITH SHRI YASPAL AHLUWALIA AND SHRI AKASH SHARMA, ADVOCATES FOR RESPONDENT NO.1.)

RESERVED ON : 15.07.2022 AND DELIVERED ON 30.09.2022

This election petition coming on for orders this day, the court passed the following:

ORDER

Heard on I.A.No.2047/2022 which is an application under Order 7 Rule 11 and Section 151 of CPC read with Section 86(1) of the Representation of People Act, 1951 (hereinafter referred to as "Act of 1951") filed on behalf of respondent no.1 for rejection of election petition on the grounds mentioned therein.

2. The present election petition has been filed by the original petitioner Rahul Silawat, who also contested the election from the Constituency No.211 Sanwer, District Indore as an independent candidate but lost to respondent no.1 by a margin of 95845 votes in the general elections for Legislative Assembly held in the month of December, 2018. The petitioner has challenged the election petition seeking the following reliefs:-

> "(i) call for the entire record from the Election Commission of Indial in respect of 211, Sanweer Constituency of M.P. State Legislative Assembly.
> (ii) declare the election of respondent no.1 from 211 Sanwer Constituency of M.P. State Legislative Assembly as null and void.
> (iii) declare the respondent no.2 (who has secured second highest votes) as duly elected member of the M.P. State Legislative Assembly from 211 Sanwer Constituency of M.P.State Legislative Assembly.
> (iv) direct for initiation of criminal proceedings under Section 125 A of the Representation of People Act against respondent no.1.
> (v) grant any other relief which this Hon'ble Court deems fit and proper in the interest of justice.
> (vi) Grand cost of the petition."

3. The respondent no.1 filed the reply of the election petition on 16.06.2019 and denied all the allegations in toto and in reply to the allegations made against the respondent no.1, it is contended that the allegations levelled in the election petition do not fall under the definition of corrupt practice described under the Act of 1951.

During the pendency of this petition the respondent no.1 resigned from the Legislative Assembly and his resignation was duly accepted on 14.03.2020 and the seat of Sanwer Constituency No.211 was declared vacant on account of resignation of respondent no.1. After the by-elections were notified by the election commission, the original petitioner filed an application for withdrawal of the petition and lastly in compliance to order passed by this Court, the Registry of this Court

published the notice on 27.01.2021 seeking withdrawal of the election petition and thereafter on 13.02.2021, the substituted petitioner filed an application under Section 110(C) of the Act of 1951 which was allowed and the present petitioner has been constituted in place of the original petitioner and this Court permitted him to continue proceedings of the instant election petition.

4. Learned counsel for the respondent no.1 has submitted that due to the resignation of respondent no.1 and after the by-elections of seat of Sanwer constituency, the relief sought by the petitioner in the original petition has rendered infructuous and the reliefs are only academic. It is also submitted that in the by-elections respondent no.1 won the elections from the Legislative Assembly of Constituency No.211, Sanwer, district Indore by margin of 53,264 votes. Now no cause of action survives and as a result of which petition could be said to be the petition disclosing no cause of action qua the relief of declaring the election of the respondent no.1 from the Constituency No.211, Sanwer District Indore in the general assembly election held in the year 2018 null and void. All other reliefs are consequential and now are academic only. **It is also submitted that Section 83 of the Act of 1951 not having been satisfied inasmuch as the petitioner in the petition though having alleged for commission of corrupt practices in the said election has failed to satisfy the mandatory requirement of law by not filing proper affidavit in support of the allegations of corrupt practices made in the petition as an effect whereof the petition is liable for rejection.** It is further submitted that the reliefs as claimed in the petition cannot be granted.

5. It is further submitted by the counsel for the respondent no.1 that in the election petition ground of corrupt practices has also been raised. However, the instant election petition lacks in material fact constituting the cause of action required under the Act of 1951. The affidavit filed in support of the petitioner does not contain a concise statement of material

facts on which the petitioner relies and therefore, does not disclose a triable issue or cause of action. The so called specific allegations of corrupt practice as contained in petition did not meet out the basic requirement which could constitute cause of action as required by law.. Even the material particulars are absent in the election petition. The material facts as to how the information came to the knowledge of the petitioner pertaining to various incidents, as mentioned in the referred paras is absolutely missing, whereas the same is the preliminary requirement for maintainability of the petition. Thus, it suffers from non-compliance of the provisions contained under 83(1) of the Act of 1951.

6. It is also submitted by the learned counsel for respondent no.1 that no trial or inquiry is permissible on the basis of such vague, indefinite imprecise averments. The Court should not undertake to decide an issue unless it is a living issue between the parties. If an issue is purely academic in that case its is the decision neither way would have no impact on the position of the parties and would be an exercise in futility leading to waste of public time. The orders that could be passed by this Court at the conclusion of the trial of the election petition are detailed in Section 98 of the Act and relief nos. (ii) and (iii) could not be granted to the petitioner and further relief nos.(i) and (iv) also cannot be granted as the affidavit filed with the petition in support of the allegations of corrupt practice and particulars thereof does not comply with the provisions of the Act of 1951 and the Rules made thereunder.

7. It is also submitted that the affidavit accompanying the election petition in support of the allegations of corrupt practices and the particulars thereof is not according to Form No.25 prescribed for the same and provisions of Section 83(1) of Act of 1951. The petitioner has not prayed for declaration that the respondent no.1 be declared as disqualified and under the circumstances the entire petition as it is framed and also looking to the nature of the prayer clauses, has become

infructuous and no cause of action accrues and same is liable to be dismissed on this count alone. The affidavit, in essence, though forms part of the petition is in the shape of criminal charge as the allegations of corrupt practices are quasi criminal in nature and as such without disclosing the charge in the manner provided the complete cause of action has lacked. The statutory provisions laying down the requirement cannot be allowed to be diluted as the very purpose of statutory provision is to be given obedience and not the disobedience and any deviation showing the requirement of law regarding filing of an affidavit when the allegations of corrupt practices are made and also regarding other requirements as such mentioning of paragraphs regarding statements of facts qua the allegations of corrupt practices and the name of the particular corrupt practice and also the material particular qua the corrupt practice and the source of the information of the corrupt practice is an essential one as the charge of corrupt practice is not purely of civil nature but is of quasi criminal nature.

8. It is also submitted by the learned counsel for respondent no.1 that the election petition on account of sufferance of deficiency noticed heretofore cannot proceed further as the relief of declaring the election of respondent no.1 is null and void and declaring the respondent no.2 returned candidate have become infructuous on account of subsequent holding of the by-elections and further the allegations of corrupt practice,in the present case the relief on the basis of allegations of corrupt practice against the respondent no.1 cannot be granted as the respondent no.1 cannot be put to trial as affidavit which is the essence of the charges, had failed to satisfy the requirement of law. Hence, it is prayed that this application be allowed and this election petition be dismissed as rendered infructuous and not maintainable.

9. It is submitted by learned counsel for the petitioner that averments made in the application are based on erroneous, misleading and

superficial interpretation of the statutory provisions of the Act of 1951. On 09.11.2021 the respondent no.1 filed the application bearing I.A.No.7387/2021 under Order VI Rule 16 read with Section 151 of the CPC seeking relief of striking out/deletion of the pleadings on the ground that the original petitioner has failed to file affidavit in the prescribed Form No.25, in view of Rule 94-A of the Conduct of Election Rules, 1961 (hereinafter referred to as "Rule of 1961"). Thus respondent no.1 had no issue with the election petition but only satisfied with the certain paragraphs of the petition. Reply to the said application was filed by the petitioner on 11.02.2022 denying the allegations made by the respondent no.1 in the aforesaid application. After filing of the reply to I.A.No.7387/2021 on the date fixed for arguments, the respondent no.1 with an ulterior motive to prolong the trial of the instant election petition sought time to file counter affidavit. When the counter affidavit was also not found conducive, the present I.A.has been filed. It is submitted that provision of Section 86 is applicable only when there is a default in non-compliance with the provisions of Section 81 or 82 or 117 of the Act of 1951. Undisputedly, there is no non-compliance with any of the said provisions. The requirement of result of the election having been materially affected is envisaged under Section 100(10(d) and not under Section 100(1)(b) i.e. corrupt practice committed by the returned candidate or the election agent or any other person with the consent of the returned candidate or his election agent. For invoking Section 100(1)(b), proof of result having been materially affected is not required. Therefore, the present application deserves to be dismissed.

10. It is also submitted that if the contents of this election petition regarding corrupt practices are found to be true then not only the election of respondent no.1 will be declared void, but will also be incurred electoral disqualification. Infact, if the instant election petition had been decided and allowed prior to the by-elections, then the respondent no.1

would have been disqualified from contesting the said elections. The resignation from constituent assembly/dissolution of assembly or by election and result thereof, has no bearing on the present election petition much less will not result in abatement of the petition. In support of the aforesaid contention reliance is placed in the matter of **Sheo Sadan Singh Vs. Mohan Lal Gautam reported in (1969) 1 SCC 408.**

11. It is further submitted that a bare perusal of the written statement of respondent no.1 reveals that there was no protest/demur/objection with regard to the pleadings of the election petition. The instant election petition is duly supported by an affidavit in Form No.25 as prescribed under Rule 94-A of Rule of 1961 and is filed in terms of Section 83 of the Act of 1951. The averments made in the petition has also been verified by the original petitioner in the verification clause of the affidavit as per Form No.25. In the said affidavit it has been categorically stated that the statements made in paragraphs 9 to 31 of the election petition in respect of corrupt practices by suppression of criminal antecedents and improper filing of nomination form of the respondent no.1 are true to his knowledge. The election petition contains a concise statement of material facts and requisite particulars in accordance with the Rule of 1961.

12. It is also submitted that a bare reading of Section 83 of the Act of 1951 would show that an election petition should contain a concise statement of material facts and full particulars of corrupt practice including as full a statement as possible of the names of the parties alleged to have committed such corrupt practice and the date and place of the commission of each such practice. A bare perusal of paragraphs 9 to 20, 23 to 27 and 30 of the election petition itself shows that the election petition complies with the requirement of Section 83 of the Act of 1951. Respondent no.1 has levelled the pleadings as vague, indefinite, imprecise but failed to mention as to which particular averment/pleading

is vague/incomprehensible. On the above grounds the petitioner prays for dismissal of the application on exemplary cost.

13. Heard learned senior counsel for both the parties at length and perused the record.

14. Undisputedly, during the pendency of the election petition respondent no.1 has resigned from the Legislative Assembly and Sanwer Constituency No.211 was declared vacant and after by elections respondent no.1 was elected once against for Assembly from the same Constituency, hence relief nos.(ii) and (iii) claimed by the petitioner in the relief clause of the petition cannot be granted. So far as relief nos.(i) and (iv) in the relief clause of the petition is concerned, petitioner has to prove that any corrupt practices has/have been committed by the respondent no.1, and if it is proved then this Court shall pass order under Section 99 of the Act of 1951.

15. As per respondent no.1 petition also suffers from non-compliance of Section 83 (1) of the Act of 1951 which also provides that where the petitioner alleges any corrupt practice, the petition shall also be accompanied by an affidavit in the prescribed form in support of he allegation of such corrupt practice and the particulars thereof.

16. Learned counsel for respondent no.1 has relied upon the judgment of the Apex Court in the case of **Dhartipakar Madan Lal Agarwal Vs. Rajiv Gandhi AIR 1987 SC 1577.** The Apex Court in the aforesaid case has held as under:-

> "4 . The election under challenge relates to 1981, its term expired in 1984 on the dissolution of the Lok Sabha, thereafter another general election was held in December, 1984 and the respondent was again elected from 25th Amethi Constituency to the Lok Sabha. The validity of the election held in 1984 was questioned by means of two separate election petitions and both the petitions have been dismissed. The validity of respondent's election has been upheld in Azhar Hussain v. Rajiv Gandhi, [1986]2SCR782 and Bhagwati Prasad v. Rajiv Gandhi: [1986]2SCR823 . Since the impugned election

relates to the Lok Sabha which was dissolved in 1984 the respondent's election cannot be set aside in the present proceedings even if the election petition is ultimately allowed on trial as the respondent is a continuing member of the Lok Sabha not on the basis of the impugned election held in 1981 but on the basis of his subsequent election in 1984. Even if we allow the appeal and remit the case to the High Court the respondent's election cannot be set aside after trial of the election petition as the relief for setting aside the election has been rendered infructuous by lapse of time. In this view grounds raised in the petition for setting aside the election of the respondent have been rendered academic. Court should not undertake to decide an issue unless it is a living issue between the parties. If an issue is purely academic in that its decision one way or the other would have no impact on the position of the parties, it would be waste of public time to engage itself in deciding it. Lord Viscount Simon in his speech in the House of Lords in Sun Life Assurance Company of Canada v. Jervis [1944] AC 111 observed; "I do not think that it would be a proper exercise of the Authority which this House possesses to hear appeals if it occupies time in this case in deciding an academic question, the answer to which cannot affect the respondent in any way. It is an essential quality of an appeal fit to be disposed of by this House that there should exist between the parties a matter in actual controversy which the House undertakes to decide as a living issue." These observations are relevant in exercising the appellate jurisdiction of this Court. 5 . The main controversy raised in the present appeal regarding setting aside of the respondent's election has become stale and academic, but precious time of the apex Court was consumed in hearing the appeal at length on account of the present state of law. Section 98 read with Section 99 indicates that once the machinery of the Act is moved by means of an election petition, charges of corrupt practice, if any, raised 24-09-2022 (Page 2 of 18) against the returned candidate must be investigated. On conclusion of the trial if the Court finds that a returned candidate or any of his election agent is guilty of commission of corrupt practice he or his election agent, as the case may be, would be guilty of electoral offence incurring disqualification from contesting any subsequent election for a period of six years. In this state of legal

