

“बिजनेस पोस्ट के अन्तर्गत डाक शुल्क के नगद भुगतान (बिना डाक टिकट) के प्रेषण हेतु अनुमत. क्रमांक जी.2-22-छत्तीसगढ़ गजट / 38 सि. से. भिलाई. दिनांक 30-05-2001.”



पंजीयन क्रमांक
“छत्तीसगढ़/दुर्ग/09/2013-2015.”

छत्तीसगढ़ राजपत्र

(असाधारण)
प्राधिकार से प्रकाशित

क्रमांक 281]

नवा रायपुर, बुधवार, दिनांक 3 जून 2026 — ज्येष्ठ 13, शक 1948

कार्यालय मुख्य निर्वाचन पदाधिकारी, छत्तीसगढ़
शास्त्री चौक, पुराना मंत्रालय परिसर, रायपुर

रायपुर, दिनांक 22 मई 2026

फा.क-18/03/निर्वाचन याचिका/2024-26/3996.— भारत निर्वाचन आयोग, नई दिल्ली द्वारा जारी अधिसूचना संख्या 82/पूर्व.अनु.-1/छ.ग.-वि.स./ (01/2024)/2026 दिनांक 06 मई, 2026 लोक प्रतिनिधित्व अधिनियम, 1951 (1951 का 43) की धारा 106 के अनुसरण में, भारत निर्वाचन आयोग एतद्द्वारा निर्वाचन अर्जी संख्या-01/2024 में दिए गए छत्तीसगढ़ उच्च न्यायालय, बिलासपुर के तारीख दिनांक 17 अप्रैल, 2026 के आदेश को राज्य के शासकीय राजपत्र में सर्वसाधारण की जानकारी हेतु प्रकाशित किया जाता है।

हस्ता./-

(यशवंत कुमार)
मुख्य निर्वाचन पदाधिकारी.

भारत निर्वाचन आयोग
निर्वाचन सदन, अशोक रोड, नई दिल्ली-110001

नई दिल्ली, तारीख 6 मई, 2026 — 16 वैशाख, 1948 (शक)

अधिसूचना

सं. 82/पूर्व.अनु.-1/छ.ग.-वि.स./(01/2024)/2026.— लोक प्रतिनिधित्व अधिनियम, 1951 (1951 का 43) की धारा 106 के अनुसरण में, भारत निर्वाचन आयोग एतद्वारा निर्वाचन अर्जी सं. 01/2024 में दिये गये छत्तीसगढ़ उच्च न्यायालय, बिलासपुर के तारीख 17 अप्रैल, 2026 के आदेश को प्रकाशित करता हूँ।

आदेश से,

हस्ता./-

(तनुज कुमारी)
सचिव.

ELECTION COMMISSION OF INDIA
Nirvachan Sadan, Ashoka Road, New Delhi -110001

New Delhi, Dated 6th May, 2026 — 16 Vaisakha, 1948 (Saka)

NOTIFICATION

No. 82/ES-I/CG-LA/(01/2024)/2026.— In pursuance of Section 106 of the Representation of the People Act, 1951 (43 of 1951), the Election Commission hereby publish Order dated 17th April, 2026 High Court of the Chhattisgarh at Bilaspur in Election Petition No. 01 of 2024.

By Order,

Sd/-

(Tanuj Kumari)
Secretary.

(EP No.1/2024)

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HIGH COURT OF CHHATTISGARH AT BILASPUR**Election Petition No.1 of 2024**Order reserved on: 17/03/2026Order delivered on: 17/04/2026Order (Full) uploaded on: 17/04/2026

Munna Lal Toppo, S/o Late Heera Sai, aged about 44 years, R/o Village Bishunpur, P.O. Poksarai, P.S. Sitapur, Tehsil Batauli, District Surguja (C.G.)

... Petitioner**versus**

1. Chhattisgarh Election Commission through the Chief Electoral Officer of Chhattisgarh, Shastri Chowk, Old Mantralaya Premises, Raipur, District Raipur (C.G.)
2. District Election Officer cum Collector, Surguja, P.O. Ambikapur, District Surguja (C.G.)
3. Ravi Rahi, Returning Officer, Legislative Assembly Circle-11, Sitapur Constituency, Sitapur, District Surguja (C.G.)
4. Poorv Sainik Ramkumar Toppo, S/o Ganesh Ram, aged about 31 years, R/o Gotchhal, Post Jamkani, Tehsil Mainpath, District Surguja (C.G.)
Bharatiya Janata Party

... Respondents

For Petitioner	:	Dr. Jitendra Kishor Mehta and Mr. Anand Kumar Kujur, Advocates.
For Respondents No.1 to 3	:	Mr. Rakesh Kumar Jha, Advocate.
For Respondent No.4	:	Mr. Sharad Mishra, Advocate.

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Single Bench: -
Hon'ble Shri Justice Sanjay K. Agrawal

C.A.V. Order

For sake of exposition, this Order is divided in following parts:-

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1. Challenge in the Election Petition

The Election Petitioner herein has called in question the election of Respondent No.4/Returned Candidate from Legislative Assembly Constituency No.11, Sitapur (ST), District Surguja under Sections 80A & 81 read with Section 100(1)(c) of the Representation of the People Act, 1951 (for short, 'the Act of 1951') that his nomination papers

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have been improperly rejected by the Returning Officer by its order dated 31.10.2023 vide Ex.-P/19.

2. Election Petition and Ground for declaring Election Void:-

2.1) The election petitioner herein has filed this election petition stating inter alia that he intended to contest the Chhattisgarh Legislative Assembly Election, 2023. In order to contest election from Constituency No.11, Sitapur (ST), District Surguja, he submitted 3 sets of nomination papers on 27.10.2023 and 30.10.2023 before the Returning Officer, Legislative Constituency No.11, Sitapur (ST), District Surguja, vide Exs.-P/11, P/12 & P/13. On the date of scrutiny of nomination papers i.e. on 31.10.2023, one independent candidate namely, Ram Kumar Kindo filed an objection before the Returning Officer stating that the election petitioner is a Government contractor, as he is registered with the Public Health Engineering Department, and at present he holds the office of profit and, therefore, under Section 9A of the Act of 1951, the petitioner is disqualified to contest the election.

2.2) The election petitioner herein submitted his reply to the objection raised by candidate Ram Kumar Kindo on 31.10.2023, vide Ex.-P/16. Thereafter on the same day i.e. 31.10.2023, the Returning Officer, Legislative Assembly Constituency No.11, Sitapur (ST) sought a factual report vide Ex.-P/17 from the Executive Engineer, Public Health Engineering Department on two points namely, (1) whether election petitioner Munna Lal Toppo was having contract with

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appropriate Government in relation to his own trade or business or for execution of any work undertaken by the said Government, and (2) if yes, then whether such contract still subsists? The Executive Engineer, Public Health Engineering Department submitted his report on the same day i.e. 31.10.2023 vide Ex.-P/18 answering both the queries in affirmative along with supporting documents. Thereafter, on 31.10.2023, the Returning Officer, Legislative Assembly Constituency No.11 Sitapur passed the impugned order vide Ex.-P/19 rejecting his nomination papers holding that the election petitioner is disqualified for contesting the election and being elected as member of Legislative Assembly of Chhattisgarh under Section 9A of the Act of 1951.

