



झारखण्ड गजट

असाधारण अंक

झारखण्ड सरकार द्वारा प्रकाशित

12 फाल्गुन, 1946 (श०)

संख्या - 112 राँची, सोमवार,

3 मार्च, 2025 (ई०)

मंत्रिमंडल विभाग (निर्वाचन)

अधिसूचना

3 मार्च, 2025

संख्या-02/नि०न्या०वा०-17-06/220/04 -- निर्वाचन अर्जी संख्या 06/2020 में दिये गये उच्च न्यायालय, झारखण्ड, राँची के तारीख 9 अक्टूबर, 2024 के आदेश से संबंधित भारत निर्वाचन आयोग, नई दिल्ली की अधिसूचना संख्या-82/पूर्व अनु०-1/झार०-वि०स०/(06/2020)/2025 दिनांक-10 फरवरी, 2025 को एतद्वारा सर्वसाधारण की जानकारी हेतु प्रकाशित की जाती है।

झारखण्ड राज्यपाल के आदेश से,

(के० रवि कुमार),

मुख्य निर्वाचन पदाधिकारी सह-सचिव

भारत निर्वाचन आयोग

अधिसूचना

10 फरवरी, 2025

सं० 82/पूर्वअनु.-1/झार.-वि.स./(06/2020)/2025—लोक प्रतिनिधित्व अधिनियम, 1951 (1951 का 43) की धारा 106 (ख) के अनुसरण में, भारत निर्वाचन आयोग एतद्वारा निर्वाचन अर्जी सं. 06/2020 में दिये गये उच्च न्यायालय, झारखण्ड, राँची के तारीख 29 अक्टूबर, 2024 के आदेश को प्रकाशित करता है ।

IN THE HIGH COURT OF JHARKHAND AT RANCHI**Election Petition No.06 of 2020**

Santosh Hembram, age about 42 years, S/o Late Resendra Hembram R/o Pitwasol, Village-G.P. Maheshmunda, PO-Sagjuria, PS-Nala, District Jamtara, Jharkhand, PIN 815355

..... Petitioner

Versus

Rabindra Nath Mahto, S/o Golak Bihari Mahto, R/o-Vill-Patanpur, P.O-Mohanabanka, P.S-Bindapathata, District Jamtara, Jharkhand

..... Respondent

CORAM:HON'BLEMR. JUSTICE SANJAY PRASAD

For the Petitioner	:Mr. Mukesh Kumar Dubey, Advocate
	:Mr. Deb Nandan Rajak, Advocate
For the Respondent	:Mr. Arbind Kumar Lal, Advocate
	:Mr. Anil Kumar, Advocate
For the State	:Mr. Ashutosh Anand, AAG-III

CAV on:17th October,2024**Delivered on:29.10.2024**

The instant Election Petition has been filed on behalf of the petitioner-Santosh Hembram under Section 80(A) (2) and 81 of the Representation of Peoples Act, 1951 challenging the election of the sole respondent, who was elected on 23.12.2019 from 08, Nala Assembly Constituency as a member of the Jharkhand Legislative Assembly.

2. The case of the election petitioner, in brief, is that:-

(i) The Notification was issued by the Returning Officer for holding the election and the dates were fixed for filing of nomination paper, scrutiny of nomination papers and withdrawal of nomination paper and also the date of election and the date of counting of votes as well as the date of declaration of the result were published, which was fixed on 03.12.2019, 04.12.2019, 06.12.2019, 20.12.2019, 23.12.2019 and 23.12.2019 respectively.

(ii) The Returning Officer had accepted the nomination paper party wise for sixteen (16) persons and the Returning Officer has rejected the nomination paper of four persons also. As per election petition the name of the petitioner is shown at Serial No.16 whereas the Respondent is shown at Serial No.7 from Jharkhand Mukti Morcha (JMM).

(iii) According to the result sheet prepared by the Returning Officer, the respondent had secured 61356 votes whereas his rival Satyanand Jha of Bhartiya Janta Party had secured 57836 votes whereas the election petitioner had secured 1769 votes and as such the sole respondent was declared as a Returned Candidate from 08, Nala Assembly Constituency.