position we had to devote considerable time to the present proceedings as the appellant insisted that even though six years period has elapsed and subsequent election has been held nonetheless if the allegations made by him make out a case of corrupt practice the proceedings should be remanded to the High Court for trial and if after the trial the Court finds him guilty of corrupt practice the respondent should be disqualified. If we were to remand the proceedings to the High Court for trial for holding inquiry into the allegations of corrupt practice, the trial itself may take couple of years, we doubt if any genuine and bona fide evidence could be produced by the parties before the Court, in fact, during the course of hearing the appellant himself stated before us more than once, that it would now be very difficult for him to produce evidence to substantiate the allegations of corrupt practice but nonetheless he insisted for the appeal being heard on merits. Though the matter is stale and academic yet having regard to the present state of law, we had to hear the appeal at length. 6. Before we consider the submissions on merit, we would like to say that Parliament should consider the desirability of amending the law to prescribe time limit for inquiry into the allegations of corrupt practice or to devise means to ensure that valuable time of this Court is not consumed in election matters which by efflux of time are reduced to mere academic interest. Election is the essence of democratic system and purity of elections must be maintained to ensure fair election. Election petition is a necessary process to hold inquiry into corrupt practice to maintain the purity of election. But there should be some time limit for holding this inquiry. Is it in public interest to keep sword of Damocles hanging on the head of the returned candidate for an indefinite period of time as a result of which he cannot perform his public duties and discharge his obligations to his constituents? We do not mean to say that the returned candidate should be permitted to delay proceedings and to plead later on the plea of limitation. Ways and means should be found to strike a balance in ascertaining the purity of election and at the same time in preventing waste of public time and money and keeping the sword of Damocles hanging on the head of returned candidate for an indefinite period of time. 7. The appellant appeared in person and argued the case vehemently for a number of days. He made three

submissions: (i) The High Court had no jurisdiction to entertain preliminary objections under Order VI Rule 16 or to reject the election petition under Order VII Rule 11 of the CPC before the respondent had filed his written statement to the petition. In rejecting the petition under Order VII Rule 11 the High Court deprived the appellant opportunity of amending the petition by supplying material facts and particulars, (ii) Allegations contained in various paragraphs of the election petition constituted corrupt practice which disclosed cause of action within the meaning of Section 100 of the Act. The High Court committed error in holding that the petition was defective on the premise that it did not disclose any triable issue, (iii) The election petition disclosed primary facts regarding corrupt practice and if there was absence of any particulars or details the High Court should have afforded opportunity to the appellant to amend the petition. 8. The first question which falls for our determination is whether the High Court had jurisdiction to strike out pleadings under Order VI Rule 16 of the CPC and to reject the election petition under Order VII Rule 11 of the Code at the preliminary stage even 24-09-2022 (Page 3 of 18) though no written statement had been filed by the respondent. Section 80 provides that no election is to be called in question except by an election petition presented in accordance with the provisions of Part VI of the Act before the High Court. Section 81 provides that an election petition may be presented on one or more of the grounds specified in Section 100 by an elector or by a candidate questioning the election of a returned candidate. Section 83 provides that an election petition shall contain a concise statement of material facts on which the petitioner relies and he shall set forth full particulars of any corrupt practice that he may allege including full statement of the names of the parties alleged to have committed such corrupt practice and the date and place of the commission of each such practice. Section 86 confers power on the High Court to dismiss an election petition which does not comply with the provisions of Sections 81 and 82 or Section 117. Section 87 deals with the procedure to be followed in the trial of the election petition and it lays down that subject to the provisions of the Act and of any rules made there under, every election petition shall be tried by the High Court as nearly as may be in accordance with the procedure

applicable to the trial of suits under the CPC, 1908. Since provisions of Civil Procedure Code apply to the trial of an election petition, Order VI Rule 16 and Order VII Rule 11 are applicable to the proceedings relating to the trial of an election petition subject to the provisions of the Act. On a combined reading of Sections 81, 83, 86 and 87 of the Act, it is apparent that those paragraphs of a petition which do not disclose any cause of action, are liable to be struck off under Order VI Rule 16, as the Court is empowered at any stage of the proceedings to strike out or delete pleading which is unnecessary, scandalous, frivolous or vexatious or which may tend to prejudice, embarrass or delay the fair trial of the petition or suit. It is the duty of the Court to examine the plaint and it need not wait till the defendant files written statement and points out the defects. If the court on examination of the plaint or the election petition finds that it does not disclose any cause of action it would be justified in striking out the pleadings. Order VI Rule 16 itself empowers the Court to strike out pleadings at any stage of the proceedings which may even be before the filing of the written statement by the respondent or commencement of the trial. If the Court is satisfied that the election petition does not make out any cause of action and that the trial would prejudice, embarrass and delay the proceedings, the court need not wait for the filing of the written statement instead it can proceed to hear the preliminary objections and strike out the pleadings. If after striking out the pleadings the court finds that no triable issues remain to be considered, it has power to reject the election petition under Order VII Rule 11."

17. In the case of **Shipping Corporation of India Limited Vs. Machado Brothers and others (2004) 11 SCC 168** it has been held as under:-

"19. Coming to the maintainability of I.A.No.20651/2001, the learned counsel for the appellant in support of his contention that an application under Section 151 CPC for the dismissal of the suit on the ground of same having become infructuous was maintainable, has relied on number of judgments. In M/s. Ram Chand & Sons Sugar Mills Pvt.Ltd. Barabanki (U.P.) vs. Kanhayalal Bhargava & Ors. (AIR 1966 SC

1899) while discussing the scope of Section 151 CPC this court after considering various previous judgments on the point held: "The inherent power of a court is in addition to and complementary to the powers expressly conferred under the Code. But that power will not be exercise if its exercise is inconsistent with, or comes into conflict with, any of the powers expressly or by necessary implication conferred by the other provisions of the Code. If there are express provisions exhaustively covering a particular topic, they give rise to a necessary implication that no power shall be exercised in respect of the said topic otherwise than in the manner prescribed by the said provisions. Whatever limitations are imposed by construction on the provisions of S.151 of the Code, they do not control the undoubted power of the Court conferred under Section 151 of the Code to make a suitable order to prevent the abuse of the process of the court."

20. From the above, it is clear that if there is no specific provision which prohibits the grant of relief sought in an application filed under Section 151 of the Code, the courts have all the necessary powers under Section 151 CPC to make a suitable order to prevent the abuse of the process of court. Therefore, the court exercising the power under section 151 CPC first has to consider whether exercise of such power is expressly prohibited by any other provisions of the Code and if there is no such prohibition then the Court will consider whether such power should be exercised or not on the basis of facts mentioned in the application.

21. In the instant case, the appellant contends that during the pendency of the first suit, certain subsequent events have taken place which has made the first suit infructuous and in law the said suit cannot be kept pending and continued solely for the purpose of continuing an interim order made in the said suit.

22. While examining this question we will have to consider whether the court can take cognizance of a subsequent event to decide whether the pending suit should be disposed of or kept alive. If so, can a defendant make an application under Section 151 CPC for dismissing the pending suit on the ground the said suit has lost its cause of action. This Court in the case of Pasupuleti Venkateswarlu vs. The Motor & General Traders (1975 1 SCC 770 at para 4) has held thus:

"We feel the submissions devoid of substance. First about the jurisdiction and propriety vis-`-vis circumstances which come into being subsequent to the commencement of the proceedings. It is basic to our processual jurisprudence that the right to relief must be judged to exist as on the date a suitor institutes the legal proceeding. Equally clear is the principle that procedure is the handmaid and not the mistress of the judicial process. If a fact, arising after the lis has come to court and has a fundamental impact on the right to relief or the manner of moulding it, is brought diligently to the notice of the tribunal, it cannot blink at it or be blind to events which stultify or render inept the decretal remedy. Equality justifies bending the rules of procedure, where no specific provision or fairplay is not violated, with a view to promote substantial justice subject, of course, to the absence of other disentitling factors or just circumstances. Nor can we contemplate any limitation on this power to take note of updated facts to confine it to the trial court. If the litigation pends, the power exists, absent other special circumstances repelling resort to that course in law or justice. Rulings on this point are legion, even as situations for applications of this equitable rule are myriad.

We affirm the proposition that for making the right or remedy claimed by the party just and meaningful as also legally and factually in accord with the current realities, the court can, and in many cases must, take cautious cognizance of events and developments subsequent to the institution of the proceeding provided the rules of fairness to both sides are scrupulously obeyed."

23. In the very same case, this Court quoted with approval a judgment of the Supreme Court of United States in Patterson vs. State of Alabama, (294 US 600) wherein it was laid down thus : "We have frequently held that in the exercise of our appellate jurisdiction we have power not only to correct error in the judgment under review but to make such deposition of the case as justice requires. And in determining what justice does require, the Court is bound to consider any change, either in fact or in law, which has supervened since the judgment was entered."

24. Almost similar is the view taken by this Court in the case of J.M.Biswas vs. N.K.Bhattacharjee & Ors. (2002 (4) SCC 68) wherein this Court held :

"The dispute raised in the case has lost its relevance due to passage of time and subsequent events which have taken place during the pendency of the litigation. In the circumstances, continuing this litigation will be like flogging a dead horse. Such litigation, irrespective of the result, will neither benefit the parties in the litigation nor will serve the interests of the Union."

25. Thus it is clear that by the subsequent event if the original proceeding has become infructuous, ex debito justitiae, it will be the duty of the court to take such action as is necessary in the interest of justice which includes disposing of infructuous litigation. For the said purpose it will be open to the parties concerned to make an application under Section 151 of CPC to bring to the notice of the court the facts and circumstances which have made the pending litigation infructuous. Of course, when such an application is made, the court will enquire into the alleged facts and circumstances to find out whether the pending litigation has in fact become infructuous or not.

26. Having thus understood the law, we will now consider whether the courts were justified in rejecting the application filed by the appellant herein for dismissing the suit on the ground that the same had become infructuous. In this process, we have already noticed that there seems to be no dispute that the original termination notice based on which first suit O.S.No.4212/95 was filed, has since ceased to exist because of the subsequent termination notice issued on 23.8.2001, validity of which has already been challenged by the respondent in the third suit.

27. While dismissing the application I.A.No.20651/2001 the courts below proceeded not on the basis that the original notice of termination has not become infructuous, but on the basis that the said application lacks in bona fide and if the said application is allowed the interlocutory injunction hitherto enjoyed by the plaintiff will get vacated and consequently the plaintiff will be prejudiced. The question for our consideration now is whether such ground can be considered as valid and legal. While so considering the

said question one basic principle that should be borne in mind is that interlocutory orders are made in aid of final orders and not vice versa. No interlocutory order will survive after the original proceeding comes to an end. This is a well established principle in law as could be seen from the judgment of this Court in Kavita Trehan (Mrs.) & Anr. vs. Balsara Hygiene Products Ltd. (1994 5 SCC 380) wherein it is held :

"Upon dismissal of the suit, the interlocutory order stood set aside and that whatever was done to upset the status quo, was required to be undone to the extent possible."

28. Therefore, in our opinion, the courts below erred in continuing an infructuous suit just to keep the interlocutory order alive which in a manner of speaking amounts to putting the cart before the dead horse.

18. In the case of **Pawan Diwan Vs. Vidya Charan Shukla reported in 1996 JLJ 762** it has been held as under:-

"20. To summaries the second part of the objections, learned Counsel for the applicant/Respondent No. 1 in this connection made following four-fold submissions: (a) that in the absence of prayer seeking declaration for declaring Respondent No. 1 as disqualified the petition as framed is infructuous as no cause of action accrues; (b) that the affidavit filed was not in consonance of Form 25 (supra) read with Rule 7 of the Rules framed by the High Court of Madhya Pradesh under the Act; (c) that the affidavit accompanying the petition wherefore proforma is prescribed by law has to satisfy the requirements of law which are mandatory in character; (d) that though the affidavit in proforma 25 do not provide for disclosure of source of information for the alleged corrupt practice the mode of information needs to be disclosed as the preposition is no more res-integra. The first point as raised by the learned Counsel for the Respondent No. 1 is sans substance as firstly such an objection is not covered under the provisions of Order 7 Rule 11 of the Code of Civil Procedure as the allegations in the petition disclose cause of action and not the prayer. Secondly relief could be the subject matter of amendment at any stage within the framework of the allegations in the petition, if found necessary. Thirdly High Court at the conclusion of Trial of an election petition can grant only the following reliefs: (a) dismiss the petition; or (b) declare the election

of all or any of the returned candidates to be void; or (c) declaring the election of all or any of the returned candidates to be void and the Petitioner or any other candidate to have been duly elected. However, Section 99 of the Act provides that at the time of making an order under Section 98 the High court shall also make an order: (a) where any charge is made in the petition of any corrupt practice having been committed at the election, recording: (i) a finding whether any corrupt practice has or has not been proved to have been committed at the election, and the nature of that corrupt practice; and 24-09-2022 (Page 9 of 14) (ii) the names of all persons, if any, who have been proved at the trial to have been guilty of any corrupt practice and the nature of that practice. This provision does not speak for final order that could be passed by the High Court except recording of finding of the guilt of corrupt practice qua the nature of corrupt practice and the name of the person who committed. In this context it is relevant to extract out the Section 8A of the Act, which is: 8A. Disqualification on ground of corrupt practices.- (1) The case of every person found guilty of a corrupt practice by an order under Section 99 shall be submitted, as soon as may be, after such order takes effect, by such authority as the Central Government may specify in this behalf, to the President for determination of the question as to whether such person shall be disqualified and if so, for what period: Provided that the period for which any person may be disqualified under this subsection shall in no case exceed six years from the date on which the order made in relation to him under Section 99 takes effect. (2) Any person who stands disqualified under Section 8A of this Act as it stood immediately before the commencement of the Election Laws (Amendment) Act, 1975 (40 of 1975), may, if the period of such disqualification has not expired, submit a petition to the President for the removal of such disqualification for the unexpired portion of the said period. (3) Before giving his decision on any question mentioned in Subsection (1) or on any petition submitted under Sub-section (2), the President shall obtain the opinion of the Election Commission on such question on petition and shall act according to such opinion. (Emphasis supplied) The case after finding of guilt Under Section 99 of the Act to be submitted to the President of India for determination of the question as to whether

such person shall be disqualified and if so, for what period. When High Court cannot grant relief Under Section 98 of the Act there is no question of claiming the relief in petition by the election Petitioner Under Section 99 of the Act, if the charges of corrupt practice are pleaded in the petition, then High Court to record only finding and nothing more. The objection thus fails. It may, however, may not go un-noticed that the High Court does not act as a Commission under the Commissions of Enquiry Act, 1952 for recording finding leaving action for the President of India. President of India cannot figure himself in the justice processing delivery system and thereby in judicial review process. The provision under Section 99 of the Act read with Section 8A, prima facie, erodes upon the basic feature of the Constitution and independence of the Judiciary. However here there is neither any such challenge nor could such a challenge be given in the election petition in view of law laid down by the Supreme Court in the case of Charan Lal Sahu v. Shri Keelam Sanjeeva Reddy AIR 1978 SC 409. 24-09-2022 (Page 10 of 14). In connection with second point, learned Counsel for the Respondent No. 1 as a first limb of submission submitted that the Petitioner has to specify the paragraphs of the election petition which relate to the allegation of corrupt practice in the affidavit as it is a mandatory requirement of law and it has to be in the prescribed form in support of the allegations of corrupt practices and particulars thereof and this mandatory requirement has not been complied-with by the Petitioner/opposite party, as according to him, the election Petitioner has to specify in the affidavit the name of the corrupt practice as provided Under Section 123 of the Act and while stating the name of corrupt practice also to give the particulars of such practice as mentioned in the paragraphs of the petition in the beginning of the affidavit. Second limb of submission is that though the Form 25 does not provide for giving source of information, if any, for such corrupt practice and the mode of information but the mode of information has to be disclosed and this proposition is no more res Integra in view of the pronouncement of the Supreme Court. The objection (d) (supra) finds place in objection (b).