2.3) Thereafter, respondent No.4 was declared elected from the Legislative Assembly Constituency No.11 Sitapur (ST), District Surguja on 5.12.2023. Feeling aggrieved, the election petitioner has filed the present Election Petition questioning the improper rejection of nomination papers on the grounds enumerated under Section 9A of the Act of 1951 that he was qualified to contest the election.

3. Return by the Returned Candidate

3.1) Respondent No.4/Returned Candidate, has filed return stating that the Returning Officer was absolutely justified in rejecting the nomination papers of the election petitioner, as the District Water & Sanitation Mission (DWSM) was constituted by order of the Collector under the Government scheme and powers for implementation of Jal

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Jeevan Mission were delegated by the PHE Department as per the recommendation of the Cabinet and as such, DWSM would fall within the definition of 'appropriate Government' under Sections 7(a) and 9A of the Act of 1951.

3.2) It was further pleaded that the Returning Officer was absolutely justified in rejecting the nomination papers of the election petitioner, as the election petitioner was having contract with the appropriate Government, which is apparent from the report submitted by the Executive Engineer, Public Health Engineering Department. Therefore, in view of Sections 7(a) and 9A of the Act of 1951, the Election Petition deserves to be dismissed.

4. Issues and Findings on the Issues:-

On the basis of pleadings made by the parties, following issues were framed and corresponding answers/findings are noted against each one of them :-

S.No.	Issues	Findings
1.	Whether the returning officer is justified in rejecting the nomination paper of the petitioner by order dated 31.10.2023 holding that the petitioner is disqualified to contest the election of Sitapur Assembly Constituency No.11, District Surguja, in view of the provisions contained in Section 9A of the Act of 1951?	"Yes"
2.	Whether the District Water and Sanitation Mission and the Village Water and Sanitation Committee would fall within the definition of "appropriate Government" under Section 7(a) read with Section 9A of the Act of 1951?	"Not proved"
3.	Relief and cost(s)?	"As per para 49"

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5. In order to prove his case that his nomination papers were improperly rejected by the Returning Officer, the election petitioner has examined himself as PW-1 and he has proved the documents (Ex.-P/1 to P/25); (PW-2) Ravi Rahi – Returning Officer, who has proved the contents of Exs.-P/15, P/16, P/17 & P/19; (PW-3) Shankar Prasad Mandavi, Executive Engineer, PHE Department, Bilaspur, who has proved his reply/enquiry report (Ex.-P/18); (PW-4) Ram Kumar Kindo, who has proved the complaint (Ex.-P/15) and (PW-5) Ram Kumar Toppo. An affidavit under Order 18 Rule 4 of the CPC has been filed by the election petitioner as also by Ram Kumar Kindo (complainant). Similarly, respondent No.4 has examined himself.
6. On 2.2.2026, learned counsel for the election petitioner submitted that his nomination papers were rejected on 31.10.2023, whereas Dr. Sarweshwar Narendra Bhure (proposed Government Witness) was posted as MD, Jal Jivan Mission from 11th September, 2024 to 21st April, 2025 and, therefore, he does not want to examine him as the petitioner's witness. Considering the submission made by learned counsel for the election petitioner, Dr. Sarweshwar Narendra Bhure (proposed Government Witness) present before the Court through Video Conferencing, was discharged without his examination

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7. Submissions on behalf of the petitioner

Dr. Jitendra Kishor Mehta, learned counsel appearing on behalf of the election petitioner, would submit as under:-

(i) The Returning Officer was absolutely unjustified in rejecting the nomination papers on the ground enumerated under Section 9A of the Act of 1951, as the District Water and Sanitation Mission and Village Water and Sanitation Committee would not fall within the definition of appropriate Government under Section 7(a) read with Section 9A of the Act of 1951.

(ii) Section 9A of the Act of 1951 requires strict proof of a subsisting contract with the appropriate Government for execution of works undertaken by that Government and all the ingredients must co-exist on the date of scrutiny. Appropriate Government has been defined under Section 7(a) of the Act of 1951 which means the State Government in relation to Assembly elections.

(iii) All contracts made in the exercise of the executive power of the State shall be expressed to be made by the Governor. Article 299 of the Constitution of India mandates that a valid Government contract must be expressed in the name of Governor and the same be executed on behalf of the Governor. Non-compliance of Article 299 is fatal to claim that the contract is with the Government/appropriate Government. In the instant case, the agreement with the District Water

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and Sanitation Mission and Village Water and Sanitation Committee is not expressed in the name of Governor of Chhattisgarh, rather it is executed by the Executive Engineer, PHE Department for District Water and Sanitation Mission and Village Water and Sanitation Committee. A tripartite agreement has been entered into between the Executive Engineer, PHE Department; the petitioner as contractor and Ex-officio Secretary of the District Water and Sanitation Mission and Sarpanch for Village Water and Sanitation Committee. As such, there is no contract/agreement executed with the Executive Engineer, PHE Department and other bodies and, therefore, the nomination papers of the petitioner have been wrongly rejected.

(iv) Learned counsel for the election petitioner would place reliance on the judgments of the Supreme Court in the matters of Shrikant v. Vasantrao & Ors¹, Mulamchand v. State of Madhya Pradesh², K.P. Chowdhry v. State of Madhya Pradesh and others³, Bhikraj Jaipuria v. Union of India⁴, Konappa Rudrappa Nadgouda v. Vishwanath Reddy and Another⁵. Learned counsel for the election petitioner would further place reliance on the judgment of the Supreme Court in the matter of Shibu Soren v. Dayanand Sahay and Others⁶ to submit that disqualification of a person must be proved strictly in

1 (2006) 2 SCC 682

2 1968 SCC OnLine SC 21 : AIR 1968 SC 1218

3 AIR 1967 SC 203

4 AIR 1962 SC 113

5 1968 SCC OnLine SC 407

6 (2001) 7 SCC 425

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conformity with the object of the Act. Reliance is also placed in the matter of Jagan Nath v. Jaswant Singh and Others⁷. Relying on the decision of the Supreme Court in the matter of Kanta Kathuria v. Manak Chand Surana⁸, it was argued that mere admission of the Election Petitioner in the nomination paper would not create any disqualification. Lastly, learned counsel for the election petitioner would rely upon the decision of the Supreme Court in the matter of Sushil Kumar Mehta v. Gobind Ram Bohra (dead) through his LRs⁹. As such, it was prayed that the election petition be allowed and the election of Respondent No.4 be set aside.