(iv) The election of the sole Respondent/Returned Candidate is void on the ground that the sole Respondent/Returned Candidate and his election agent and other persons have committed in connivance and with consent, the corrupt practice wherein the sole Respondent/Returned Candidate and his election agent by publication and statement. The ground comes within the mandate of Section 100(1) (b) of Representation of People Act, 1951.

(v) The sole Respondent-Rabindra Nath Mahato had filed his nomination paper in three sets. The Election Agent of Returned Candidate was Ashok Kumar Mahto R/o Village Barmosia, Panchayat Khamaarbad, PO Tilaki, District Jamtara. The petitioner has tried his best to obtain the certified copy of all the sets of the nomination paper filed by the sole Respondent but it is yet to be received, albeit requisition for certified copy was filed before the competent authority on 25.01.2020.

(vi) The petitioner herein has filed his nomination paper as independent candidate on 03.12.2019. The petitioner has tried his best to obtain the certified copy of the nomination paper filed by the petitioner but it is yet to be received, albeit requisition for the same was filed on 25.01.2020.

(vii) The petitioner belongs to Schedule Tribes community more specifically the petitioner belongs to Santhal Tribes.

(viii) The list of candidates were published in Format-7(k) as per Rule 10(1) of the Representation of People Act.

(ix) After finalization of name of all the contesting candidates and their position as given in Format-7(k) the present sole respondent got printed handbill/pamphlet of specimen of EVM Machines wherein the serial no., name of candidates his/her photograph and election symbols from Lucky Printing Press.

(x) It has been stated that the present petitioner is member of Schedule Tribes community more specially Santhal community. The Nala Assembly Constituency is a tribal dominated constituency where near about 32% of the population belongs to Tribal Community. They got pasted these handbills in the prominent place of the villages wherein Schedule Tribes community resided in large numbers. They persuade/advised the villagers not to cast vote at Serial No.16 (i.e. the petitioner).

(xi) Some of the corrupt practices committed by the Returned Candidate (i.e. the Respondent) and/or his agents and other person are as follows:-

(a) Village Jhantipahari-Prem Kumar Hembram has informed the petitioner that the cadre of JMM (Jharkhand Mukti Morcha) alongwith Sh. Sabut Murmu came to village Jhantipahari on 15.12.2019 at evening and distributed the above said handbill/pamphlet and specimen of EVM among villagers in door-to-door campaign and organized meeting at Chaupal for campaign and influenced the villagers by persuading that any vote cast in Serial No.16 would go in vain. They advised to not give vote in Serial No.16.

(b) Village Jaspur-Umesh Murmu has informed the petitioner that Jaydhan Hansda and Rupchand Hansda came to his village Jaspur on 16.12.2019 in the evening and in door-to-door campaign distributed and pasted the above said handbill in many places and requested to cast their vote his party at Serial No.7 and influenced the villager by persuading them that any vote cast in Serial No.16 would go in vain. Thus, thereby advised to not give vote in Serial No.16.

(c) Village Jabardaha-Priya Ranjan Baski has informed the petitioner that

on 17.12.2019 Ramdeo Soren and Much Marandi came to village Jabardaha along with other party worker of JMM with a specimen EVM demonstrating and influencing to cast their vote his party at Serial No.7 and influenced the villager by persuading that any vote cast in Serial No.16 would goes in vain.

(xii) The petitioner had arrived on 20.12.2019 at 3.00 p.m at village Patanpur at Booth No.91 and 92 then he found the members of the JMM and cadre of the sole respondent were undue influencing voters and distributed the dummy EVM Machines and copy of said handbill depicting the position of the sole respondent at Serial No.7 and at Serial No.16 Nota was shown. The said event was photographed by the present petitioner himself on 20.12.2019 at the village Patanpur, Block Nala, District Jamtara and photo copy of the event has been annexed as Annexure-6.

(xiii) Being aggrieved with the corrupt conduct and practice of the sole Respondent, the petitioner herein telephonically complained to the election officers on the same day. Thereafter he has given written complaint to the official posted at District Level and State Election Commission as well as Election Commission of India.