24. The Supreme Court in V.K. Saklecha's case (supra) considered the case under the Act arising from the judgment of the Madhya Pradesh High Court. In

paragraph 10 it was stated that Rule 9 of the Madhya Pradesh High Court Rules in respect of election petitions states that the rules of the High Court shall apply in so far as they are not inconsistent with the Representation of the People Act, 1951 or other rules, if any, made thereunder or of the Code of Civil Procedure in respect of all matters including inter alia affidavits. Rule 7 of the Madhya Pradesh High Court Rules states that every affidavit should clearly express how much is a statement and declaration from knowledge and how much is a statement made on information or belief and must also state the source or grounds of information or belief with sufficient particularity and in paragraph 11 of the said report the Court has stated that Form No. 25 of the Conduct of Election Rules requires the deponent of an affidavit to set out which statements are true to the knowledge of the deponent and which statements are true to his information. The source of information is required to be given under the provisions in accordance with Rule 7 of the Madhya Pradesh High Court Rules. In so far as Form No. 25 of the Conduct of Election Rules requires the deponent to state which statements are true to knowledge there is no specific mention of the sources of information in the form. The form of the affidavit and the High Court Rules are not inconsistent. The High Court Rules give effect to provisions of Order 19 of the Code of Civil Procedure. The Court pointed out that importance of setting out the sources of information in affidavits which came up for consideration before the Supreme Court from time to time. The earlier decision was State of Bombay v. Purushottam Jog Naik : AIR 1952 SC 317 where the Supreme Court endorsed the decision of the Calcutta High Court in Padmabati Dasi v. Rasik Lal Dhar ILR Cal 259 and held that the sources of information should be clearly disclosed. Again, in Barium Chemicals Ltd. v. Company Law Board 1966 : AIR 1967 SC 295 the Supreme Court deprecated 'slipshod verifications' in an affidavit and reiterated its ruling in Bombay case (supra) that verification should invariably be modelled on the lines of Order 19, Rule 3 of the Code 'whether the Code applies in terms or not'. Again in A.K.K. Nambiar v. Union of India 1969 : AIR 1970 SC 652 the Supreme Court said that the importance of verification is to test the genuineness and authenticity

of allegations and also to make the deponent responsible for allegations.

27. It may be noticed that the filing of the affidavit along with the election petition in cases where the allegations of corrupt practices are made is a must and the affidavit has to be in Form No. 25 with the addition recording source of information as per decision of the Supreme Court in V.K. Saklecha's case (supra). The necessity of affidavit is of course to constitute a charge regarding corrupt practice provided under Section 123 of the Act. The verification clause as provided in Rule 15 of Order 6 of the Code of Civil Procedure, which is as extracted below, only says: What he verifies upon information received and believed to be true. It does not provide for disclosure of the source."

19. Learned counsel for the petitioner has relied upon the judgment of Hon' ble Apex Court in the case of **Mairembam Prithviraj @ Prithviraj Singh Vs Pukhrem Sharatchandra Singh reported in (2017) 2 SCC 487** in which it has been held as under:-

"17. It is clear from the law laid down by this Court as stated above that every voter has a fundamental right to know about the educational qualification of a candidate. It is also clear from the provisions of the Act, Rules and Form 26 that there is a duty cast on the candidates to give correct information about their educational qualifications. It is not in dispute that the Appellant did not study MBA in the Mysore University. It is the case of the Appellant that reference to MBA from Mysore University was a clerical error. It was contended by the Appellant that he always thought of doing MBA by correspondence course from Mysore University. But, actually he did not do the course. The question which has to be decided is whether the declaration given by him in Form 26 would amount to a defect of substantial nature warranting rejection of his nomination."

20. In the case of **Resurgence India Vs. Election Commission of India and another reported in (2014) 14 SCC 189** the Hon'ble Apex Court has held as under:-

"26. At this juncture, it is vital to refer to Section 125A of the RP Act. As an outcome, the act of failure on the

part of the candidate to furnish relevant information, as mandated by Section 33A of the RP Act, will result in prosecution of the candidate. Hence, filing of affidavit with blank space will be directly hit by Section 125A(i) of the RP Act. However, as the nomination paper itself is rejected by the Returning officer, we find no reason why the candidate must again be penalized for the same act by prosecuting him/her.

27. If we accept the contention raised by Union of India, viz., the candidate who has filed an affidavit with false information as well as the candidate who has filed an affidavit with particulars left blank should be treated at par, it will result in breach of fundamental right guaranteed under Article 19(1)(a) of the Constitution, viz., 'right to know', which is inclusive of freedom of speech and expression as interpreted in Association for Democratic Reforms.

28.In succinct, if the Election Commission accepts the nomination papers in spite of blank particulars in the affidavits, it will directly violate the fundamental right of the citizen to know the criminal antecedents, assets and liabilities and educational qualification of the candidate. Therefore, accepting affidavit with blank particulars from the candidate will rescind the verdict in Association for Democratic Reforms (supra). Further, the subsequent act of prosecuting the candidate under Section 125A(i) will bear no significance as far as the breach of fundamental right of the citizen is concerned. For the aforesaid reasons, we are unable to accept the contention of the Union of India."

21. In the case in hand Sections 83, 99,123 and 125-A of the Act of 1951 are relevant which reads as under:-

"[83. **Contents of petition.**—(1) An election petition—

(a) shall contain a concise statement of the material facts on which the petitioner relies;

(b) shall set forth full particulars of any corrupt practice that the petitioner alleges, including as full a statement as possible of the names of the parties alleged to have committed such corrupt practice and the date and place of the commission of each such practice; and

(c) shall be signed by the petitioner and verified in the manner laid down in the Code of Civil Procedure, 1908 (5 of 1908) for the verification of pleadings:

[Provided that where the petitioner alleges any corrupt practice, the petition shall also be accompanied by an affidavit in the prescribed form in support of the allegation of such corrupt practice and the particulars thereof.]

(2) Any schedule or annexure to the petition shall also be signed by the petitioner and verified in the same manner as the petition.]

99. **Other orders to be made by the High Court.—** (1) At the time of making an order under section 98 3 [the High Court] shall also make an order—

[(a) where any charge is made in the petition of any corrupt practice having been committed at the election, recording—

(i) a finding whether any corrupt practice has or has not been proved to have been committed at the election, and the nature of that corrupt practice; and

(ii) the names of all persons, if any, who have been proved at the trial to have been guilty of any corrupt practice and the nature of that practice; and]

(b) fixing the total amount of costs payable and specifying the persons by and to whom costs shall be paid:

Provided that 6 [a person who is not a party to the petition shall not be named] in the order under sub-clause (ii) of clause (a) unless—

(a) he has been given notice to appear before 3 [the High Court] and to show cause why he should not be so named; and

(b) if he appears in pursuance of the notice, he has been given an opportunity of cross-examining any witness who has already been examined by 3 [the High Court] and has given evidence against him, of calling evidence in his defence and of being heard.

[(2) In this section and in section 100, the expression "agent" has the same meaning as in section 123.]

123. 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) a person to stand or not to stand as, or 4 [to withdraw or not to withdraw] from being a candidate at an election, or

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

(i) a person for having so stood or not stood, or for 5 [having withdrawn or not having withdrawn] his candidature; or

(ii) an elector for having voted or refrained from voting;
(B) the receipt of, or agreement to receive, any gratification, whether as a motive or a reward—

(a) by a person for standing or not standing as, or for 6 [withdrawing or not withdrawing] from being, a candidate; or

(b) by any person whomsoever for himself or any other person for voting or refraining from voting, or inducing or attempting to induce any elector to vote or refrain from voting, or any candidate [to withdraw or not to withdraw] his candidature.

Explanation.—For the purposes of this clause the term "gratification" is not restricted to pecuniary gratifications or gratifications estimable in money and it includes all forms of entertainment and all forms of employment for reward but it does not include the payment of any expenses bona fide incurred at, or for the purpose of, any election and duly entered in the account of election expenses referred to in section 78.]

(2) Undue influence, that is to say, any direct or indirect interference or attempt to interfere on the part of the candidate or his agent, or of any other person 7 [with the consent of the candidate or his election agent], with the free exercise of any electoral right:

Provided that—

(a) without prejudice to the generality of the provisions of this clause any such person as is referred to therein who—

(i) threatens any candidate or any elector, or any person in whom a candidate or an elector is interested, with injury of any kind including social ostracism and ex-communication or expulsion from any caste or community; or

(ii) induces or attempts to induce a candidate or an elector to believe that he, or any person in whom he is interested, will become or will be rendered an object of divine displeasure or spiritual censure,

shall be deemed to interfere with the free exercise of the electoral right of such candidate or elector within the meaning of this clause;

(b) a declaration of public policy, or a promise of public action, or the mere exercise of a legal right without intent to interfere with an electoral right, shall not be deemed to be interference within the meaning of this clause.

[(3) The appeal by a candidate or his agent or by any other person with the consent of a candidate or his election agent to vote or refrain from voting for any person on the ground of his religion, race, caste, community or language or the use of, or appeal to religious symbols or the use of, or appeal to, national symbols, such as the national flag or the national emblem, for the furtherance of the prospects of the election of that candidate or for prejudicially affecting the election of any candidate:]

2 [Provided that no symbol allotted under this Act to a candidate shall be deemed to be a religious symbol or a national symbol for the purposes of this clause.]

(3A) The promotion of, or attempt to promote, feelings of enmity or hatred between different classes of the citizens of India on grounds of religion, race, caste, community, or language, by a candidate or his agent or any other person with the consent of a candidate or his election agent for the furtherance of the prospects of the election of that candidate or for prejudicially affecting the election of any candidate.]

[(3B) The propagation of the practice or the commission of sati or its glorification by a candidate or his agent or any other person with the consent of the candidate or his election agent for the furtherance of the prospects of the election of that candidate or for prejudicially affecting the election of any candidate.

Explanation.—For the purposes of this clause, "sati" and "glorification" in relation to sati shall have the meanings respectively assigned to them in the Commission of Sati (Prevention) Act, 1987 (3 of 1988).]

(4) The publication by a candidate or his agent or by any other person 4 [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.

(5) The hiring or procuring, whether on payment or otherwise, of any vehicle or vessel by a candidate or his agent or by any other person , [with the consent of a candidate or his election agent], [or the use of such vehicle or vessel for the free conveyance] of any elector (other than the candidate himself, the members of his family or his agent) to or from any polling station provided under section 25 or a place fixed under sub-section (1) of section 29 for the poll:

Provided that the hiring of a vehicle or vessel by an elector or by several electors at their joint costs for the purpose of conveying him or them to and from any such polling station or place fixed for the poll shall not be deemed to be a corrupt practice under this clause if the vehicle or vessel so hired is a vehicle or vessel not propelled by mechanical power:

Provided further that the use of any public transport vehicle or vessel or any tramcar or railway carriage by any elector at his own cost for the purpose of going to or coming from any such polling station or place fixed for the poll shall not be deemed to be a corrupt practice under this clause.

Explanation.—In this clause, the expression "vehicle" means any vehicle used or capable of being used for the

purpose of road transport, whether propelled by mechanical power or otherwise and whether used for drawing other vehicles or otherwise.

(6) The incurring or authorizing of expenditure in contravention of section 77.

(7) The obtaining or procuring or abetting or attempting to obtain or procure by a candidate or his agent or, by any other person 1 [with the consent of a candidate or his election agent], any assistance (other than the giving of vote) for the furtherance of the prospects of that candidate's election, 2 [from any person whether or not in the service of the Government] and belonging to any of the following classes, namely:—

(a) gazetted officers;

(b) stipendiary judges and magistrates;

(c) members of the armed forces of the Union;

(d) members of the police forces;

(e) excise officers;

[(f) revenue officers other than village revenue officers known as lambardars, malguzars, patels, deshmukhs or by any other name, whose duty is to collect land revenue and who are remunerated by a share of, or commission on, the amount of land revenue collected by them but who do not discharge any police functions; and]

(g) such other class of persons in the service of the Government as may be prescribed:

[Provided that where any person, in the service of the Government and belonging to any of the classes aforesaid, in the discharge or purported discharge of his official duty, makes any arrangements or provides any facilities or does any other act or thing, for, to, or in relation to, any candidate or his agent or any other person acting with the consent of /the candidate or his election agent (whether by reason of the office held by the candidate or for any other reason), such arrangements, facilities or act or thing shall not be deemed to be assistance for the furtherance of the prospects of that candidate's election;]

[(h) class of persons in the service of a local authority, university, government company or institution or concern

or undertaking appointed or deputed by the Election Commission in connection with the conduct of elections.]