8. Submissions on behalf of respondent No.4 – Returned Candidate:-

Mr. Sharad Mishra, learned counsel appearing on behalf of the Returned Candidate/respondent No.4 herein, would oppose the submissions made on behalf of the election petitioner and would submit as under:-

- (i) The burden is on the election petitioner to prove his averments/pleadings before the Election Tribunal (this Court), which in the instant case, has not been discharged by the election petitioner.
- (ii) Since the proceedings before the Election Tribunal (this Court) are original proceedings, it was open to the election petitioner to place additional material on record during election trial to show that he was

7 (1954) 1 SCC 57

8 (1969) 3 SCC 268

9 (1990) 1 SCC 193

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not disqualified from contesting the election and his nomination papers were improperly rejected, but the election petitioner has not filed any document except the documents which were filed before the Returning Officer to demonstrate the said fact. Therefore, in order to prove his candidature/qualification to contest the election, no additional document/material has been brought before this Court and as such, the election petitioner has failed to discharge his duty cast upon him. Learned counsel for respondent No.4 would place reliance on the judgments of the Supreme Court in the matters of Vashist Narain Sharma v. Dev Chandra & Others¹⁰, Harikrishna Lal v. Babu Lal Marandi¹¹ and Birad Mal Singhvi v. Anand Purohit¹². Reliance is further placed in the matters of NT Veluswami Thevar v. G. Raja Nainar & Others¹³ and Mohd. Yasin Shah v. Ali Akbar Khan¹⁴ (para-38).

(iii) The proceeding of scrutiny of nomination paper(s) as provided under Section 36 of the Act of 1951 is summary in nature where the Returning Officer is obligated to scrutinize the nomination papers and the objection received thereof by giving opportunity of hearing to the concerned parties. During such scrutiny, the Returning Officer can conduct a summary enquiry, if he thinks necessary in the given facts and circumstances of the case. In the instant case, the Returning

10 (1954) 2 SCC 32

11 (2003) 8 SCC 613

12 1988 (Supp) SCC 604

13 AIR 1959 SC 422

14 (1977) 2 SCC 23

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Officer has duly followed the procedure prescribed under the Act of 1951, which is evident from the fact that after receiving the complaint (Ex.-P/15) filed by Ram Kumar Kindo, the Returning Officer forwarded the same and called for the report from the Executive Engineer (PW-3), pursuant to which enquiry report (Ex.-P/18) was submitted by the Executive Engineer, PHED. Thereafter, reply was also sought from the election petitioner and after giving due opportunity of hearing and after conducting a summary enquiry, the order dated 31.10.2023 (Ex.-P/19) was passed. Reliance is also placed in the matter of **Mathura Prasad v. Ajeem Khan**¹⁵.

(iv) The election petitioner has categorically admitted in his nomination papers as well as affidavit (Exs.-P/11 to P/14) that he has subsisting contract with the appropriate Government, which he admitted during trial as well in his cross-examination. Therefore, admission is the best evidence and admitted facts need not be proved unless the same is rebutted during trial, as per Sections 17, 21 and 58 of the Indian Evidence Act, 1872. Learned counsel for respondent No.4 would place reliance on the judgment of the Supreme Court in the matter of **Bishwanath Prasad and Others v. Dwaraka Prasad and Others**¹⁶ (para-4).

(v) Lastly, it was submitted that since the election petitioner himself admitted in his nomination papers (Exs.-P/11 to P/13) and affidavit

15 (1990) 3 SCC 659

16 (1974) 1 SCC 78

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(Ex.-P/14) that he was having subsisting contracts under the Jal Jeevan Mission, he cannot be allowed firstly to make admission before the Returning Officer to mislead and thereafter revert back and say that the District Water and Sanitation Mission and Village Water and Sanitation Committee are not appropriate Government under Section 7(a) read with Section 9A of the Act of 1951. Admission made and duly proved by the petitioner is binding on him and, therefore, he cannot resile from his version. As such, the Election Petition deserves to be dismissed.

9. Submission on behalf of the Election Commission

Mr. Rakesh Kumar Jha, learned counsel appearing on behalf of the Chhattisgarh Election Commission/respondents No.1 to 3 herein, would support the stand taken by learned counsel for respondent No.4.

10. I have heard learned counsel for the parties and considered their rival submissions made herein-above and also gone through the record with utmost circumspection.

Grounds for declaring election to be void: -

11. The petitioner has taken a ground that his nomination papers have improperly been rejected by the Returning Officer. At this stage, it would be appropriate to notice Section 100(1)(c) of the Act of 1951 which states as under: -

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

(a) and (b) xxx xxx xxx

(c) that any nomination has been improperly rejected; or

(d) xxx xxx xxx

the High Court shall declare the election of the returned candidate to be void.”

12. A careful perusal of Section 100(1)(c) of the Act of 1951 would show that this Court would declare the election of the returned candidate to be void, if the nomination paper of any candidate has been improperly rejected.

13. Improper rejection of nomination paper by itself and without anything more is good ground to declare election of returned candidate, void (see Somnath Rath v. Bikram K. Arukh and others¹⁷). Similarly, in the matter of Surendra Nath Kosla and another v. S. Dalip Singh and others¹⁸, the Supreme Court has made distinction between two classes of cases namely improper acceptance and improper rejection of nomination paper. There is presumption in case of improper rejection of nomination paper that it has materially affected result of election. Fact that one of several candidates for election had been kept out of arena is by itself very material consideration. On the other hand, in case of improper acceptance of nomination paper, proof may easily be forthcoming to demonstrate that coming into arena of additional

¹⁷ AIR 1999 SC 3417

¹⁸ AIR 1957 SC 242

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candidate has not had any effect on election of best candidate in field. Similarly, in the matter of Nandiesha Reddy v. Kavita Mahesh¹⁹, the Supreme Court has held that if election is challenged on ground of improper rejection of nomination paper, petition should set out reasons given by Returning Officer for rejection and facts necessary to show that rejection was improper; in absence of such averments it cannot be said election petition contains material facts to make out a cause of action to put the election petition in trial.

Scrutiny of nomination paper: -

14. Section 36 of the Act of 1951 deals with Scrutiny of nomination. By virtue of sub-section (2) of Section 36, the Returning Officer shall 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 fit, reject any nomination on any of the following grounds:—

(a) that on the date fixed for the scrutiny of nominations the candidate either is not qualified or is disqualified for being chosen to fill the seat under any of the following provisions that may be applicable, namely:—

Articles 84, 102, 173 and 191.

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

¹⁹ AIR 2011 SC 2639

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

15. Similarly, sub-section (4) of Section 36 of the Act of 1951 provides rejection on the ground of any defect which is not of a substantial character.
16. Under sub-section (2) of Section 36, the Returning Officer has to examine the nomination paper and decide all objections which may be made thereto. This power is undoubtedly judicial in character. But in exercising this power he is authorised to come to a decision "after such summary enquiry, if any, as he thinks necessary". In other words, the function of the Returning Officer acting under Section 36 of the Act of 1951 is judicial in character but he is not to act judicially in discharging it. (See Virindar Kumar Satyawadi v. State of Punjab²⁰.)
17. In the matter of N.T. Veluswami Thevar v. G. Raja Nainar and others²¹, the Supreme Court has again held that the enquiry which a Returning Officer has to make under Section 36 of the Act of 1951 is summary in character. He may make such summary enquiry, if any, as he thinks necessary; he can act *suo motu*.

20 AIR 1956 SC 153

21 AIR 1959 SC 422

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18. Similarly, in the matter of Birad Mal Singhvi v. Anand Purohit²², the Supreme Court has held that Returning Officer must satisfy himself that candidate possesses necessary qualifications, as enquiry under Section 36 of the Act of 1951 is summary in nature.