Photo copy of written complaint filed by the present petitioner dated 22.12.2019 and acknowledgement has been annexed as Annexure-7.

(xiv) It has been stated that the handbill/pamphlet printed and distributed by sole respondent or his election agent or other agents with consent and connivance of sole respondent were aimed at furthering the election prospect of the sole respondent by means of corrupt practice as stipulated in Section 100(1) (b) r/w Section 123 (4) of Representation of People Act, 1951 which is against the electoral prospect of present election petitioner.

(xv) It has been stated that the petitioner has deposited the required security deposited as contemplated under Section 117 of the Representation of People Act, 1951 in this Hon'ble Court vide Challan No.J-185 dated 03.02.2020.

3. The case of the respondent-Rabindra Nath Mahto as per Written Statement dated 12.10.2022, in brief, is as follows:-

(i) This election petition is not maintainable in the eye of law and as such liable to be dismissed with heavy compensatory cost.

(ii) The petitioner has failed to make out any prima facie case against the respondent. It has been stated that the affidavit sworn by the election petitioner has also not been sworn in accordance with Rule 61 of Jharkhand High Court Rules.

(iii) It has been stated that the election petition has stated several statements in

the election petition but the same are not supported by affidavit in Form-25 as required under proviso to Section 81 (1) of the Act read with Rule 94 A of the Conduct of Elections Rules 1961.

(iv) The election petitioner has annexed several documents as annexures of the election petition and on perusal of the same, it is crystal clear that each and every annexure has not been properly verified nor affidavitated in accordance with law, hence the election petition is liable to be dismissed accordingly.

(v) The copy of the election petition and the affidavit therein as supplied to the Respondent No.1 does not contain the affirmation by the Oath Commissioner. Under these circumstances such defect is not curable defect. Therefore, the present election petition deserves to be dismissed in accordance with law.

(vi) It has been stated that in view of non-compliance of Section 83 of Representation of Peoples Act, 1951 the election petition deserves to be dismissed. Since the full particular of material facts and particular of relating to corrupt practices in the election petition has not been complied with, the election petition deserves to be summarily dismissed.

(vii) The respondent denied that he and his election agent and other persons, have committed in connivance and with consent the corrupt practice bearing the sole respondent has declared successful.

(viii) It has been denied by the respondent that the ground taken by the election petitioner comes within the mandate of Section 100 (1) (b) of the Representation of Peoples Act, 1951.

(ix) The respondent denied to have got printed handbill/pamphlets of specimen of EVM Machine wherein the serialim, name of candidates his/her photographs and election symbols from Lucky Printing Press. He also denied that he got printed and depicted his name, photographs and symbol at Serial No.7 and he got deliberately printed the name of the petitioner at Serial No.16 (Nota). It is stated that the copy of printed handbill/pamphlets has been annexed as Annexure-5.

(x) The alleged handbill wherein in Serial No.16 as NOTA has been shown is frivolous and malicious. The same has neither been printed nor distributed whatsoever either by this respondent or any of his part worker or supporter. The question of pasting the alleged handbill in the prominent places of the villages also does not arise. The petitioner has made false allegation only to malign his image. The election petitioner has not mentioned as to in which place and village or villages, the respondent has distributed the alleged handbill/pamphlets etc. and on which date and time as neither the respondent nor his election agent got

published/printed the alleged handbills/pamphlets and as such no prejudice is caused to the election petitioner.

(xi) Distribution of alleged handbill in village Jhantipahari and other villages on 15.12.2019, 16.12.2019 and 17.12.2019 respectively is nothing but a totally false story. As such, the election petitioner has not mentioned anywhere as to whom, which voter the alleged handbill/pamphlet was given and as such without prejudice it is hereby submitted that at the time of such alleged occurrence, what the supporters of election petitioner has done to protest the same.

(xii) That the date 20.12.2019 was the date of polling and at the place of polling Presiding Officers of such booths of Booth no.91 and 92 along with other administrative personnel were present there. But in spite of this fact no complain whatsoever was made by the election petitioner to them. As such it is crystal clear that no such alleged occurrence happened as alleged and as such question of taking photographs by the election petitioner himself is nothing but a photo shopping through computers with full of ulterior motive and bad intention in order to misuse the process of law.