[(8) booth capturing by a candidate or his agent or other person.] Explanation.—(1) In this section, the expression "agent" includes an election agent, a polling agent and any person who is held to have acted as an agent in connection with the election with the consent of the candidate.

(2) For the purposes of clause (7), a person shall be deemed to assist in the furtherance of the prospects of a candidate's election if he acts as an election agent of that candidate.]

[(3) For the purposes of clause (7), notwithstanding anything contained in any other law, the publication in the Official Gazette of the appointment, resignation, termination of service, dismissal or removal from service of a person in the service of the Central Government (including a person serving in connection with the administration of a Union territory) or of a State Government shall be conclusive proof—

(i) of such appointment, resignation, termination of service, dismissal or removal from service, as the case may be, and

(ii) where the date of taking effect of such appointment, resignation, termination of service, dismissal or removal from service, as the case may be, is stated in such publication, also of the fact that such person was appointed with effect from the said date, or in the case of resignation, termination of service, dismissal or removal from service, such person ceased to be in such service with effect from the said date.] 3 [(4) For the purposes of clause (8), "booth capturing" shall have the same meaning as in section 135A.]

[125A. Penalty for filing false affidavit, etc.—A candidate who himself or through his proposer, with intent to be elected in an election,—

(i) fails to furnish information relating to sub-section (1) of section 33A; or

(ii) give false information which he knows or has reason to believe to be false; or

(iii) conceals any information,

in his nomination paper delivered under sub-section (1) of section 33 or in his affidavit which is required to be delivered under sub-section (2) of section 33A, as the case may be, shall, notwithstanding anything contained in any other law for the time being in force, be punishable with imprisonment for a term which may extend to six months, or with fine, or with both.]

22. Rule 94-A of the Rules of 1961 reads as under:-

[94A. Form of affidavit to be filed with election petition.—The affidavit referred to in the proviso to subsection (1) of section 83 shall be sworn before a magistrate of the first class or a notary or a commissioner of oaths and shall be in Form 25.]

23. Form No.25 is reproduced here as under:-

(See rule 94A)

Affidavit

I, ...,the petitioner in the accompanying election petition calling in question the election of Shri/Shrimati............(respondent No...........in the said petition) make solemn affirmation/oath and say—

(a) that the statements made in paragraphs......................of the accompanying election petition about the commission of the corrupt practice of*..................and the particulars of such corrupt practice mentioned in paragraphs................of the same petition and in paragraphs....................of the Schedule annexed thereto are true to my knowledge;

(b) that the statements made in paragraphs...................of the said petition about the commission of the corrupt practice of*........................and the particulars of such corrupt practice given in paragraphs.........................of the said petition and in paragraphs.....................................of the Schedule annexed thereto are true to my information;

(c)

(d)

etc.

Signature of deponent.

Solemnly affirmed/sworn by Shri/ Shrimati.......at.....this......day of......19 .

Before me, Magistrate of the first class/Notary/ Commissioner of Oaths.]

* Here specify the name of the corrupt practice.]

24. The affidavit in Form No.25 filed by the petitioner is reproduced as under:-

BEFORE THE HON'BLE HIGH COURT OF MADHYA PRADESH

IN THE MATTER OF

Rahul Silawat .....Petitioner

Versus

Shri Tulsiram Silawat and others .....Respondents

FORM 25
(See rule 94A)
Affidavit

I, Rahul Silawat, the petitioner in the accompanying election petition calling in question the election of Shri Tulsiram Silawat (Respondent no.1 in the said petition) make solemn affirmation/oath and say-

a) That, the statements made in the paragraphs No.9 to 31 of the accompanying election petition about the commission of corrupt practices by suppression of criminal antecedents and improper filing of nomination form and affidavit by the respondent no.1 and improper acceptance of nomination form by respondent no.11 and annexures thereto are true to my knowledge;

DEPONENT

Solemnly affirmed by Shri Rahul Silawat at Jabalpur this 24th day of January, 2019.

BEFORE ME

25. To summarize the objections raised by respondent no.1 regarding affidavit filed in Form No.25 the following three questions arise:-

(i) Whether the affidavit filed was not in consonance of Form No.25(supra) read with Rule 7 of the Rules framed by the High Court of Madhya Pradesh under the Act.

(ii) Whether the affidavit accompanying the petition wherefore proforma is prescribed by law has to satisfy the requirements of law which are mandatory in character.

(iii) Whether the affidavit in Form No.25 (Rule 94-A) do not provide for disclosure of source of information for the alleged corrupt practice the mode of information needs to be disclosed.

26. Learned counsel for respondent no.1 submits that petitioner has to specify the paragraphs of the election petition which relate to the allegation of corrupt practices. The affidavit as it is a mandatory requirement of law and it has to be in the prescribed form in support of the allegations of corrupt practices and particulars thereof and this mandatory requirement has not been complied with by the petitioner, as according to him, the election petitioner has to specify in the affidavit the name of the corrupt practice as provided under Section 123 of the Act and while stating the name of the corrupt practice also to given the particulars of such practice as mentioned in the paragraphs of the petition in the beginning of the affidavit. It is also submitted that Form No.25 does not provide for giving source of information, if any, for such corrupt practice and the mode of information but the mode of information has to be disclosed. The Hon'ble Apex Court in the case of **V.K.Sakhlecha Vs. Jagjiwan reported in AIR 1974 SC 1957** it has been held as under:-

> "14. The non-disclosures of grounds or sources of information in an election petition which is to be filed within 45 days from the date of election of the returned candidate, will have to be scrutinized from two points of view. The non-disclosure of the grounds will indicate that the election Petitioner did not come forward with the sources of information at the first opportunity. The real importance of setting out the sources of information at the time of the presentation of the petition is to give the other side notice of the contemporaneous evidence on which the election petition is based. That will give an opportunity to the other side to test the genuineness and veracity of the sources of information. The other point of view is that the election Petitioner will not be able to make any departure from the sources or grounds. If there is any embellishment of the case, it will be discovered."

27. On perusal of the affidavit (Form No.25) it is evident that clause (a) the name and the particulars of corrupt practice as provided under Section 123 of Act of 1951was stated. As per proforma of affidavit under Rule 94-A of Rules of 1961 in Column (b) source of information has to be disclosed which is absent in the affidavit filed by the petitioner.

28. Learned counsel for respondent no.1 submits that the affidavit is defective because it does not disclose the source of information. It is further submitted that affidavit in essence, though form part of the petition is in the shape of criminal charges as the allegations of corrupt practices are quasi criminal in nature and as such without disclosing the charge in the manner provided the complete cause of action has lapsed.

29. The importance of setting out the sources of information in affidavits which came up for consideration before the Supreme Court from time to time. The earlier decision was **State of Bombay v. Purushottam Jog Naik AIR 1952 SC 317** where the Supreme Court endorsed the decision of the Calcutta High Court in **Padmabati Dasi v. Rasik Lal Dhar ILR Cal 259** and held that the sources of information should be clearly disclosed. Again, in **Barium Chemicals Ltd. v. Company Law Board AIR 1967 SC 295** the Supreme Court deprecated 'slipshod verifications' in an affidavit and reiterated its ruling in Bombay case (supra) that verification should invariably be modelled on the lines of Order 19, Rule 3 of the Code 'whether the Code applies in terms or not'. Again in **A.K.K. Nambiar v. Union of India AIR 1970 SC 652** the Supreme Court said that the importance of verification is to test the genuineness and authenticity of allegations and also to make the deponent responsible for allegations.

30. Paragraph 14 of the aforesaid decision in **V.K. Saklecha's case**, as has already been extracted above, which deals with the non-disclosure of grounds or sources of information, the Court said that the non-disclosure

of grounds will indicate that the election Petitioner did not come forward with the sources of information at the first opportunity. The real importance of setting out the source of information at the time of presentation of the petition is to give the other side notice of the contemporaneous evidence on which the election petition is based. That will give an opportunity to the other side to test the genuineness and veracity of the source of information. The other point of view is that the election Petitioner will not be able to make any departure from the sources or grounds. If there is any embellishment of the case it will be discovered. It may be noticed that the filing of the affidavit along with the election petition in cases where the allegations of corrupt practices are made is a must and the affidavit has to be in Form No. 25 with the addition recording source of information as per decision of the Supreme Court in **V.K. Saklecha's case (supra)**.

31. In **Hari Vishnu Kamath v. Ahmad Ishaqua and Ors. AIR 1955 SC 233** in Paragraph 35 the Court though in different context laid down the rule of law as:

> "When the law prescribes that the intention should be expressed in a particular manner, it can be taken into account only if it is so expressed. An intention not duly expressed is, in a Court of law, in the same position as an intention not expressed at all."

This principle would be attracted as here the intention of disclosure of the source of information and the intention of disclosing the particular corrupt practice is provided by law.

32. In the case in hand the relief nos. (ii) and (iii) of relief clause of petition cannot be granted. Only cause of action has to be seen with regard to relief nos.(i)&(iv) claimed in the petition. The complete cause of action thus in the absence of affidavit in the form prescribed together

satisfying the requirements of the Rules of the Court in view of decision of **V.K. Saklecha's case (supra)**, source of information is not there and as such the filing of the affidavit satisfying all the requirements in Form No. 25 is a mandatory requirement of law.

33. In **Pawan Diwan's Case (Supra)** it was held that the statutory provision laying down the requirement of cannot be allowed to be diluted as the very purpose of statutory provision is to give obedience and not the disobedience and any deviation showing the requirement of law regarding filing of an affidavit when the allegations of corrupt practices are made and also regarding other requirements as such mentioning of paragraphs regarding statements of facts qua the allegation of corrupt practice and the name of the particular corrupt practice and also the material particular qua the corrupt practice and the source of the information of the corrupt practice is an essential one as the charge of corrupt practice is not purely of civil nature but is of quasi criminal nature. Accordingly, I am of the view that when the election petition which contains allegations of corrupt practices against a returned candidate then the petition should be accompanied by an affidavit and such an affidavit must strictly conform to the requirements mentioned in Form No. 25 as well as the disclosure of the source of information as required under the Ruies of the Court. In the absence of satisfying the above requirements the petition qua the corrupt practices would be treated as not disclosing the complete cause of action qua the charges of corrupt practice.

34. In view of the above, I find that the election petition on account of sufferance of deficiency noticed hereinbove cannot proceed further as the reliefs claimed in the petition cannot be granted as the respondent No. 1 cannot be put to trial as affidavit, which is essence of the charges, had failed to satisfy the requirement of law.

35. Accordingly the I.A.No.2047/2022 is allowed and this petition is dismissed. No order as to cost. However, the substituted petitioner is entitled to take back the security amount which lie deposited. The security amount so deposited shall be refunded to the substituted petitioners as a whole. Let the intimation of decision and authenticated copy of decision may be sent to the authorities as mentioned in Section 103 of the Act of 1951.

Sd./-
(RAJENDRA KUMAR VERMA)
JUDGE.

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

भारत निर्वाचन आयोग

निर्वाचन सदन, अशोक रोड, नई दिल्ली—110 001

नई दिल्ली, तारीख 02 फरवरी 2023—12 पौष, 1944 (शक)

अधिसूचना

सं.—82—म.प्र.—(26 / 2019)—2023.—लोक प्रतिनिधित्व अधिनियम, 1951 (1951 का 43) की धारा 106 के अनुसरण में, भारत निर्वाचन आयोग 2019 की निर्वाचन याचिका सं. 26 में मध्यप्रदेश उच्च न्यायालय के दिनांक 30 सितम्बर 2022 के निर्णय / आदेश को एतद्द्वारा प्रकाशित करता है (श्री मुकेश चौधरी विरुद्ध श्री तुलसीराम सिलावट एवं अन्य).

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

ELECTION COMMISSION OF INDIA

Nirvachan Sadan, Ashoka Road, New Delhi—110 001

New Delhi, Dated 02nd February, 2023—12 Pausa, 1944 (Saka)

NOTIFICATION

No. 82-MP-(26/2019)-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 30th September 2022 of the High Court of Madhya Pradesh in the Election Petition No. 26 of 2019 (Sh. Mukesh Choundary *Vs.* Sh. Tulsiram Silawat & Others).

IN THE HIGH COURT OF MADHYA PRADESH
AT INDORE

BEFORE

HON'BLE SHRI JUSTICE RAJENDRA KUMAR (VERMA)

ELECTION PETITION No. 26 of 2019

Between:-
MUKESH CHOUDHARY,
S/O SHRI CHHOGALAL CHOUDHARY,
AGED ABOUT 44 YEARS,
OCCUPATION AGRICULTURIST,
R/O 127/2 GRAM KANADIYA, TEHSIL
INDORE, MADHYA PRADESH

.....PETITIONER

(BY SHRI RAVINDRA CHHABRA, SENIOR COUNSEL WITH SHRI AMAN ARORA, LEARNED COUNSEL FOR THE PETITIONER)

AND

1. SHRI TULSIRAM SILAWAT, S/O
SHRI THAKURDIN SILAWAT,
AGED ABOUT 63 YEARS,
R/O 80,AGRAWAL NAGAR,
TEHSIL AND DISTRICT-INDORE

2. SHRI KAMAL CHOUHAN,
S/O SHRI BAPU CHOUHAN,
AGED ABOUT 43 YEARS,
R/O 30, VILLAGE-SOLSINDA,
TEHSIL SANWER, DISTRICT INDORE.