Relevant provision regarding Disqualification to Contest the Election

19. This would bring me back to the disqualifying provision under which the election petitioner has been disqualified. Section 9A of the Act of 1951, which is the disqualifying provision, states as under: -

“9A. Disqualification for Government contracts, etc.—A person shall be disqualified if, and for so long as, there subsists a contract entered into by him in the course of his trade or business with the appropriate Government for the supply of goods to, or for the executions of any works, undertaken by that Government.

Explanation.—For the purposes of this section, where a contract has been fully performed by the person by whom it has been entered into with the appropriate Government, the contract shall be deemed not to subsist by reason only of the fact that the Government has not performed its part of the contract either wholly or in part.”

20. Section 7 of the Act of 1951 is Definitions clause. Section 7(a) defines the term “appropriate Government” and Section 7(b) defines the word “disqualified”. Both the clauses state as under: -

“(a) “appropriate Government” means in relation to any disqualification for being chosen as or for being a member of either House of Parliament, the Central Government, and in relation to any disqualification for being chosen as or for being a

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member of the Legislative Assembly or Legislative Council of a State, the State Government;

(b) “disqualified” means disqualified for being chosen as, and for being, a member of either House of Parliament or of the Legislative Assembly or Legislative Council of a State under the provisions of this chapter, and on no other ground.”

21. As this Court is dealing with disqualification for being chosen as a Member of the Legislative Assembly, the term “appropriate Government” in Section 9A of the Act of 1951 refers to and means the “State Government”. The term “State Government” is not defined either in the Constitution or in the Act of 1951. Clause (a) of sub-section (1) of Section 2 of the Act of 1951 provides that unless the context otherwise requires, each of the expressions defined in Section 2 or sub-section (1) of Section 27 of the Representation of the People Act, 1950, but not defined in the Act of 1951, shall have the same meaning as in the Act. Section 2(60) of the General Clauses Act, 1897, provides that the term “State Government”, as respects anything done or to be done, shall mean in a State, the Governor.
22. The Supreme Court in Shrikant (supra) considered the meaning of “State Government” with reference to Section 9A of the Act of 1951 and held that the term “State Government” in Section 9A (read with Section 7 of the Act) should, therefore, be understood in its ordinary and normal sense, and not with reference to the extended meaning under Article 12 of the Constitution.

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23. In the matter of Ranjeet Singh v. Harmohinder Singh Pradhan²³, the Supreme Court has held that Section 9A is a statutory provision which imposes a disqualification on a citizen. Their Lordships further held that it would, therefore, be unreasonable to take a general or broad view, ignoring the essentials of the section and the intention of the legislature. Purposive interpretation is necessary.
24. Further, in the matter of Kartar Singh Bhadana v. Hari Singh Nalwa²⁴, the Supreme court has clearly held that the provisions of Section 9A disqualify a citizen from contesting an election; a citizen may, therefore, be disqualified only if the facts of his case squarely fall within the conditions prescribed by Section 9A. Their Lordships considering Ranjeet Singh (supra) and Kartar Singh Bhadana (supra) held in Shrikant (supra) that in order to invoke Section 9A a candidate has to have a subsisting contract with the appropriate Government and such contract must be entered into by him in the course of his trade or business, the contract should relate to the works undertaken by the appropriate Government, and it should be for execution of such works. It has been observed in Shrikant (supra) as under: -

“20. The object and intent of Section 9-A of the Act is to maintain the purity of the legislature and to avoid conflicts between duty and interest of Members of the Legislative Assembly and the Legislative Council. The said object is sought to be achieved by ensuring that a person who has entered into a

23 (1999) 4 SCC 517

24 (2001) 4 SCC 661

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contract with the State Government and therefore liable to perform certain obligations towards the State Government, is not elected as a Member of the Legislative Assembly or Legislative Council, lest he should use his influence as an elected member of the legislature to dilute the obligations or to seek and secure undue advantages and benefits in respect of the subsisting contracts. It seeks to ensure that personal interests will not override his duties and obligations as a member of the legislature or Legislative Council. For the purpose of Section 9-A, what is relevant is whether the candidate has a subsisting contract with the appropriate Government (in this case, the State Government) either for supply of goods to the State Government or for execution of any work undertaken by the State Government. The six requirements for application of disqualification under Section 9-A of the Act where a candidate holds a contract for execution of works undertaken by the appropriate Government have been listed by this Court in *Kartar Singh Bhadana v. Hari Singh Nalwa* [(2001) 4 SCC 661] as follows: (SCC p. 665, para 8)

- (i) There should be a contract entered into by the candidate;
- (ii) such contract should be entered into by him in the course of his trade or business;
- (iii) the contract should be entered into with the appropriate Government;
- (iv) the contract should subsist;
- (v) the contract should relate to the works undertaken by the appropriate Government; and
- (vi) the contract should be for execution of such works."

Nature of Election Petition/Proceeding: -

25. It is well settled that the election petition before this Court is an original proceeding and the proceedings in an election petition are not in the nature of appeal against the order of the Returning Officer. It is open to an election petitioner to place material before this Court to

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show that the election petitioner was qualified to contest the election.

It has been held by their Lordships of the Supreme Court in **Birad Mal Singhvi** (supra) as under: -

“10. ... In the absence of any material before the returning officer, the returning officer was not wrong in taking the entries in the electoral roll into consideration and acting on them. But his decision is not final. In an election petition it is open to an election petitioner to place cogent evidence before the High Court to show that the candidate whose nomination paper was rejected had in fact attained the age of 25 years on the relevant date. It is open to the High Court to take a final decision in the matter notwithstanding the order of the returning officer rejecting the nomination paper. If on the basis of the material placed before the High Court it is proved that the candidate whose nomination paper had been rejected was qualified to contest the election it is open to the High Court to set aside the election. Enquiry during scrutiny is summary in nature as there is no scope for any elaborate enquiry at that stage. Therefore it is open to a party to place fresh or additional material before the High Court to show that the returning officer's order rejecting the nomination paper was improper. It should be borne in mind that the proceedings in an election petition are not in the nature of appeal against the order of the returning officer. It is an original proceeding. In the instant case it was open to the respondent election petitioner to place material before the High Court to show that the two candidates were qualified and their nomination paper was improperly rejected.”

Burden of Proof

26. It is well settled legal position that burden is on the election petitioner to prove the pleadings averred in the election petition. The Supreme Court in **Vashist Narain Sharma** (supra) held that the petitioner must discharge the burden of proving that fact and on his failure to do so, the election must be allowed to stand. Their Lordships further held that the question is one of fact and has to be proved by positive

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evidence. If the petitioner is unable to adduce evidence, the only inescapable conclusion to which the Tribunal can come is that the burden is not discharged and that the election must stand.

27. In **Harikrishna Lal** (supra), their Lordships of the Supreme Court have held that the election petitioner has to demonstrate that the Returning Officer was not right in arriving at the satisfaction which he did and as such, the High Court has not erred in not setting aside the election of the returned candidate.

Evidentiary Value of Admission

28. Section 17 of the Indian Evidence Act, 1872/corresponding new provision is Section 15 of the Bharatiya Sakshya Adhiniyam, 2023, defines Admission. It states about the admission which constitutes a substantive piece of evidence, which can be relied upon for proving the veracity of the facts incorporated therein. When once the admission as noted in a statement either oral or documentary is found, then the whole onus would shift to the party who made such an admission and it will become an imperative duty on such party to explain it. In the absence of any satisfactory explanation, it will have to be presumed to be true. (See **Vathsala Manickavasagam and others v. N. Ganesan and another**²⁵.)