(xiii) It has been stated that this respondent is a very popular leader in his area as such he secured the highest vote i.e. 61,356 whereas the election petitioner has got only 1769 votes. Thus, it is clear that there is a huge difference of 59587 votes. As such the result of the election has not been materially affected and hence the election of this respondent is not at all liable to be declared void but instead the election petition itself deserves to be dismissed with heavy compensatory cost. Hence this Election Petition may be dismissed.

4. Heard Mr. Mukesh Kumar Dubey, learned counsel assisted by Mr. Deb Nandan Rajak, learned counsel for the petitioner, Mr. Arbind Kumar Lal, learned counsel for the respondent assisted by Mr. Anil Kumar.

5. Learned counsel for the petitioner submitted that the election of the respondent may be declared void and illegal, who has been illegally elected from 08-Nala Assembly Constituency from the Jharkhand Mukti Morcha political party. It is submitted that the petitioner and several other persons and the respondent had contested 08-Nala Assembly election which was held on 20.12.2019. However, the respondent by adopting unfair means and corrupt practices became the Returned Candidate. The petitioner has contested the said election of 2019 as an Independent Candidate and he is a member of Scheduled Tribe and the number of votes in the said constituency is very high and the petitioner is a very popular among the people of Scheduled Tribes at 08-Nala Assembly Constituency and he

was confident of winning the said seat. However, during course of election campaign, he learnt from one Prem Kumar Hembram that the cadre of JMM (Jharkhand Mukti Morcha) along with Sh. Sabut Murmu came to village Jhantipahari on 15.12.2019 at evening and distributed the above said handbill/pamphlet and specimen of EVM among villagers in door-to-door campaign and organized meeting at Chaupal for campaign and influenced the villagers by persuading that any vote cast in Serial No.16 would go in vain. It is submitted that Umesh Murmu has informed the petitioner that Jaydhan Hansda and Rupchand Hansda came to his village Jaspur on 16.12.2019 in the evening and in door-to-door campaign distributed and pasted the above said handbill in many places and requested to cast their vote his party at Serial No.7 and influenced the villager by persuading them that any vote cast in Serial No.16 would go in vain. It is submitted that Priya Ranjan Baski has informed the petitioner that on 17.12.2019 Ramdeo Soren and Much Marandi came to village Jabardaha along with other party worker of JMM with a specimen EVM demonstrating and influencing to cast their vote his party at Serial No.7 and influenced the villager by persuading that any vote cast in Serial No.16 would go in vain. It is submitted that the petitioner on 20.12.2019 when arrived at village Patanpur at Booth No.91 and 92 then he found the members of the JMM and cadre of the sole respondent for undue influencing voters distributed the dummy EVM Machines. It is submitted that the Respondent got distributed the handbills and pamphlets through his Election Agent or other agents among the general public by adopting corrupt practices and due to which the Petitioner has lost significant votes and as such the election of the Respondent may be declared void.

6. It is further submitted that villager Umesh Murmu of village Jaspur informed him that similar propaganda was made house to house in his village by showing demo that Rabindra Nath Mahto, candidate of JMM is shown at Serial No.7. Even Umesh Murmu informed that Jaydhan Hansda and Roopchand Hansda were propagating in favour of JMM to give vote at Serial No.7 and further not to give vote at Serial No.16 showing it as 'NOTA'.

Similarly, in the village Jabardaha he also learnt during his election campaign that JMM volunteers Ramdeo Soren and Much Marandi are propagating to vote in favour of Rabindra Nath Mahto at Serial No.7 and Serial No.16 was shown as 'NOTA' for not giving vote.