3. SHRI ANIL CHOUHAN,
S/O SHRI BALU CHOUHAN,
AGED ABOUT 26 YEARS,
R/O 238, VILLAGE BRAHMAN-PIPALYA,
P.O.TODI, TEH SANWER, DISTRICT INDORE, M.P.

4. SHRI BRAMHANAND MALVIYA,
S/O SHRI MANGILAL MALVIYA,
AGED ABOUT 65 YARS,
R/O 29, ASRAWAD BUJURG,
HANUMAN MOHALLA,
P.O. DUDHIYA, DISTRICT INDORE.

5. SHRI RAHUL KHARE,
S/O SHRI KISHORE KHARE,
AGED ABOUT 34 YEARS,
R/O 166, VILALGE-PACHOLA,

**P.O. CHITTODA, TEH-SANWER,
DISTRICT INDORE, M.P.**

**6. SHRI SUBHASH CHOUHAN,
S/O SHRI RAMESH CHANDRA CHOUHAN,
AGED ABOUT 37 YEARS,
R/O 166, VILLAGE-ALWASA, P.O. ALWASA,
TEH-HATOD, DISTRICT INDORE.**

**7.NARENDRA BOURASI,
S/O SHRI NANKULAL, AGED ABOUT 62 YEARS,
R/O 103/1, MUKHERJEE NAGAR,
INDORE, DISTRICT-INDORE, M.P.**

**8.RAHUL SILAWAT S/O SHRI BRIJKISHOR SILAWAT,
AGED ABOUT 30 YEARS, R/O 200, SAMAR PARK,
NIPANIYA, INDORE, DISTRICT INDORE M.P.**

**9.STATE ELECTION COMMISSIONER,
M.P.STATE ELECTION COMMISSION,
NIRVACHAN BHAWAN, 58, ARERA HILLS, BHOPAL.**

**10. DISTRICT ELECTION OFFICER,
INDORE, DISTRICT INDORE, M.P.**

**11. SDM/SDO/RETURNING OFFICER,
211, SANWER CONSTITUENCY,
DISTRICT INDORE, M.P.**

.....RESPONDENTS

(SHRI VINAY SARAF, SENIOR ADVOCATE WITH SHRI YASPAL AHLUWALIA AND SHRI AKASH SHARMA, ADVOCATES FOR RESPONDENT NO.1.)

RESERVED ON : 15.07.2022 AND DELIVERED ON 30.09.2022

This election petition coming on for orders this day, the court passed the following:

ORDER

Heard on I.A.No.2048/2022 which is an application under Order 7 Rule 11 and Section 151 of CPC read with Section 86(1) of the Representation of People Act, 1951 (hereinafter referred to as "Act of 1951") filed on behalf of respondent no.1 for rejection of election petition on the grounds mentioned therein.

The present election petition has been filed by the original petitioner, Dr.Rajesh Sonkar, who also contested the election from the Constituency No.211 Sanwer, District Indore as an independent candidate, but lost to respondent no.1 by a margin of 2945 votes in the general elections for Legislative Assembly held in the month of December, 2018. The petitioner has challenged the election petition seeking the following reliefs:-

> "(i) call for the entire record from the Election Commission of India in respect of 211, Sanweer Constituency of M.P. State Legislative Assembly.
> (ii) declare the election of respondent no.1 from 211 Sanwer Constituency of M.P. State Legislative Assembly as null and void.
> (iii) declare the petitioner (who has secured second highest votes) as duly elected member of the M.P. State Legislative Assembly from 211 Sanwer Constituency of M.P.State Legislative Assembly.
> (iv) direct for initiation of criminal proceedings under Section 125 A of the Representation of People Act against respondent no.1.
> (v) grant any other relief which this Hon'ble Court deems fit and proper in the interest of justice.
> (vi) Grand cost of the petition."

3. The respondent no.1 filed the reply of the election petition on 16.06.2019 and denied all the allegations in toto and in reply to the allegations made against the respondent no.1, it is contended that the allegations levelled in the election petition do not fall under the definition of corrupt practice described under the Act of 1951.

During the pendency of this petition the respondent no.1 resigned from the Legislative Assembly and his resignation was duly accepted on 14.03.2020 and the seat of Sanwer Constituency No.211 was declared vacant on account of resignation of respondent no.1. After the by-elections were notified by the election commission, the original petitioner filed an application for withdrawal of the petition and lastly in compliance to order passed by this Court, the Registry of this Court

published the notice on 27.01.2021 seeking withdrawal of the election petition and thereafter on 13.02.2021, the substituted petitioner filed an application under Section 110(C) of the Act of 1951 which was allowed and the present petitioner has been constituted in place of the original petitioner and this Court permitted him to continue proceedings of the instant election petition.

4. Learned counsel for the respondent no.1 has submitted that due to the resignation of respondent no.1 and after the by-elections of seat of Sanwer constituency, the relief sought by the petitioner in the original petition has rendered infructuous and the reliefs are only academic. It is also submitted that in the by-elections respondent no.1 won the elections from the Legislative Assembly of Constituency No.211, Sanwer, district Indore by margin of 53,264 votes. Now no cause of action survives and as a result of which petition could be said to be the petition disclosing no cause of action qua the relief of declaring the election of the respondent no.1 from the Constituency No.211, Sanwer District Indore in the general assembly election held in the year 2018 null and void. All other reliefs are consequential and now are academic only. **It is also submitted that Section 83 of the Act of 1951 not having been satisfied inasmuch as the petitioner in the petition though having alleged for commission of corrupt practices in the said election has failed to satisfy the mandatory requirement of law by not filing proper affidavit in support of the allegations of corrupt practices made in the petition as an effect whereof the petition is liable for rejection.** It is further submitted that the reliefs as claimed in the petition cannot be granted.

5. It is further submitted by the counsel for the respondent no.1 that in the election petition ground of corrupt practices has also been raised. However, the instant election petition lacks in material fact constituting the cause of action required under the Act of 1951. The affidavit filed in support of the petitioner does not contain a concise statement of material

facts on which the petitioner relies and therefore, does not disclose a triable issue or cause of action. The so called specific allegations of corrupt practice as contained in petition did not meet out the basic requirement which could constitute cause of action as required by law. Even the material particulars are absent in the election petition. The material facts as to how the information came to the knowledge of the petitioner pertaining to various incidents, as mentioned in the referred paras is absolutely missing, whereas the same is the preliminary requirement for maintainability of the petition. Thus, it suffers from non-compliance of the provisions contained under 83(1) of the Act of 1951.

6. It is also submitted by the learned counsel for respondent no.1 that no trial or inquiry is permissible on the basis of such vague, indefinite imprecise averments. The Court should not undertake to decide an issue unless it is a living issue between the parties. If an issue is purely academic in that case its is the decision neither way would have no impact on the position of the parties and would be an exercise in futility leading to waste of public time. The orders that could be passed by this Court at the conclusion of the trial of the election petition are detailed in Section 98 of the Act and relief nos. (ii) and (iii) could not be granted to the petitioner and further relief nos.(i) and (iv) also cannot be granted as the affidavit filed with the petition in support of the allegations of corrupt practice and particulars thereof does not comply with the provisions of the Act of 1951 and the Rules made thereunder.

7. It is also submitted that the affidavit accompanying the election petition in support of the allegations of corrupt practices and the particulars thereof is not according to Form No.25 prescribed for the same and provisions of Section 83(1) of Act of 1951. The petitioner has not prayed for declaration that the respondent no.1 be declared as disqualified and under the circumstances the entire petition as it is framed and also looking to the nature of the prayer clauses, has become

infructuous and no cause of action accrues and same is liable to be dismissed on this count alone. The affidavit, in essence, though forms part of the petition is in the shape of criminal charge as the allegations of corrupt practices are quasi criminal in nature and as such without disclosing the charge in the manner provided the complete cause of action has lacked. The statutory provisions laying down the requirement cannot be allowed to be diluted as the very purpose of statutory provision is to be given obedience and not the disobedience and any deviation showing the requirement of law regarding filing of an affidavit when the allegations of corrupt practices are made and also regarding other requirements as such mentioning of paragraphs regarding statements of facts qua the allegations of corrupt practices and the name of the particular corrupt practice and also the material particular qua the corrupt practice and the source of the information of the corrupt practice is an essential one as the charge of corrupt practice is not purely of civil nature but is of quasi criminal nature.

8. It is also submitted by the learned counsel for respondent no.1 that the election petition on account of sufferance of deficiency noticed heretofore cannot proceed further as the relief of declaring the election of respondent no.1 is null and void and declaring the respondent no.2 returned candidate have become infructuous on account of subsequent holding of the by-elections and further the allegations of corrupt practice,in the present case the relief on the basis of allegations of corrupt practice against the respondent no.1 cannot be granted as the respondent no.1 cannot be put to trial as affidavit which is the essence of the charges, had failed to satisfy the requirement of law. Hence, it is prayed that this application be allowed and this election petition be dismissed as rendered infructuous and not maintainable.

9. It is submitted by learned counsel for the petitioner that averments made in the application are based on erroneous, misleading and

superficial interpretation of the statutory provisions of the Act of 1951. On 21.02.2022 the respondent no.1 filed the application bearing I.A.No.1256/2022 under Order VI Rule 16 read with Section 151 of the CPC seeking relief of striking out/deletion of the pleadings on the ground that the original petitioner has failed to file affidavit in the prescribed Form No.25, in view of Rule 94-A of the Conduct of Election Rules, 1961 (hereinafter referred to as "Rule of 1961"). Thus respondent no.1 had no issue with the election petition but only satisfied with the certain paragraphs of the petition. Reply to the said application was filed by the petitioner on 04.03.2022 denying the allegations made by the respondent no.1 in the aforesaid application. After filing of the reply to I.A.No.1256/2022 on the date fixed for arguments, the respondent no.1 with an ulterior motive to prolong the trial of the instant election petition sought time to file counter affidavit. When the counter affidavit was also not found conducive, the present I.A.has been filed. It is submitted that provision of Section 86 is applicable only when there is a default in non-compliance with the provisions of Section 81 or 82 or 117 of the Act of 1951. Undisputedly, there is no non-compliance with any of the said provisions. The requirement of result of the election having been materially affected is envisaged under Section 100(10(d) and not under Section 100(1)(b) i.e. corrupt practice committed by the returned candidate or the election agent or any other person with the consent of the returned candidate or his election agent. For invoking Section 100(1)(b), proof of result having been materially affected is not required. Therefore, the present application deserves to be dismissed.

10. It is also submitted that if the contents of this election petition regarding corrupt practices are found to be true then not only the election of respondent no.1 will be declared void, but will also be incurred electoral disqualification. Infact, if the instant election petition had been decided and allowed prior to the by-elections, then the respondent no.1

would have been disqualified from contesting the said elections. Thus resignation from constituent assembly/dissolution of assembly or by-election and result thereof, has no bearing on the present election petition much less will not result in abatement of the petition. In support of the aforesaid contention reliance is placed in the matter of **Sheo Sadan Singh Vs. Mohan Lal Gautam reported in (1969) 1 SCC 408.**

11. It is further submitted that a bare perusal of the written statement of respondent no.1 reveals that there was no protest/demur/objection with regard to the pleadings of the election petition. The instant election petition is duly supported by an affidavit in Form No.25 as prescribed under Rule 94-A of Rule of 1961 and is filed in terms of Section 83 of the Act of 1951. The averments made in the petition has also been verified by the original petitioner in the verification clause of the affidavit as per Form No.25. In the said affidavit it has been categorically stated that the statements made in paragraphs 9 to 35 of the election petition in respect of corrupt practices by suppression of criminal antecedents and improper filing of nomination form of the respondent no.1 are true to his knowledge. The election petition contains a concise statement of material facts and requisite particulars in accordance with the Rule of 1961.

12. It is also submitted that a bare reading of Section 83 of the Act of 1951 would show that an election petition should contain a concise statement of material facts and full particulars of corrupt practice including as full a statement as possible of the names of the parties alleged to have committed such corrupt practice and the date and place of the commission of each such practice. A bare perusal of paragraphs 9 to 20, 23 to 27 and 30 of the election petition itself shows that the election petition complies with the requirement of Section 83 of the Act of 1951. Respondent no.1 has levelled the pleadings as vague, indefinite, imprecise but failed to mention as to which particular averment/pleading

is vague/incomprehensible. On the above grounds the petitioner prays for dismissal of the application on exemplary cost.

13. Heard learned senior counsel for both the parties at length and perused the record.

14. Undisputedly, during the pendency of the election petition respondent no.1 has resigned from the Legislative Assembly and Sanwer Constituency No.211 was declared vacant and after by elections respondent no.1 was elected once against for Assembly from the same Constituency, hence relief nos.(ii) and (iii) claimed by the petitioner in the relief clause of the petition cannot be granted. So far as relief nos.(i) and (iv) in the relief clause of the petition is concerned, petitioner has to prove that any corrupt practices has/have been committed by the respondent no.1, and if it is proved then this Court shall pass order under Section 99 of the Act of 1951.

15. As per respondent no.1 petition also suffers from non-compliance of Section 83 (1) of the Act of 1951 which also provides that where the petitioner alleges any corrupt practice, the petition shall also be accompanied by an affidavit in the prescribed form in support of he allegation of such corrupt practice and the particulars thereof.