29. The Supreme Court in the matter of **Union of India v. Moksh Builders and Financiers Ltd.**²⁶ relying upon **Bharat Singh v.**

²⁵ (2013) 9 SCC 152

²⁶ (1977) 1 SCC 60

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Bhagirathi²⁷ has held that an admission is substantive evidence of the fact admitted, and that admissions duly proved are admissible evidence irrespective of whether the party making them appeared in the witness box or not, and observed as under: -

“21. ... It has been held by this Court in *Bharat Singh v. Bhagirath* [AIR 1966 SC 405 : (1966) 1 SCR 606] that an admission is substantive evidence of the fact admitted, and that admissions duly proved are

‘admissible evidence irrespective of whether the party making them appeared in the witness box or not and whether that party when appearing as witness was confronted with those statements in case it made a statement contrary to those admissions.’ (AIR p. 410, para 19)

In taking this view this Court has noticed the decision in *Ajodhya Prasad Bhargava v. Bhawani Shanker Bhargava* [AIR 1957 All 1] also.”

30. In the matter of **Life Insurance Corporation of India and another v.**

Ram Pal Singh Bisen²⁸, it has been held by their Lordships of the Supreme Court that admission must be proved in accordance with law.

Their Lordships observed as under: -

“31. Under the law of evidence also, it is necessary that contents of documents are required to be proved either by primary or by secondary evidence. At the most, admission of documents may amount to admission of contents but not its truth. Documents having not been produced and marked as required under the Evidence Act cannot be relied upon by the court. Contents of the document cannot be proved by merely filing in a court.”

²⁷ AIR 1966 SC 405

²⁸ (2010) 4 SCC 491

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Discussion and Analysis: -

31. Since both the issues are interlinked with each other, they are considered and decided together.
32. In this case, the election petitioner herein has filed his nomination papers to contest the election from Legislative Assembly Constituency No.11, Sitapur (ST), District Surguja. He has filed three sets of nomination papers before the Returning Officer vide Exs.P-11, P-12 & P-13 and on the date of scrutiny of nomination papers on 31.10.2023, one independent candidate namely, Ram Kumar Kindo (PW-4) made an objection before the Returning Officer stating that the election petitioner is a Government contractor with the PHE Department and, therefore, he is disqualified under Section 9A of the Act of 1951 to contest the election to which the election petitioner has filed reply on 31.10.2023 itself vide Ex.P-16. On the same day i.e. on 31.10.2023, the Returning Officer sought factual report from the Executive Engineer, PHE Department on two points namely, (1) whether election petitioner Munna Lal Toppo was having contract with appropriate Government in relation to his own trade or business or for execution of any work undertaken by the said Government, and (2) if yes, then whether such contract still subsists, which was replied by the Executive Engineer vide Ex.P-18 in affirmative and thereafter, the Returning Officer on 31.10.2023, after making summary enquiry, passed the order Ex.P-19 rejecting his nomination papers holding that

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the election petitioner is disqualified from contesting election by virtue of Section 9A of the Act of 1951.

33. All the three sets of nomination papers Exs.P-11 to P-13 contain a clause whether the candidate has any subsisting contract(s) with the Government. The said clause states as under: -

“(1) to (6) xxx xxx xxx

(7) Whether the candidate has any subsisting contract(s) with the Government either in individual capacity or by trust or partnership in which the candidate has a share for supply of any goods to that Government or for execution of works undertaken by that Government?. ...YES...(Yes/No)

-If Yes, with which Government and details of subsisting contract

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1. KAMLESHWARPUR 2021-22
2. AMGAON 2021-22
3. BISHUNPUR 2022-23
4. LAIGU 2022-23
5. KAMLESHWARPUR/SAPNADAR 2022-23”

34. Not only this, the election petitioner has also filed an affidavit vide Ex.P-14 before the Returning Officer in support of nomination papers declaring in clause (9B) that he has contracts with appropriate Government and the details are as stated herein: -

“(9B) Contracts with appropriate Government and any public company or companies

(a) details of contracts entered by the candidate...

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3. BISHUNPUR 2022-23
4. LAIGU 2022-23
5. KAMLESHWARPUR/SAPNADAR 2022-23

(b) details of contracts entered into by spouse NIL.....

(c) details of contracts entered into by dependents
.....NIL.....

(d) details of contracts entered into by Hindu Undivided Family
or trust in which the candidate or spouse or dependents have
interest NIL.....

(e) details of contracts, entered into by Partnership Firms in
which candidate or spouse or dependents are partners
.....NIL.....

(f) details of contracts, entered into by private companies in
which candidate or spouse or dependents have share
.....NIL.....

xxx xxx xxx

xxx xxx xxx

xxx xxx xxx

VERIFICATION

I, the deponent, above named, do hereby verify and declare that the contents of this affidavit are true and correct to the best of my knowledge and belief and no part of it is false and nothing material has been concealed there from. I further declare that: -

(a) there is no case of conviction or pending case against me other than those mentioned in items 5 and 6 of Part A and B above;

(b) I, my spouse, or my dependents do not have any asset or liability, other than those mentioned in items 7 and 8 of Part A and items 8, 9 and 10 of Part B above.

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Verified at this the day
of.....

Sd/-
DEPONENT"

35. Thereafter, Ram Kumar Kindo raised objection vide Ex.P-15 before the Returning Officer that the election petitioner is a Government contractor and, therefore, he is disqualified under Section 9A of the Act of 1951 upon which the Returning Officer noticed the election petitioner also and the election petitioner filed his reply denying the allegations made in the objection. The Returning Officer also noticed the Executive Engineer, PHE Department vide Ex.P-17 on the following two queries: -

अतएव उपरोक्त बिंदुओं के संबंध में जांच करते हुए तत्काल इस कार्यालय को यह प्रतिवेदन मय दस्तावेज उपलब्ध कराना सुनिश्चित करें कि क्या मुन्ना लाला टोप्पो आ0 स्व0 हीरासाय वर्तमान में समुचित सरकार के साथ अपने कारोबार या व्यापार के अनुक्रम में या समुचित सरकार द्वारा उपक्रांत किन्हीं संकर्मों के निष्पादन हेतु संविदा में है? यदि हां तो क्या वह संविदा अभी भी जीवित है, इस तथ्य का जवाब (मय दस्तावेज) आज ही सायं 5 बजे तक विशेष वाहक के हस्ते भिजवाना सुनिश्चित करें।

36. The Executive Engineer, PHE Department submitted reply on the same day vide Ex.P-18 as under: -

कार्यालय कार्यपालन अभियन्ता, लोक स्वास्थ्य यांत्रिकी विभाग
खण्ड-अम्बिकापुर, जिला-सरगुजा (छ.ग.)

पत्र क्र. 6330/त.शा./का.अ./लो.स्वा.या.खण्ड/2023/अम्बिकापुर, दिनांक 31/10/2023

प्रति,

रिटर्निंग ऑफिसर
कार्यालय रिटर्निंग ऑफिसर
विधानसभा निर्वाचन क्षेत्र-11 सीतापुर
जिला- सरगुजा (छ.ग.)