7. It is further submitted that the respondent has failed to file his Written Statement before this Court within time and the Written Statement filed by the respondent has not been accepted till date by this Court. It is submitted that the respondent has filed I.A No. 8791 of 2022 under Section 148 C.P.C for extension of time in filing his Written Statement. It is submitted that as per provisions of Civil Procedure Code, the Written Statement was required to be filed within 60 days from the side of the respondent and which

can be extended only for further 60 day by the Court on its discretion and thus, the period of filing the limitation petition in the suit is only 60 days + 60 days=120 days only and which could not be condoned by the Court also. It is submitted that the Hon'ble Supreme Court has held that the Written Statement cannot be accepted beyond the statutory period. It is further submitted that under Order VIII Rule 2 of the C.P.C, the evidence adduced on behalf of the respondent is not admissible as there is no proper pleading of any document. It is submitted that although vide order dated 11.07.2022, the Co-ordinate Bench (Hon'ble Mr. Justice Gautam Kumar Chaudhary) of this Court had permitted the respondent to file his Written Statement but mere filing of Written Statement is not sufficient as the same has not been accepted by this Court till date. It is submitted that even single vote obtained by the respondent by adopting the corrupt means would render the entire election vitiated. It is submitted that the document marked as Exhibits (on admission) of both the sides are not admissible in evidence.

8. In support of his contention, learned counsel for the petitioner has relied upon the judgment reported in ***AIR 1955 (1) SCR 608 (Jamuna Prasad Mukhariya and Ors. vs. Lachhi Ram and Ors.)*** in which Hon'ble Supreme Court has held that vote obtained through corrupt practice and fraud would render the election void and illegal against the sole respondent. It is further submitted that the petitioner had himself visited several sites and had gone to several booths including the Booth No.91 and 92 at Patanpur and he had also noticed that the volunteers of JMM were distributing pamphlets and handbills in which the name of the respondent was printed at Serial No.7 whereas the name of the petitioner has been printed at Serial No.16 and he took photograph of the same from his mobile phone and got it enlarged through the nearby shop and which reveals that several JMM volunteers were distributing illegal pamphlets. The Respondent got printed the said illegal pamphlet from Lucky Printing Press and thus has adopted the corrupt practices. It is submitted that evidence of R.W-1 to R.W-8 namely, Janardhan Bhandari, Jaydhan Hansda, Binod Raut, Sadhucharan Mahto, Manoranjan Hansda, Musuhy Marandi, Kali Pada Murmu and Sona Yadav respectively are not reliable as they are interested witnesses and they have given evidence before this Court under the influence of the respondent-Rabindra Nath Mahto. It is submitted that R.W-9 is the respondent himself and he has also failed to show the expenses incurred towards the election campaign. It is submitted that R.W-9 has himself admitted during cross-examination that he had got prepared poster and banner from 'Bharat Traders' Press but he had not examined any person from 'Bharat Traders' Press, Ranchi in support of his case. Neither the candidate nor the representative of the said 'Bharat Traders' Press has been examined nor the Respondent has not filed any Expenditure Register to show that he had got printed the pamphlet from said Bharat Traders Press.

9. It is submitted that Much Marandi and Ramdeo Soren were distributing pamphlet like Exhibit-01 at village Jabardaha and they have not been examined on behalf of the respondent to show that they were not doing the illegal acts of corrupt practices. It is submitted that the petitioner has sent complaint to Deputy Commissioner, Jamtara and also to the Returning Officer, Jamtara and also to the Election Commission of India on 22.12.2019 and also on 18.02.2020 but no action was taken by the State authorities against the said Respondent and hence the petitioner has been compelled to file this election petition. It is submitted that even the complaint of the petitioner has not been taken care of by the authorities of the State as they were in connivance with the respondent. Thus, the election of the respondent may be declared void and illegal.

10. On the other hand, learned counsel for the Respondent has submitted that this election petition is not maintainable. It is submitted that all the contestants have not been made parties in this election petition. It is submitted that original copy of the Election Petition has not been served upon the Respondent. It is submitted that respondent got knowledge of this case only after paper publication of notice issued by the petitioner and thereafter, he had been given the photo copy of the election petition.