16. Learned counsel for respondent no.1 has relied upon the judgment of the Apex Court in the case of **Dhartipakar Madan Lal Agarwal Vs. Rajiv Gandhi AIR 1987 SC 1577.** The Apex Court in the aforesaid case has held as under:-

> "4 . The election under challenge relates to 1981, its term expired in 1984 on the dissolution of the Lok Sabha, thereafter another general election was held in December, 1984 and the respondent was again elected from 25th Amethi Constituency to the Lok Sabha. The validity of the election held in 1984 was questioned by means of two separate election petitions and both the petitions have been dismissed. The validity of respondent's election has been upheld in Azhar Hussain v. Rajiv Gandhi, [1986]2SCR782 and Bhagwati Prasad v. Rajiv Gandhi: [1986]2SCR823 . Since the impugned election

relates to the Lok Sabha which was dissolved in 1984 the respondent's election cannot be set aside in the present proceedings even if the election petition is ultimately allowed on trial as the respondent is a continuing member of the Lok Sabha not on the basis of the impugned election held in 1981 but on the basis of his subsequent election in 1984. Even if we allow the appeal and remit the case to the High Court the respondent's election cannot be set aside after trial of the election petition as the relief for setting aside the election has been rendered infructuous by lapse of time. In this view grounds raised in the petition for setting aside the election of the respondent have been rendered academic. Court should not undertake to decide an issue unless it is a living issue between the parties. If an issue is purely academic in that its decision one way or the other would have no impact on the position of the parties, it would be waste of public time to engage itself in deciding it. Lord Viscount Simon in his speech in the House of Lords in Sun Life Assurance Company of Canada v. Jervis [1944] AC 111 observed; "I do not think that it would be a proper exercise of the Authority which this House possesses to hear appeals if it occupies time in this case in deciding an academic question, the answer to which cannot affect the respondent in any way. It is an essential quality of an appeal fit to be disposed of by this House that there should exist between the parties a matter in actual controversy which the House undertakes to decide as a living issue." These observations are relevant in exercising the appellate jurisdiction of this Court. 5 . The main controversy raised in the present appeal regarding setting aside of the respondent's election has become stale and academic, but precious time of the apex Court was consumed in hearing the appeal at length on account of the present state of law. Section 98 read with Section 99 indicates that once the machinery of the Act is moved by means of an election petition, charges of corrupt practice, if any, raised 24-09-2022 (Page 2 of 18) against the returned candidate must be investigated. On conclusion of the trial if the Court finds that a returned candidate or any of his election agent is guilty of commission of corrupt practice he or his election agent, as the case may be, would be guilty of electoral offence incurring disqualification from contesting any subsequent election for a period of six years. In this state of legal

position we had to devote considerable time to the present proceedings as the appellant insisted that even though six years period has elapsed and subsequent election has been held nonetheless if the allegations made by him make out a case of corrupt practice the proceedings should be remanded to the High Court for trial and if after the trial the Court finds him guilty of corrupt practice the respondent should be disqualified. If we were to remand the proceedings to the High Court for trial for holding inquiry into the allegations of corrupt practice, the trial itself may take couple of years, we doubt if any genuine and bona fide evidence could be produced by the parties before the Court, in fact, during the course of hearing the appellant himself stated before us more than once, that it would now be very difficult for him to produce evidence to substantiate the allegations of corrupt practice but nonetheless he insisted for the appeal being heard on merits. Though the matter is stale and academic yet having regard to the present state of law, we had to hear the appeal at length. 6. Before we consider the submissions on merit, we would like to say that Parliament should consider the desirability of amending the law to prescribe time limit for inquiry into the allegations of corrupt practice or to devise means to ensure that valuable time of this Court is not consumed in election matters which by efflux of time are reduced to mere academic interest. Election is the essence of democratic system and purity of elections must be maintained to ensure fair election. Election petition is a necessary process to hold inquiry into corrupt practice to maintain the purity of election. But there should be some time limit for holding this inquiry. Is it in public interest to keep sword of Damocles hanging on the head of the returned candidate for an indefinite period of time as a result of which he cannot perform his public duties and discharge his obligations to his constituents? We do not mean to say that the returned candidate should be permitted to delay proceedings and to plead later on the plea of limitation. Ways and means should be found to strike a balance in ascertaining the purity of election and at the same time in preventing waste of public time and money and keeping the sword of Damocles hanging on the head of returned candidate for an indefinite period of time. 7. The appellant appeared in person and argued the case vehemently for a number of days. He made three

submissions: (i) The High Court had no jurisdiction to entertain preliminary objections under Order VI Rule 16 or to reject the election petition under Order VII Rule 11 of the CPC before the respondent had filed his written statement to the petition. In rejecting the petition under Order VII Rule 11 the High Court deprived the appellant opportunity of amending the petition by supplying material facts and particulars, (ii) Allegations contained in various paragraphs of the election petition constituted corrupt practice which disclosed cause of action within the meaning of Section 100 of the Act. The High Court committed error in holding that the petition was defective on the premise that it did not disclose any triable issue, (iii) The election petition disclosed primary facts regarding corrupt practice and if there was absence of any particulars or details the High Court should have afforded opportunity to the appellant to amend the petition. 8. The first question which falls for our determination is whether the High Court had jurisdiction to strike out pleadings under Order VI Rule 16 of the CPC and to reject the election petition under Order VII Rule 11 of the Code at the preliminary stage even 24-09-2022 (Page 3 of 18) though no written statement had been filed by the respondent. Section 80 provides that no election is to be called in question except by an election petition presented in accordance with the provisions of Part VI of the Act before the High Court. Section 81 provides that an election petition may be presented on one or more of the grounds specified in Section 100 by an elector or by a candidate questioning the election of a returned candidate. Section 83 provides that an election petition shall contain a concise statement of material facts on which the petitioner relies and he shall set forth full particulars of any corrupt practice that he may allege including full statement of the names of the parties alleged to have committed such corrupt practice and the date and place of the commission of each such practice. Section 86 confers power on the High Court to dismiss an election petition which does not comply with the provisions of Sections 81 and 82 or Section 117. Section 87 deals with the procedure to be followed in the trial of the election petition and it lays down that subject to the provisions of the Act and of any rules made there under, every election petition shall be tried by the High Court as nearly as may be in accordance with the procedure

applicable to the trial of suits under the CPC, 1908. Since provisions of Civil Procedure Code apply to the trial of an election petition, Order VI Rule 16 and Order VII Rule 11 are applicable to the proceedings relating to the trial of an election petition subject to the provisions of the Act. On a combined reading of Sections 81, 83, 86 and 87 of the Act, it is apparent that those paragraphs of a petition which do not disclose any cause of action, are liable to be struck off under Order VI Rule 16, as the Court is empowered at any stage of the proceedings to strike out or delete pleading which is unnecessary, scandalous, frivolous or vexatious or which may tend to prejudice, embarrass or delay the fair trial of the petition or suit. It is the duty of the Court to examine the plaint and it need not wait till the defendant files written statement and points out the defects. If the court on examination of the plaint or the election petition finds that it does not disclose any cause of action it would be justified in striking out the pleadings. Order VI Rule 16 itself empowers the Court to strike out pleadings at any stage of the proceedings which may even be before the filing of the written statement by the respondent or commencement of the trial. If the Court is satisfied that the election petition does not make out any cause of action and that the trial would prejudice, embarrass and delay the proceedings, the court need not wait for the filing of the written statement instead it can proceed to hear the preliminary objections and strike out the pleadings. If after striking out the pleadings the court finds that no triable issues remain to be considered, it has power to reject the election petition under Order VII Rule 11."

17. In the case of **Shipping Corporation of India Limited Vs. Machado Brothers and others (2004) 11 SCC 168** it has been held as under:-

"19. Coming to the maintainability of I.A.No.20651/2001, the learned counsel for the appellant in support of his contention that an application under Section 151 CPC for the dismissal of the suit on the ground of same having become infructuous was maintainable, has relied on number of judgments. In M/s. Ram Chand & Sons Sugar Mills Pvt.Ltd. Barabanki (U.P.) vs. Kanhayalal Bhargava & Ors. (AIR 1966 SC

1899) while discussing the scope of Section 151 CPC this court after considering various previous judgments on the point held: "The inherent power of a court is in addition to and complementary to the powers expressly conferred under the Code. But that power will not be exercise if its exercise is inconsistent with, or comes into conflict with, any of the powers expressly or by necessary implication conferred by the other provisions of the Code. If there are express provisions exhaustively covering a particular topic, they give rise to a necessary implication that no power shall be exercised in respect of the said topic otherwise than in the manner prescribed by the said provisions. Whatever limitations are imposed by construction on the provisions of S.151 of the Code, they do not control the undoubted power of the Court conferred under Section 151 of the Code to make a suitable order to prevent the abuse of the process of the court."

20. From the above, it is clear that if there is no specific provision which prohibits the grant of relief sought in an application filed under Section 151 of the Code, the courts have all the necessary powers under Section 151 CPC to make a suitable order to prevent the abuse of the process of court. Therefore, the court exercising the power under section 151 CPC first has to consider whether exercise of such power is expressly prohibited by any other provisions of the Code and if there is no such prohibition then the Court will consider whether such power should be exercised or not on the basis of facts mentioned in the application.

21. In the instant case, the appellant contends that during the pendency of the first suit, certain subsequent events have taken place which has made the first suit infructuous and in law the said suit cannot be kept pending and continued solely for the purpose of continuing an interim order made in the said suit.

22. While examining this question we will have to consider whether the court can take cognizance of a subsequent event to decide whether the pending suit should be disposed of or kept alive. If so, can a defendant make an application under Section 151 CPC for dismissing the pending suit on the ground the said suit has lost its cause of action. This Court in the case of Pasupuleti Venkateswarlu vs. The Motor & General Traders (1975 1 SCC 770 at para 4) has held thus:

"We feel the submissions devoid of substance. First about the jurisdiction and propriety vis-`-vis circumstances which come into being subsequent to the commencement of the proceedings. It is basic to our processual jurisprudence that the right to relief must be judged to exist as on the date a suitor institutes the legal proceeding. Equally clear is the principle that procedure is the handmaid and not the mistress of the judicial process. If a fact, arising after the lis has come to court and has a fundamental impact on the right to relief or the manner of moulding it, is brought diligently to the notice of the tribunal, it cannot blink at it or be blind to events which stultify or render inept the decretal remedy. Equality justifies bending the rules of procedure, where no specific provision or fairplay is not violated, with a view to promote substantial justice subject, of course, to the absence of other disentitling factors or just circumstances. Nor can we contemplate any limitation on this power to take note of updated facts to confine it to the trial court. If the litigation pends, the power exists, absent other special circumstances repelling resort to that course in law or justice. Rulings on this point are legion, even as situations for applications of this equitable rule are myriad.

We affirm the proposition that for making the right or remedy claimed by the party just and meaningful as also legally and factually in accord with the current realities, the court can, and in many cases must, take cautious cognizance of events and developments subsequent to the institution of the proceeding provided the rules of fairness to both sides are scrupulously obeyed."

23. In the very same case, this Court quoted with approval a judgment of the Supreme Court of United States in Patterson vs. State of Alabama, (294 US 600) wherein it was laid down thus : "We have frequently held that in the exercise of our appellate jurisdiction we have power not only to correct error in the judgment under review but to make such deposition of the case as justice requires. And in determining what justice does require, the Court is bound to consider any change, either in fact or in law, which has supervened since the judgment was entered."

24. Almost similar is the view taken by this Court in the case of J.M.Biswas vs. N.K.Bhattacharjee & Ors. (2002 (4) SCC 68) wherein this Court held :

"The dispute raised in the case has lost its relevance due to passage of time and subsequent events which have taken place during the pendency of the litigation. In the circumstances, continuing this litigation will be like flogging a dead horse. Such litigation, irrespective of the result, will neither benefit the parties in the litigation nor will serve the interests of the Union."

25. Thus it is clear that by the subsequent event if the original proceeding has become infructuous, ex debito justitiae, it will be the duty of the court to take such action as is necessary in the interest of justice which includes disposing of infructuous litigation. For the said purpose it will be open to the parties concerned to make an application under Section 151 of CPC to bring to the notice of the court the facts and circumstances which have made the pending litigation infructuous. Of course, when such an application is made, the court will enquire into the alleged facts and circumstances to find out whether the pending litigation has in fact become infructuous or not.

26. Having thus understood the law, we will now consider whether the courts were justified in rejecting the application filed by the appellant herein for dismissing the suit on the ground that the same had become infructuous. In this process, we have already noticed that there seems to be no dispute that the original termination notice based on which first suit O.S.No.4212/95 was filed, has since ceased to exist because of the subsequent termination notice issued on 23.8.2001, validity of which has already been challenged by the respondent in the third suit.

27. While dismissing the application I.A.No.20651/2001 the courts below proceeded not on the basis that the original notice of termination has not become infructuous, but on the basis that the said application lacks in bona fide and if the said application is allowed the interlocutory injunction hitherto enjoyed by the plaintiff will get vacated and consequently the plaintiff will be prejudiced. The question for our consideration now is whether such ground can be considered as valid and legal. While so considering the

said question one basic principle that should be borne in mind is that interlocutory orders are made in aid of final orders and not vice versa. No interlocutory order will survive after the original proceeding comes to an end. This is a well established principle in law as could be seen from the judgment of this Court in Kavita Trehan (Mrs.) & Anr. vs. Balsara Hygiene Products Ltd. (1994 5 SCC 380) wherein it is held :

"Upon dismissal of the suit, the interlocutory order stood set aside and that whatever was done to upset the status quo, was required to be undone to the extent possible."

28. Therefore, in our opinion, the courts below erred in continuing an infructuous suit just to keep the interlocutory order alive which in a manner of speaking amounts to putting the cart before the dead horse.