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विषय— निर्वाचन क्षेत्र क्रं.-11 से आम आदमी पार्टी के अभ्यर्थी श्री मुन्ना लाल टोप्पो के संबंध में जांच प्रतिवेदन प्रस्तुत करने के संबंध में।

संदर्भ— आपका पत्र क्रं.-47/वि.सा.निर्वा.-11/2023, सीतापुर, दिनांक 31/10/2023

-0-

उपरोक्त विषयांतर्गत लेख है कि आपके द्वारा चाही गई जानकारी निम्नानुसार है—

क्रं.	विवरण	टिप्पणी
1	क्या मुन्ना लाल टोप्पो आ. स्व. हीरासाय वर्तमान में समुचित सरकार के साथ अपने कारोबार या व्यापार के अनुक्रम में समुचित सरकार द्वारा उपक्रांत किन्हीं संकर्मों के निष्पादन हेतु संविदा में है?	हां
2	यदि हां तो क्या वह संविदा अभी भी जीवित है?	हां

श्री मुन्ना लाल टोप्पो, ठेकेदार, ई-पंजीयन क्रमांक CGeR12718 के द्वारा लोक स्वास्थ्य यांत्रिकी खण्ड अम्बिकापुर में निम्नलिखित अनुबंधों के तहत कार्य किया जा रहा है—

क्रं.	अनुबंध क्रमांक एवं वर्ष	कार्यादेश क्रं. व दिनांक	कार्य की स्थिति
1	11/DL/2021-22	1165/05.05.2021	कार्य प्रगति पर है।
2	12/DL/2021-22	1167/08.05.2021	कार्य प्रगति पर है।
3	48/DL/2022-23	7840/12.11.2022	कार्य प्रगति पर है।
4	189/DL/2022-23	584/25.01.2023	कार्य प्रगति पर है।
5	392/DL/2022-23	1474/03.03.2023	कार्य प्रगति पर है।

उपरोक्त सभी अनुबंधों में वर्तमान में कार्य प्रगतिरत है। अतः जानकारी आपकी ओर आवश्यक कार्यवाही हेतु प्रेषित है।

संलग्न— (1) अनुबंध की छायाप्रति-05 नग

सही /—
कार्यपालन अभियन्ता
लोक स्वास्थ्य यांत्रिकी खण्ड
अम्बिकापुर

37. Thereafter, the Returning Officer by its impugned order Ex.P-19 rejected the nomination papers of the election petitioner by recording following findings: -

उपरोक्त प्राप्त आपत्ति, जवाब एवं कार्यालय कार्यपालन अभियन्ता लोक स्वास्थ्य यांत्रिकी संभाग अम्बिकापुर के प्रतिवेदन मय दस्तावेज के परीक्षण से मैं इस निष्कर्ष पर पहुंचता हूँ कि अभ्यर्थी श्री मुन्ना लाल टोप्पो आ0 स्व0 हीरासाय जो कि वर्तमान में लोक स्वास्थ्य यांत्रिकी

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खण्ड अम्बिकापुर के साथ जल जीवन मिशन के कार्यों हेतु संविदा में हैं एवं यह संविदा अभी जीवित है तथा उनके द्वारा विभाग से लिये गये अनुबंधों पर वर्तमान में कार्य प्रगति पर है। जो कि समुचित सरकार के साथ किन्हीं संकर्मों के निष्पादन के लिये संविदा है। अभ्यर्थी श्री मुन्ना लाल टोप्पो ने स्वयं अपने जवाब में इस तथ्य को स्वीकार किया है। इसके अतिरिक्त उन्होंने अपने नाम निर्देशन पत्र एवं शपथ पत्र में भी इस बाबत जानकारी दी है कि उनका जल जीवन मिशन के कार्य हेतु समुचित सरकार के साथ अनुबंध/संविदा है। जिसका विवरण उन्होंने निम्नानुसार दिया है—

SUB- जल जीवन मिशन, लायसेंस नंबर – CGeR12718

01- कमलेश्वरपुर 2021-22

02- आमगांव 2021-22

03- बिशुनपुर 2022-23

04- लैगू 2022-23

05- कमलेश्वरपुर/सपनादर – 2022-23

उपरोक्त तथ्यों के आलोक में लोक प्रतिनिधित्व अधिनियम 1951 की धारा 09 क पर ध्यान देना आवश्यक है। जो यह प्रावधान करती है कि “कोई भी व्यक्ति निरहिंत होगा यदि और जब तक कोई ऐसी संविदा विद्यमान है जो उसने समुचित सरकार के साथ अपने व्यापार या कारबार के अनुक्रम में उस सरकार को माल का प्रदाय करने के लिये या उस सरकार द्वारा उपक्रांत किन्हीं संकर्मों के निष्पादन के लिये की है।”

अतः अभ्यर्थी श्री मुन्ना लाल टोप्पो आ0 स्व0 हीरा साय को में लोक प्रतिनिधित्व की धारा 09 क के अंतर्गत विधानसभा का सदस्य चुने जाने के लिए निरहिंत पाता हूँ। अतः आपत्तिकर्ता द्वारा प्रस्तुत आपत्ति स्वीकार की जाती है एवं श्री मुन्ना लाल टोप्पो आ0 स्व0 हीरा साय द्वारा विधानसभा क्षेत्र 11 सीतापुर (अ.ज.जा.) में दाखिल नामांकन पत्र क्र0 04/AC11/2023/RO, 20/AC11/2023/RO एवं 21/AC11/2023/RO को अविधिमन्य पाते हुये अस्वीकार अर्थात् प्रतिक्षेपित करता हूँ।

उपरोक्तानुसार आदेश पारित किया गया एवं पढ़कर सुनाया गया।

38. From the aforesaid narration of facts, following facts are quite evident:-

38.1) The election petitioner while filing nomination papers clearly asserted that he has a subsisting contract with the appropriate Government for the supply of goods to that Government or for the executions of any works undertaken by that Government, and that the contract is subsisting contract. Thereafter, he has also filed an affidavit

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vide Ex.P-14 in support of his nomination papers and in paragraph 9(B) of the affidavit (Ex.P-14) also, he has reasserted that he has subsisting contract with the appropriate Government for the supply of goods or for the executions of any works undertaken by that Government.

38.2) On objection being made by Ram Kumar Kindo, the Returning Officer noticed the petitioner also, upon which the petitioner did not assert that he had no subsisting contract with the appropriate Government for the supply of goods to that Government or for the executions of any works undertaken by that Government in the course of his trade or business, rather he remained vague only stating that he did not hold the office of profit and he is neither Government servant nor he is suffering any kind of disqualification.

38.3) On the pointed enquiry raised by the Returning Officer before the Executing Engineer, PHE Department that whether the petitioner has undertaken the contract with the appropriate Government in the course of his trade or business for the supply of goods or for the executions of any works undertaken by that Government and if yes, whether such contract still subsists, vide Ex.P-17, the Executive Engineer submitted his report in affirmative to both the queries. The Returning Officer relying upon the statement made by the petitioner in the nomination papers (Exs.P-11 to P-13) at clause (7) read with the affidavit Ex.P-14 at clause (9B) and further relying upon the statement

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of the Executive Engineer, PHE Department, came to the conclusion that the election petitioner has subsisting contract entered by him in the course of his trade or business with the appropriate Government for the supply of goods or for the executions of any works undertaken by that Government, and proceeded to reject the nomination papers.