It is submitted that this election petition has been filed under Section 80(A) (2) and 81 of the Representation of Peoples Act, 1951 (hereinafter in short referred to as 'R.P. Act'), however no averments has been made in regard to Section 100 (1) and 101 of R.P. Act which relates to corrupt practice made by the candidate in terms of Section 123 of the Representation of People Act. There is no averment with regard any corrupt practice allegedly made by the Respondent at the time of filing this election petition. There is neither any pleading nor any cogent evidence has been led down on behalf of the petitioner. It is submitted that there is no allegation in the election petition as to who had done corrupt practices at the instance of the respondent. It is submitted that Section 123 of the R.P. Act deals with the corrupt practices but nothing has been mentioned in the election petition regarding any of the corrupt practices adopted by the respondent or his election agent or his volunteer. It is submitted that none of the provisions of Section 123 of the R.P. Act is applicable. It is submitted that no case of doing any corrupt practice is made out in this election petition by the election petitioner.

11. Learned counsel for the respondent has relied upon the judgment reported in **AIR 1990 SC 1731 (Lalit Kisore Chaturvedi vs. Jagdish Prasad Thada and Ors.)** and submitted that in the above case, even after publishing the poster by the candidate of one political party against the candidate of other political party, the Hon'ble Supreme Court had not found for doing any corrupt practices.

It is submitted that in the above case, there were serious allegations and aspersions were cast/made upon the election petitioner against the winning candidate and also serious allegations were made against one political party by printing and publishing the pamphlet, yet the Hon'ble Supreme Court held that no such case of corrupt practices was made out.

12. It is further submitted that petitioner has not made any complaint before the Returning Officer regarding the corrupt practices made by the Respondent or his volunteers at any time on the date of election or even before publication of the result on 23.12.2019.

It is further submitted that there is no evidence to show that the respondent has distributed pamphlet to any person or through his any agent and hence, in view of the above, this election petition is not maintainable.

13. It is submitted that even as per Rule 25 of Conduct of Election Rule, no affidavit has been filed in terms of Form-25. It is submitted that election petition should be decided like a criminal trial and the trial starts from the date of filing of election petition. It is submitted that vague allegation has been made out against the respondent and this Court may not consider the wide allegations made by the petitioner against the respondent for distributing the pamphlet. It is submitted that neither the name of the owner of Lucky Printing Press nor the city of press nor the place of the press has been mentioned by the petitioner in the election petition. It is submitted that petitioner has secured only approx. sixteen (16) hundred votes whereas respondent has secured more than sixty- one thousand (61,000) votes.

14. It is submitted that respondent had filed Written Statement as per Order VIII Rule 1 of the C.P.C and also in the light of the judgment reported in **2005 (4) JLR 1 (SC) (Kailash vs. Nanhku and Ors.)**. It is submitted that Written Statement of the respondent is deemed to be admitted and accepted in view of the judgment reported in **2005 (4) JLR 53 (SC) (Smt. Rani Kusum vs. Smt. Kanchan Devi and Ors.)**.

15. It is submitted that a Co-ordinate Bench (Hon'ble Mr. Justice Gautam Kumar Choudhary) of this Court vide order dated 18.07.2022 had permitted the respondent to file his Written Statement and thus, the Written Statement of the Respondent is properly filed after the order passed by the Co-ordinate Bench. It is submitted that the Respondent had filed his Written Statement on 12.10.2022 within time. Thereafter, the Co-ordinate Bench (Hon'ble Mr. Justice Gautam Kumar Choudhary) vide order dated 04.11.2022 has settled the issues. It is submitted that in view of the judgment reported in **2004 (2) JLR 604 (Narayan Chandra Mahto vs. Suraj Mahto and Ors.)**, it is well settled that Written Statement can be accepted even after delay of eight years.

16. Learned counsel for the respondent submitted that there were more than two lakhs voters in Nala Assembly Election Constituency in which the petitioner had secured only approx 1700 (seventeen hundred) votes whereas this respondent had secured 61356 votes and the margin of vote is very high to disbelieve the case of the petitioner and relied upon the judgment passed in E.P. No.02 of 2014 passed by the Co-ordinate Bench of this Court and which was affirmed by the Hon'ble Supreme Court.

17. Further in support of his contention, learned counsel for the respondent has relied upon the judgment reported in **AIR 1985 SC 89 (Surinder Singh vs. Hardial Singh and Ors.)** at para 34, 39 and 45 and submitted that corrupt practices has to be proved in this election petition like the criminal trial and mere suspicion cannot show the proof of committing the corrupt practices.