18. In the case of **Pawan Diwan Vs. Vidya Charan Shukla reported in 1996 JLJ 762** it has been held as under:-

"20. To summaries the second part of the objections, learned Counsel for the applicant/Respondent No. 1 in this connection made following four-fold submissions: (a) that in the absence of prayer seeking declaration for declaring Respondent No. 1 as disqualified the petition as framed is infructuous as no cause of action accrues; (b) that the affidavit filed was not in consonance of Form 25 (supra) read with Rule 7 of the Rules framed by the High Court of Madhya Pradesh under the Act; (c) that the affidavit accompanying the petition wherefore proforma is prescribed by law has to satisfy the requirements of law which are mandatory in character; (d) that though the affidavit in proforma 25 do not provide for disclosure of source of information for the alleged corrupt practice the mode of information needs to be disclosed as the preposition is no more res-integra. The first point as raised by the learned Counsel for the Respondent No. 1 is sans substance as firstly such an objection is not covered under the provisions of Order 7 Rule 11 of the Code of Civil Procedure as the allegations in the petition disclose cause of action and not the prayer. Secondly relief could be the subject matter of amendment at any stage within the framework of the allegations in the petition, if found necessary. Thirdly High Court at the conclusion of Trial of an election petition can grant only the following reliefs: (a) dismiss the petition; or (b) declare the election

of all or any of the returned candidates to be void; or (c) declaring the election of all or any of the returned candidates to be void and the Petitioner or any other candidate to have been duly elected. However, Section 99 of the Act provides that at the time of making an order under Section 98 the High court shall also make an order: (a) where any charge is made in the petition of any corrupt practice having been committed at the election, recording: (i) a finding whether any corrupt practice has or has not been proved to have been committed at the election, and the nature of that corrupt practice; and 24-09-2022 (Page 9 of 14) (ii) the names of all persons, if any, who have been proved at the trial to have been guilty of any corrupt practice and the nature of that practice. This provision does not speak for final order that could be passed by the High Court except recording of finding of the guilt of corrupt practice qua the nature of corrupt practice and the name of the person who committed. In this context it is relevant to extract out the Section 8A of the Act, which is: 8A. Disqualification on ground of corrupt practices.- (1) The case of every person found guilty of a corrupt practice by an order under Section 99 shall be submitted, as soon as may be, after such order takes effect, by such authority as the Central Government may specify in this behalf, to the President for determination of the question as to whether such person shall be disqualified and if so, for what period: Provided that the period for which any person may be disqualified under this subsection shall in no case exceed six years from the date on which the order made in relation to him under Section 99 takes effect. (2) Any person who stands disqualified under Section 8A of this Act as it stood immediately before the commencement of the Election Laws (Amendment) Act, 1975 (40 of 1975), may, if the period of such disqualification has not expired, submit a petition to the President for the removal of such disqualification for the unexpired portion of the said period. (3) Before giving his decision on any question mentioned in Subsection (1) or on any petition submitted under Sub-section (2), the President shall obtain the opinion of the Election Commission on such question on petition and shall act according to such opinion. (Emphasis supplied) The case after finding of guilt Under Section 99 of the Act to be submitted to the President of India for determination of the question as to whether

such person shall be disqualified and if so, for what period. When High Court cannot grant relief Under Section 98 of the Act there is no question of claiming the relief in petition by the election Petitioner Under Section 99 of the Act, if the charges of corrupt practice are pleaded in the petition, then High Court to record only finding and nothing more. The objection thus fails. It may, however, may not go un-noticed that the High Court does not act as a Commission under the Commissions of Enquiry Act, 1952 for recording finding leaving action for the President of India. President of India cannot figure himself in the justice processing delivery system and thereby in judicial review process. The provision under Section 99 of the Act read with Section 8A, prima facie, erodes upon the basic feature of the Constitution and independence of the Judiciary. However here there is neither any such challenge nor could such a challenge be given in the election petition in view of law laid down by the Supreme Court in the case of Charan Lal Sahu v. Shri Keelam Sanjeeva Reddy AIR 1978 SC 409. 24-09-2022 (Page 10 of 14). In connection with second point, learned Counsel for the Respondent No. 1 as a first limb of submission submitted that the Petitioner has to specify the paragraphs of the election petition which relate to the allegation of corrupt practice in the affidavit as it is a mandatory requirement of law and it has to be in the prescribed form in support of the allegations of corrupt practices and particulars thereof and this mandatory requirement has not been complied-with by the Petitioner/opposite party, as according to him, the election Petitioner has to specify in the affidavit the name of the corrupt practice as provided Under Section 123 of the Act and while stating the name of corrupt practice also to give the particulars of such practice as mentioned in the paragraphs of the petition in the beginning of the affidavit. Second limb of submission is that though the Form 25 does not provide for giving source of information, if any, for such corrupt practice and the mode of information but the mode of information has to be disclosed and this proposition is no more res Integra in view of the pronouncement of the Supreme Court. The objection (d) (supra) finds place in objection (b).

24. The Supreme Court in V.K. Saklecha's case (supra) considered the case under the Act arising from the judgment of the Madhya Pradesh High Court. In

paragraph 10 it was stated that Rule 9 of the Madhya Pradesh High Court Rules in respect of election petitions states that the rules of the High Court shall apply in so far as they are not inconsistent with the Representation of the People Act, 1951 or other rules, if any, made thereunder or of the Code of Civil Procedure in respect of all matters including inter alia affidavits. Rule 7 of the Madhya Pradesh High Court Rules states that every affidavit should clearly express how much is a statement and declaration from knowledge and how much is a statement made on information or belief and must also state the source or grounds of information or belief with sufficient particularity and in paragraph 11 of the said report the Court has stated that Form No. 25 of the Conduct of Election Rules requires the deponent of an affidavit to set out which statements are true to the knowledge of the deponent and which statements are true to his information. The source of information is required to be given under the provisions in accordance with Rule 7 of the Madhya Pradesh High Court Rules. In so far as Form No. 25 of the Conduct of Election Rules requires the deponent to state which statements are true to knowledge there is no specific mention of the sources of information in the form. The form of the affidavit and the High Court Rules are not inconsistent. The High Court Rules give effect to provisions of Order 19 of the Code of Civil Procedure. The Court pointed out that importance of setting out the sources of information in affidavits which came up for consideration before the Supreme Court from time to time. The earlier decision was State of Bombay v. Purushottam Jog Naik : AIR 1952 SC 317 where the Supreme Court endorsed the decision of the Calcutta High Court in Padmabati Dasi v. Rasik Lal Dhar ILR Cal 259 and held that the sources of information should be clearly disclosed. Again, in Barium Chemicals Ltd. v. Company Law Board 1966 : AIR 1967 SC 295 the Supreme Court deprecated 'slipshod verifications' in an affidavit and reiterated its ruling in Bombay case (supra) that verification should invariably be modelled on the lines of Order 19, Rule 3 of the Code 'whether the Code applies in terms or not'. Again in A.K.K. Nambiar v. Union of India 1969 : AIR 1970 SC 652 the Supreme Court said that the importance of verification is to test the genuineness and authenticity

of allegations and also to make the deponent responsible for allegations.

27. It may be noticed that the filing of the affidavit along with the election petition in cases where the allegations of corrupt practices are made is a must and the affidavit has to be in Form No. 25 with the addition recording source of information as per decision of the Supreme Court in V.K. Saklecha's case (supra). The necessity of affidavit is of course to constitute a charge regarding corrupt practice provided under Section 123 of the Act. The verification clause as provided in Rule 15 of Order 6 of the Code of Civil Procedure, which is as extracted below, only says: What he verifies upon information received and believed to be true. It does not provide for disclosure of the source."

19. Learned counsel for the petitioner has relied upon the judgment of Hon' ble Apex Court in the case of **Mairembam Prithviraj @ Prithviraj Singh Vs Pukhrem Sharatchandra Singh reported in (2017) 2 SCC 487** in which it has been held as under:-

"17. It is clear from the law laid down by this Court as stated above that every voter has a fundamental right to know about the educational qualification of a candidate. It is also clear from the provisions of the Act, Rules and Form 26 that there is a duty cast on the candidates to give correct information about their educational qualifications. It is not in dispute that the Appellant did not study MBA in the Mysore University. It is the case of the Appellant that reference to MBA from Mysore University was a clerical error. It was contended by the Appellant that he always thought of doing MBA by correspondence course from Mysore University. But, actually he did not do the course. The question which has to be decided is whether the declaration given by him in Form 26 would amount to a defect of substantial nature warranting rejection of his nomination."

20. In the case of **Resurgence India Vs. Election Commission of India and another reported in (2014) 14 SCC 189** the Hon'ble Apex Court has held as under:-

"26. At this juncture, it is vital to refer to Section 125A of the RP Act. As an outcome, the act of failure on the

part of the candidate to furnish relevant information, as mandated by Section 33A of the RP Act, will result in prosecution of the candidate. Hence, filing of affidavit with blank space will be directly hit by Section 125A(i) of the RP Act. However, as the nomination paper itself is rejected by the Returning officer, we find no reason why the candidate must again be penalized for the same act by prosecuting him/her.

27. If we accept the contention raised by Union of India, viz., the candidate who has filed an affidavit with false information as well as the candidate who has filed an affidavit with particulars left blank should be treated at par, it will result in breach of fundamental right guaranteed under Article 19(1)(a) of the Constitution, viz., 'right to know', which is inclusive of freedom of speech and expression as interpreted in Association for Democratic Reforms.

28.In succinct, if the Election Commission accepts the nomination papers in spite of blank particulars in the affidavits, it will directly violate the fundamental right of the citizen to know the criminal antecedents, assets and liabilities and educational qualification of the candidate. Therefore, accepting affidavit with blank particulars from the candidate will rescind the verdict in Association for Democratic Reforms (supra). Further, the subsequent act of prosecuting the candidate under Section 125A(i) will bear no significance as far as the breach of fundamental right of the citizen is concerned. For the aforesaid reasons, we are unable to accept the contention of the Union of India."

21. In the case in hand Sections 83, 99,123 and 125-A of the Act o 1951 are relevant which reads as under:-

"[**83. Contents of petition.**—(1) An election petition—

(a) shall contain a concise statement of the material facts on which the petitioner relies;

(b) shall set forth full particulars of any corrupt practice that the petitioner alleges, including as full a statement as possible of the names of the parties alleged to have committed such corrupt practice and the date and place of the commission of each such practice; and

(c) shall be signed by the petitioner and verified in the manner laid down in the Code of Civil Procedure, 1908 (5 of 1908) for the verification of pleadings:

[Provided that where the petitioner alleges any corrupt practice, the petition shall also be accompanied by an affidavit in the prescribed form in support of the allegation of such corrupt practice and the particulars thereof.]

(2) Any schedule or annexure to the petition shall also be signed by the petitioner and verified in the same manner as the petition.]

99. **Other orders to be made by the High Court.—** (1) At the time of making an order under section 98 3 [the High Court] shall also make an order—

[(a) where any charge is made in the petition of any corrupt practice having been committed at the election, recording—

(i) a finding whether any corrupt practice has or has not been proved to have been committed at the election, and the nature of that corrupt practice; and

(ii) the names of all persons, if any, who have been proved at the trial to have been guilty of any corrupt practice and the nature of that practice; and]

(b) fixing the total amount of costs payable and specifying the persons by and to whom costs shall be paid:

Provided that 6 [a person who is not a party to the petition shall not be named] in the order under sub-clause (ii) of clause (a) unless—

(a) he has been given notice to appear before 3 [the High Court] and to show cause why he should not be so named; and

(b) if he appears in pursuance of the notice, he has been given an opportunity of cross-examining any witness who has already been examined by 3 [the High Court] and has given evidence against him, of calling evidence in his defence and of being heard.

[(2) In this section and in section 100, the expression "agent" has the same meaning as in section 123.]

123. 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) a person to stand or not to stand as, or 4 [to withdraw or not to withdraw] from being a candidate at an election, or

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

(i) a person for having so stood or not stood, or for 5 [having withdrawn or not having withdrawn] his candidature; or

(ii) an elector for having voted or refrained from voting;
(B) the receipt of, or agreement to receive, any gratification, whether as a motive or a reward—

(a) by a person for standing or not standing as, or for 6 [withdrawing or not withdrawing] from being, a candidate; or

(b) by any person whomsoever for himself or any other person for voting or refraining from voting, or inducing or attempting to induce any elector to vote or refrain from voting, or any candidate [to withdraw or not to withdraw] his candidature.

Explanation.—For the purposes of this clause the term "gratification" is not restricted to pecuniary gratifications or gratifications estimable in money and it includes all forms of entertainment and all forms of employment for reward but it does not include the payment of any expenses bona fide incurred at, or for the purpose of, any election and duly entered in the account of election expenses referred to in section 78.]

(2) Undue influence, that is to say, any direct or indirect interference or attempt to interfere on the part of the candidate or his agent, or of any other person 7 [with the consent of the candidate or his election agent], with the free exercise of any electoral right: —

Provided that—

(a) without prejudice to the generality of the provisions of this clause any such person as is referred to therein who—

(i) threatens any candidate or any elector, or any person in whom a candidate or an elector is interested, with injury of any kind including social ostracism and ex-communication or expulsion from any caste or community; or

(ii) induces or attempts to induce a candidate or an elector to believe that he, or any person in whom he is interested, will become or will be rendered an object of divine displeasure or spiritual censure,

shall be deemed to interfere with the free exercise of the electoral right of such candidate or elector within the meaning of this clause;

(b) a declaration of public policy, or a promise of public action, or the mere exercise of a legal right without intent to interfere with an electoral right, shall not be deemed to be interference within the meaning of this clause.

[(3) The appeal by a candidate or his agent or by any other person with the consent of a candidate or his election agent to vote or refrain from voting for any person on the ground of his religion, race, caste, community or language or the use of, or appeal to religious symbols or the use of, or appeal to, national symbols, such as the national flag or the national emblem, for the furtherance of the prospects of the election of that candidate or for prejudicially affecting the election of any candidate:]

2 [Provided that no symbol allotted under this Act to a candidate shall be deemed to be a religious symbol or a national symbol for the purposes of this clause.]

(3A) The promotion of, or attempt to promote, feelings of enmity or hatred between different classes of the citizens of India on grounds of religion, race, caste, community, or language, by a candidate or his agent or any other person with the consent of a candidate or his election agent for the furtherance of the prospects of the election of that candidate or for prejudicially affecting the election of any candidate.]

[(3B) The propagation of the practice or the commission of sati or its glorification by a candidate or his agent or any other person with the consent of the candidate or his election agent for the furtherance of the prospects of the election of that candidate or for prejudicially affecting the election of any candidate.