39. Now, the question for consideration would be, whether the facts as mentioned in paragraphs 37.1 to 37.3 are duly proved before this Court for which the election petitioner has examined himself as PW-1 and three other witnesses. He has proved that he has filed nomination papers for contesting the election for Sitapur Vidhan Sabha Constituency. However, in his cross-examination paragraph 18, he has clearly admitted that he has filled the nomination papers vide Exs.P-11 to P-13 on own volition and he has further admitted that the information contained in paragraph 7 of Exs.P-11 to P-13 with regard to subsisting contract with the Government, is correct and he has also candidly admitted the information given by him in shape of clause (9B) of the affidavit (Ex.P-14) filed by him before the Returning Officer with regard to subsisting contract with the appropriate Government, is correct. Similarly, he has also stated about Jaljivan Mission, but neither there is mention of registration of the said Mission nor he has filed registration certificate of the said Mission. As such, it is quite vivid that so far as the information furnished by the election petitioner in the nomination papers Exs.P-11 to P-13 regarding the fact

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he has subsisting contract with the appropriate Government in which he has share for supply of goods to the Government or for the executions of any works undertaken by that Government is correct. Not only this, thereafter, the petitioner has also given the names of the subsisting contracts with the appropriate Government.

40. The Supreme Court in **Moksh Builders and Financiers Ltd.'s** case (supra) relying upon **Bharat Singh** (supra) has clearly held that an admission is substantive evidence of the fact admitted and admissions duly proved are admissible evidence. Further, in **Ram Pal Singh Bisen's** case (supra), it has been held that admission of documents may amount to admission of contents but not its truth.
41. In the instant case, the election petitioner himself has filed nomination papers vide Exs.P-11 to P-13 and proved those documents and in clause (7) of Exs.P-11 to P-13, he has made admission that he has subsisting contract with the appropriate Government and he has a share for supply of any goods to that Government or for execution of works undertaken by that Government and proved the same by making admission in paragraph 18 of his statement before the Court. As such, this would constitute the substantive evidence to hold that the petitioner had a subsisting contract with the appropriate Government for the supply of goods or for the executions of any works undertaken by that Government and this was subsisting on the date of filing nomination papers. Not only this, the petitioner has filed affidavit

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before the Returning Officer in shape of Ex.P-14 sworn-in before the Notary Public in which in clause (9B), which was extracted herein-above in paragraph 33, he has clearly admitted that he has contract with the appropriate Government giving details of contracts and at the end of the affidavit, while verifying the contents, he has clearly stated and declared that “the contents of this affidavit are true and correct to the best of my knowledge and belief and no part of it is false and nothing material has been concealed there from”. Thus, affidavit has been duly sworn-in by the petitioner making admission of subsisting contract with the appropriate Government for the supply of goods or for the executions of any works undertaken by that Government and that was the subsisting contract. There was no reason for the Returning Officer not to accept the statement made by the election petitioner duly sworn-in before the Notary Public to hold that he has valid and subsisting contract with the appropriate Government for the supply of goods or for the executions of any works undertaken by that Government.

42. Apart from that the objection raised by Ram Kumar Kindo – objector, was duly served to the petitioner which he replied, but did not take the stand that contract with the District Water and Sanitation Mission and the Village Water and Sanitation Committee would not fall within the meaning of appropriate Government under Section 9A read with Section 7(a) of the Act of 1951 and, therefore, he is not disqualified

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from contesting the election and Section 9A of the Act of 1951 would not attract to disqualify him and his reply was totally vague which he has also proved vide Ex.P-16.

43. Lastly, before passing the order, the Returning Officer also sought pointed query from the Executive Engineer, PHE Department that whether the election petitioner has subsisting contract with the appropriate Government for the supply of goods or for the executions of any works undertaken by that Government, which the Executive Engineer replied vide Ex.P-18 that he has subsisting contract with the appropriate Government which has been proved by Executive Engineer Shankar Prasad Mandavi (PW-3) examined on behalf of the petitioner. Thus, ultimately, Returning Officer Ravi Rahi who has been examined as PW-2 before this Court taking into consideration the admission made in clause (7) of Exs.P-11 to 13, reply filed by the election petitioner and also considering the objection made by Ram Kumar Kindo and reply to the pointed queries submitted by the Executive Engineer, PHE Department, proceeded to reject the nomination papers. The Returning Officer has been examined by the election petitioner as witness No.2 and he has also admitted that the election petitioner himself has admitted in the nomination papers as well as in the affidavit that he has subsisting contract with the appropriate Government for the supply of goods or for the executions

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of any works undertaken by that Government and that was the main reason for rejecting the nomination papers.

44. As such, the facts mentioned in paragraphs 37.1 to 37.3 are clearly established by the evidence of the petitioner and his witnesses from which it is quite apparent that the election petitioner has admitted that on the date of filing nomination papers, he has valid and subsisting contract with the appropriate Government for the supply of goods or for the executions of any works undertaken by that Government. The documents filed by the election petitioner vide Exs.P-11 to P-14 and the admission made by him which is duly proved by him are clearly binding on him on the basis of which the Returning Officer has passed the order impugned rejecting his nomination papers. Not only this, the petitioner had two opportunities to explain that the subsisting contract, if any, is not with the appropriate Government within the meaning of Section 9A read with Section 7(a) of the Act of 1951 and first opportunity was available to him when the Returning Officer noticed him on the objection of the objector, but he did not avail the opportunity and did not explain, though filed reply vide Ex.P-16, however, did not take firm stand that the contract was with the District Water and Sanitation Mission and the Village Water and Sanitation Committee, which is not “appropriate Government” within the meaning of Section 9A read with Section 7(a) of the Act of 1951 and, therefore, he is qualified to contest the election from Sitapur (ST)

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Assembly Constituency, however, though the petitioner before this Court took stand that the District Water and Sanitation Mission is a separate body/local unit which does not come under the definition of “appropriate Government”, but led no evidence in that regard.

45. In this fact-situation, since the election petition before this Court under Section 100(1)(c) of the Act of 1951 is an original proceeding, it was open to the election petitioner to file additional documents demonstrating that he was not disqualified under Section 9A read with Section 7(a) of the Act of 1951, as he was not having any subsisting contract in the course of his trade or business with the appropriate Government and the contract was with the District Water and Sanitation Mission and the Village Water and Sanitation Committee, which would not fall within the meaning of “appropriate Government” under Section 9A read with Section 7(a) of the Act of 1951. However, in shape of additional material before the Court, since the burden of proof was on the petitioner to prove that he was not disqualified from contesting the election under Section 9A read with Section 7(a) of the Act of 1951, the petitioner has only filed copy of the order Ex.P-1 by which the District Water and Sanitation Mission has been constituted and further filed document Ex.P-2 by which certain directions have been given by the State Government to the Collectors and Executive Engineers & Member Secretaries, District Water and Sanitation Mission/PHE Department and similarly, Ex.P-3 has also been filed by

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which financial power has been conferred by the State Government upon the District Water and Sanitation Mission up to ₹ 5 crores and thereafter, copy of the contract has been filed vide Exs.P-4 to P-10 which are contract documents demonstrating that the petitioner has entered into contract with the Executive Engineer & Member Secretary, District Water and Sanitation Mission. Similarly, Exs.P-20 & 21 are documents relating to Operational Guidelines for the Implementation of Jal Jeevan Mission Har Ghar Jal and Ex.P-25 is the Guidelines issued by the Election Commission of India for the Returning Officers for consideration of complaints for rejection of nomination papers on grounds of disqualification under Section 9A of the Act of 1951.

46. As such, no additional documents except the aforesaid one have been filed by the petitioner to establish the fact that the District Water and Sanitation Mission and the Village Water and Sanitation Committee is a separate body or society or trust which do not come under the purview of “appropriate Government” within the meaning of Section 9A read with Section 7(a) of the Act of 1951, as it was the burden upon him to establish the said fact being the election petitioner, which he failed to discharge in satisfaction of this Court.

47. Thus, from the aforesaid analysis, it is quite evident that the election petitioner has filed his nomination papers vide Exs.P-11 to P-13 in which in clause (7) he has admitted that he has subsisting contract in

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the course of his trade or business with the appropriate Government for the supply of goods or for the executions of any works undertaken by that Government and proved the same by his own evidence, as he has been examined as PW-1 and in paragraph 18 admitted that the facts mentioned in clause (7) of the nomination papers (Exs.P-11 to P-13) are correct. He has also admitted that the contents of the affidavit (Ex.P-14) filed before the Returning Officer regarding subsisting contract in the course of his trade or business with the appropriate Government for the supply of goods or for the executions of any works undertaken by that Government, are also correct. Surprisingly, the election petitioner though took stand in the election petition that he has contract with the District Water and Sanitation Mission and the Village Water and Sanitation Committee, but they would not fall within the definition of appropriate Government under Section 9A read with Section 7(a) of the Act of 1951, however, did not lead any evidence before this Court and he confined his evidence to the extent of proving the nomination papers Exs.P-11 to P-13 and the affidavit Ex.P-14 filed in support of the said nomination papers.

48. The petitioner had an opportunity to take stand after filing nomination papers when he was noticed by the Returning Officer and he filed reply vide Ex.P-16 that he has no subsisting contract with the appropriate Government for the supply of goods or for the executions of any works undertaken by that Government and his contract is with

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the District Water and Sanitation Mission and the Village Water and Sanitation Committee which would not fall under the definition of appropriate Government under Section 9A read with Section 7(a) of the Act of 1951, but he did not took that stand before the Returning Officer while filing his reply to the objection filed by Ram Kumar Kindo. The Returning Officer in response to the objection filed by Ram Kumar Kindo noticed the Executive Engineer, PHE Department on two points whether the election petitioner has subsisting contract with the appropriate Government for the supply of goods or for the executions of any works undertaken by that Government and whether the said contracts are subsisting, which the Executive Engineer replied in affirmative vide Ex.P-18. Again the election petitioner has examined Shankar Prasad Mandavi as witness No.3 and proved the contents of the reply Ex.P-18, but did not contradict that he has given incorrect information that his existing contracts are not with the appropriate Government and his contracts are with the District Water and Sanitation Mission and the Village Water and Sanitation Committee, it was open to the petitioner to take such stand and cross-examine Shankar Prasad Mandavi, Executive Engineer, PHE Department. As such, again the petitioner though has taken stand before this Court in the election petition that the District Water and Sanitation Mission and the Village Water and Sanitation Committee are not appropriate Government, but did not lead any evidence and in

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that regard, he has examined Shankar Prasad Mandavi (PW-3) who has only proved that the information given vide Ex.P-18 holding that the election petitioner has subsisting contract with the appropriate Government for the supply of goods to that Government or for the executions of any works undertaken by that Government, is the correct information.

49. Lastly, the Returning Officer vide Ex.P-19 rejected the nomination papers of the election petitioner. He has been examined as witness No.2 and he narrated the action taken on the nomination papers and has clearly admitted that the only reason to reject the nomination papers is the information given by the Executive Engineer, PHE Department that the election petitioner has subsisting contract with the appropriate Government. The petitioner has cited him as witness and did not cross-examine him on the point that his contract is with the District Water and Sanitation Mission and the Village Water and Sanitation Committee, which is not the appropriate Government and thus, he has no subsisting contract with the appropriate Government. As such, at this stage also the petitioner has failed to lead any evidence except proving what transpired before the Returning Officer. Even independently, no evidence has been led by the election petitioner to prove the fact that his contracts mentioned in the nomination papers and the affidavit are not with any appropriate Government which the petitioner was obliged to prove as express plea has been taken in this

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regard, rather he has clearly admitted in shape of nomination papers Exs.P-11 to P-13 & affidavit Ex.P-14 and before the Court, the statement made in Exs.P-11 to P-13 & Ex.P-14 which clearly constitute substantive piece of evidence and he did not avail the opportunity to explain his stand already taken before the Returning Officer and which has been proved before this Court.

50. The petitioner has named Dr. Sarweshwar Narendra Bhure, who was posted as Managing Director, Jal Jivan Mission, to examine him, but however, on 2-2-2026 he was given up and was discharged. As such, the fact whether the petitioner's alleged contract with the District Water and Sanitation Mission and the Village Water and Sanitation Committee is with the appropriate Government or not or the status of the said Mission/Committee, could not be established.

51. The election petitioner cannot resile from those documents which also even persuaded the Returning Officer to rely upon his own admission that he has subsisting contract in the course of his trade or business with the appropriate Government. Thus, the petitioner has failed to demonstrate that rejection of his nomination papers was improper. Merely filing certain documents showing that he had contract with the District Water and Sanitation Mission and the Village Water and Sanitation Committee would not suffice. The petitioner has failed to discharge the burden placed upon him to prove that he was not

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- disqualified from contesting the election and that he was qualified for contesting the election and his nomination paper was wrongly rejected.
52. True it is that Article 299 of the Constitution of India is mandatory in nature and Governmental contract must be executed as per the manner indicated in Article 299, but mere non-execution of contract in the manner indicated under Article 299 would not relieve the election petitioner to prove the fact that he was qualified to contest the election and he did not suffer any disqualification on the date of rejection of his nomination paper. As such, the election petitioner has failed to plead and establish that his nomination papers were improperly rejected by the Returning Officer within the meaning of Section 100(1)(c) of the Act of 1951.
53. The decisions cited by learned counsel appearing on behalf of the petitioner namely, Mulamchand (supra), K.P. Chowdhry (supra), Bhikraj Jaipuria (supra), Konappa Rudrappa Nadgouda (supra), Shibu Soren (supra), Jagan Nath (supra), Kanta Kathuria (supra) and Sushil Kumar Mehta (supra), are quite distinguishable to the facts of the present case.
- Relief and Cost: -**
54. As a fallout and consequence of the aforesaid discussion, the election petition deserves to be and is accordingly dismissed. In the facts and circumstances of the case, parties shall bear their own cost(s).

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55. A copy of this order be sent to the State Election Commission
forthwith as required by Section 103 of the Act of 1951.

Sd/-
(Sanjay K. Agrawal)
Judge