Explanation.—For the purposes of this clause, "sati" and "glorification" in relation to sati shall have the meanings respectively assigned to them in the Commission of Sati (Prevention) Act, 1987 (3 of 1988).]

(4) The publication by a candidate or his agent or by any other person 4 [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.

(5) The hiring or procuring, whether on payment or otherwise, of any vehicle or vessel by a candidate or his agent or by any other person , [with the consent of a candidate or his election agent], [or the use of such vehicle or vessel for the free conveyance] of any elector (other than the candidate himself, the members of his family or his agent) to or from any polling station provided under section 25 or a place fixed under sub-section (1) of section 29 for the poll:

Provided that the hiring of a vehicle or vessel by an elector or by several electors at their joint costs for the purpose of conveying him or them to and from any such polling station or place fixed for the poll shall not be deemed to be a corrupt practice under this clause if the vehicle or vessel so hired is a vehicle or vessel not propelled by mechanical power:

Provided further that the use of any public transport vehicle or vessel or any tramcar or railway carriage by any elector at his own cost for the purpose of going to or coming from any such polling station or place fixed for the poll shall not be deemed to be a corrupt practice under this clause.

Explanation.—In this clause, the expression "vehicle" means any vehicle used or capable of being used for the

purpose of road transport, whether propelled by mechanical power or otherwise and whether used for drawing other vehicles or otherwise.

(6) The incurring or authorizing of expenditure in contravention of section 77.

(7) The obtaining or procuring or abetting or attempting to obtain or procure by a candidate or his agent or, by any other person 1 [with the consent of a candidate or his election agent], any assistance (other than the giving of vote) for the furtherance of the prospects of that candidate's election, 2 [from any person whether or not in the service of the Government] and belonging to any of the following classes, namely:—

(a) gazetted officers;

(b) stipendiary judges and magistrates;

(c) members of the armed forces of the Union;

(d) members of the police forces;

(e) excise officers;

[(f) revenue officers other than village revenue officers known as lambardars, malguzars, patels, deshmukhs or by any other name, whose duty is to collect land revenue and who are remunerated by a share of, or commission on, the amount of land revenue collected by them but who do not discharge any police functions; and]

(g) such other class of persons in the service of the Government as may be prescribed:

[Provided that where any person, in the service of the Government and belonging to any of the classes aforesaid, in the discharge or purported discharge of his official duty, makes any arrangements or provides any facilities or does any other act or thing, for, to, or in relation to, any candidate or his agent or any other person acting with the consent of /the candidate or his election agent (whether by reason of the office held by the candidate or for any other reason), such arrangements, facilities or act or thing shall not be deemed to be assistance for the furtherance of the prospects of that candidate's election;]

[(h) class of persons in the service of a local authority, university, government company or institution or concern

or undertaking appointed or deputed by the Election Commission in connection with the conduct of elections.]

[(8) booth capturing by a candidate or his agent or other person.] Explanation.—(1) In this section, the expression "agent" includes an election agent, a polling agent and any person who is held to have acted as an agent in connection with the election with the consent of the candidate.

(2) For the purposes of clause (7), a person shall be deemed to assist in the furtherance of the prospects of a candidate's election if he acts as an election agent of that candidate.]

[(3) For the purposes of clause (7), notwithstanding anything contained in any other law, the publication in the Official Gazette of the appointment, resignation, termination of service, dismissal or removal from service of a person in the service of the Central Government (including a person serving in connection with the administration of a Union territory) or of a State Government shall be conclusive proof—

(i) of such appointment, resignation, termination of service, dismissal or removal from service, as the case may be, and

(ii) where the date of taking effect of such appointment, resignation, termination of service, dismissal or removal from service, as the case may be, is stated in such publication, also of the fact that such person was appointed with effect from the said date, or in the case of resignation, termination of service, dismissal or removal from service, such person ceased to be in such service with effect from the said date.] 3 [(4) For the purposes of clause (8), "booth capturing" shall have the same meaning as in section 135A.]

[125A. Penalty for filing false affidavit, etc.—A candidate who himself or through his proposer, with intent to be elected in an election,—

(i) fails to furnish information relating to sub-section (1) of section 33A; or

(ii) give false information which he knows or has reason to believe to be false; or

(iii) conceals any information,

in his nomination paper delivered under sub-section (1) of section 33 or in his affidavit which is required to be delivered under sub-section (2) of section 33A, as the case may be, shall, notwithstanding anything contained in any other law for the time being in force, be punishable with imprisonment for a term which may extend to six months, or with fine, or with both.]

22. Rule 94-A of the Rules of 1961 reads as under:-

[94A. Form of affidavit to be filed with election petition.—The affidavit referred to in the proviso to subsection (1) of section 83 shall be sworn before a magistrate of the first class or a notary or a commissioner of oaths and shall be in Form 25.]

23. Form No.25 is reproduced here as under:-

(See rule 94A)

Affidavit

I, ...,the petitioner in the accompanying election petition calling in question the election of Shri/Shrimati............(respondent No...........in the said petition) make solemn affirmation/oath and say—

(a) that the statements made in paragraphs......................of the accompanying election petition about the commission of the corrupt practice of*..................and the particulars of such corrupt practice mentioned in paragraphs................of the same petition and in paragraphs....................of the Schedule annexed thereto are true to my knowledge;

(b) that the statements made in paragraphs...................of the said petition about the commission of the corrupt practice of*........................and the particulars of such corrupt practice given in paragraphs..........................of the said petition and in paragraphs......................................of the Schedule annexed thereto are true to my information;

(c)

(d)

etc.

Signature of deponent.

Solemnly affirmed/sworn by Shri/ Shrimati........at.....this......day of......19 .

Before me, Magistrate of the first class/Notary/ Commissioner of Oaths.]

* Here specify the name of the corrupt practice.]

24. The affidavit in Form No.25 filed by the petitioner is reproduced as under:-

BEFORE THE HON'BLE HIGH COURT OF MADHYA PRADESH

IN THE MATTER OF

Dr. Rajesh Sonkar .....Petitioner

Versus

Shri Tulsiram Silawat and others .....Respondents

FORM 25
(See rule 94A)
Affidavit

I, Dr. Rajesh Sonkar, the petitioner in the accompanying election petition calling in question the election of Shri Tulsiram Silawat (Respondent no.1 in the said petition) make solemn affirmation/oath and say-

a) That, the statements made in the paragraphs No.9 to 35 of the accompanying election petition about the commission of corrupt practices by suppression of criminal antecedents and improper filing of nomination form and affidavit by the respondent no.1 and improper acceptance of nomination form by respondent no.11 and annexures thereto are true to my knowledge;

DEPONENT

Solemnly affirmed by Dr. Rajesh Sonkar at Jabalpur this 24th day of January, 2019.

BEFORE ME

25. To summarize the objections raised by respondent no.1 regarding affidavit filed in Form No.25 the following three questions arise:-

(i) Whether the affidavit filed was not in consonance of Form No.25(supra) read with Rule 7 of the Rules framed by the High Court of Madhya Pradesh under the Act.

(ii) Whether the affidavit accompanying the petition wherefore proforma is prescribed by law has to satisfy the requirements of law which are mandatory in character.

(iii) Whether the affidavit in Form No.25 (Rule-94-A) do not provide for disclosure of source of information for the alleged corrupt practice the mode of information needs to be disclosed.

26. Learned counsel for respondent no.1 submits that petitioner has to specify the paragraphs of the election petition which relate to the allegation of corrupt practice I the affidavit as it is a mandatory requirement of law and it has to be in the prescribed form in support of the allegations of corrupt practices and particulars thereof and this mandatory requirement has not been complied with by the petitioner, as according to him, the election petitioner has to specify in the affidavit the name of the corrupt practice as provided under Section 123 of the Act and while stating the name of the corrupt practice also to given the particulars of such practice as mentioned in the paragraphs of the petition in the beginning of the affidavit. It is also submitted that Form No.25 does not provide for giving source of information, if any, for such corrupt practice and the mode of information but the mode of information has to be disclosed. The Hon'ble Apex Court in the case of **V.K.Sakhlecha Vs. Jagjiwan reported in AIR 1974 SC 1957** it has been held as under:-

> "14. The non-disclosures of grounds or sources of information in an election petition which is to be filed within 45 days from the date of election of the returned candidate, will have to be scrutinized from two points of view. The non-disclosure of the grounds will indicate that the election Petitioner did not come forward with the sources of information at the first opportunity. The real importance of setting out the sources of information at the time of the presentation of the petition is to give the other side notice of the contemporaneous evidence on which the election petition is based. That will give an opportunity to the other side to test the genuineness and veracity of the sources of information. The other point of view is that the election Petitioner will not be able to make any departure from the sources or grounds. If there is any embellishment of the case, it will be discovered."

27. On perusal of the affidavit (Form No.25) it is evident that clause (a) the name and the particulars of corrupt practice as provided under Section 123 of Act of 1951was stated. As per proforma of affidavit under Rule 94-A of Rules of 1961 in Column (b) source of information has to be disclosed which is absent in the affidavit filed by the petitioner.

28. Learned counsel for respondent no.1 submits that the affidavit is defective because it does not disclose the source of information. It is further submitted that affidavit in essence, though form part of the petition is in the shape of criminal charges as the allegations of corrupt practices are quasi criminal in nature and as such without disclosing the charge in the manner provided the complete cause of action has lapsed.

29. The importance of setting out the sources of information in affidavits which came up for consideration before the Supreme Court from time to time. The earlier decision was **State of Bombay v. Purushottam Jog Naik AIR 1952 SC 317** where the Supreme Court endorsed the decision of the Calcutta High Court in **Padmabati Dasi v. Rasik Lal Dhar ILR Cal 259** and held that the sources of information should be clearly disclosed. Again, in **Barium Chemicals Ltd. v. Company Law Board AIR 1967 SC 295** the Supreme Court deprecated 'slipshod verifications' in an affidavit and reiterated its ruling in Bombay case (supra) that verification should invariably be modelled on the lines of Order 19, Rule 3 of the Code 'whether the Code applies in terms or not'. Again in **A.K.K. Nambiar v. Union of India AIR 1970 SC 652** the Supreme Court said that the importance of verification is to test the genuineness and authenticity of allegations and also to make the deponent responsible for allegations.

30. Paragraph 14 of the aforesaid decision in **V.K. Saklecha's case**, as has already been extracted above, which deals with the non-disclosure of

grounds or sources of information, the Court said that the non-disclosure of grounds will indicate that the election Petitioner did not come forward with the sources of information at the first opportunity. The real importance of setting out the source of information at the time of presentation of the petition is to give the other side notice of the contemporaneous evidence on which the election petition is based. That will give an opportunity to the other side to test the genuineness and veracity of the source of information. The other point of view is that the election Petitioner will not be able to make any departure from the sources or grounds. If there is any embellishment of the case it will be discovered. It may be noticed that the filing of the affidavit along with the election petition in cases where the allegations of corrupt practices are made is a must and the affidavit has to be in Form No. 25 with the addition recording source of information as per decision of the Supreme Court in **V.K. Saklecha's case (supra).**

31. In **Hari Vishnu Kamath v. Ahmad Ishaqua and Ors. AIR 1955 SC 233** in Paragraph 35 the Court though in different context laid down the rule of law as:

> "When the law prescribes that the intention should be expressed in a particular manner, it can be taken into account only if it is so expressed. An intention not duly expressed is, in a Court of law, in the same position as an intention not expressed at all."

This principle would be attracted as here the intention of disclosure of the source of information and the intention of disclosing the particular corrupt practice is provided by law.

32. In the case in hand the relief nos.(ii) and (iii) of relief clause of petition cannot be granted. Only cause of action has to be seen with regard to relief nos.(i) and (iv) claimed in the petition. The complete

cause of action thus in the absence of affidavit in the form prescribed together satisfying the requirements of the Rules of the Court in view of decision of **V.K. Saklecha's case (supra)**, source of information is not there and as such the filing of the affidavit satisfying all the requirements in Form No. 25 is a mandatory requirement of law.

33. In **Pawan Diwan's Case (Supra)** it was held that the statutory provision laying down the requirement of cannot be allowed to be diluted as the very purpose of statutory provision is to give obedience and not the disobedience and any deviation showing the requirement of law regarding filing of an affidavit when the allegations of corrupt practices are made and also regarding other requirements as such mentioning of paragraphs regarding statements of facts qua the allegation of corrupt practice and the name of the particular corrupt practice and also the material particular qua the corrupt practice and the source of the information of the corrupt practice is an essential one as the charge of corrupt practice is not purely of civil nature but is of quasi criminal nature. Accordingly, I am of the view that when the election petition which contains allegations of corrupt practices against a returned candidate then the petition should be accompanied by an affidavit and such an affidavit must strictly conform to the requirements mentioned in Form No. 25 as well as the disclosure of the source of information as required under the Rules of the Court. In the absence of satisfying the above requirements the petition qua the corrupt practices would be treated as not disclosing the complete cause of action qua the charges of corrupt practice.

34. In view of the above, I find that the election petition on account of sufferance of deficiency noticed hereinbove cannot proceed further as the reliefs claimed in the petition cannot be granted as the respondent No. 1 cannot be put to trial as affidavit, which is essence of the charges, had failed to satisfy the requirement of law.

35. Accordingly the I.A.No.2048/2022 is allowed and this petition is dismissed. No order as to cost. However, the election petitioner is entitled to take back the security amount which lie deposited. The security amount so deposited shall be refunded to the Petitioner as a whole. Let the intimation of decision and authenticated copy of decision may be sent to the authorities as mentioned in Section 103 of the Act of 1951.

Sd./-
(RAJENDRA KUMAR VERMA)

JUDGE.

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

नियंत्रक, शासकीय मुद्रण तथा लेखन सामग्री, मध्यप्रदेश द्वारा शासकीय केन्द्रीय मुद्रणालय, भोपाल से मुद्रित तथा प्रकाशित—2023.