It is further submitted that petitioner has made complaint before the Election Commission of India in the year 2020 only after the result was declared on 23.12.2019 and there is no proof that any voter complained before the Deputy Commissioner, Jamtara or before the Returning Officer.

18. It is submitted that P.W-3-Surendra Kumar, who was the Returning Officer of said 2019 08-Nala Assembly Election has clearly stated during the evidence that no complaint was received from the petitioner on the date of election regarding any corrupt practices. It is further submitted that even the petitioner had filed representation before the Deputy Commissioner, Jamtara on 22.12.2019 but he has failed to show the photo copy of EVM sample which was enclosed with the application dated 22.12.2019 filed by the petitioner before the Deputy Commissioner, Jamtara. It is submitted that even the tainted source was not produced by the petitioner.

19. Learned counsel for the Respondent further submitted that all material facts have to be pleaded by the petitioner in his election petition otherwise this case will fail and in support of his contention, learned counsel for the Respondent has relied upon the judgment reported in **2023 SCC OnLine SC 573 (Kanimozhi Karunanidhi vs. A. Santhana Kumar and Ors.)**. It is submitted that there is no personal allegation against the respondent and even there is no personal allegation against the election agent of the respondent for distributing the 'Pamphlet or any 'Purcha' or any 'Handbill'.

20. It is further submitted that petitioner had stated during his evidence that pamphlet was being distributed but he had not stated that pamphlet was being distributed either by the Respondent himself or by the election agent or by his party workers rather he has merely stated that some volunteers of JMM were distributing the disputed pamphlet i.e. Exhibit-01 (with objection) and had produced the photographs of some person marked as Exhibit02

(with objection). However, the persons who are seen in Exhibit-02 (with objection) are neither the volunteers of JMM nor they were employed for by the respondent or by the election agent of the respondent. The petitioner has made casual statement by merely blaming corrupt practices by the respondent but he had failed to substantiate the charges against the respondent during his evidence. It is further submitted that the petitioner even during cross-examination, has himself stated that he himself had not seen the respondent and his agent for distributing purcha or pamphlet.

21. It is submitted that P.W-2 is Umesh Murmu who was the Election Agent of the petitioner and although he also stated that pamphlet was being distributed but he could not say the name of the boy, who had informed him about the distribution of pamphlet nor could he say the name of the parents of the boy of his village. Thus, the evidence of P.W-2 is also not reliable.

It is submitted that apart from P.W-1 and P.W-2 namely Santosh Hembram and Umesh Murmu, no witness has been examined on behalf of the petitioner to substantiate the election of corrupt practices allegedly made by the respondent. It is submitted that the petitioner had not examined any co-villagers or any other person of his voting area to substantiate his claim against the respondent.

22. It is submitted that P.W-3 was the Returning Officer and who has been examined as P.W-3 on behalf of the petitioner but, even said P.W-3 has not stated anything against the respondent for doing any corrupt practices. Even the petitioner had not filed any complaint before him. Thus, the evidence of P.W-3 supports the case of the respondent.

23. It is further submitted that R.W-1 to R.W-8, namely Janardhan Bhandari, Jaydhan Hansda, Binod Raut, Sadhucharan Mahto, Manoranjan Hansda, Musuhy Marandi, Kali Pada Murmu and Sona Yadav respectively have fully supported the case of the respondent and they have clearly stated in their evidence that they had neither seen the pamphlet i.e. Exhibit-01 (with objection) nor the persons shown in photograph of Exhibit-02 during the election campaign. They had denied the existence of Exhibit-01 and Exhibit-02 completely. Even the petitioner had not cross-examined proper whereas on the point of distributing the said Exhibit-01 and Exhibit-02. Although R.W-1 to R.W-8 respectively are the volunteers of JMM and the respondent but they had completely denied the distribution of such pamphlet. Thus, the claim of the petitioner is ill founded. It is submitted that R.W-9 is the Respondent himself and who has stated that he had not made any corrupt practices during the election campaign. The respondent has completely denied for distributing the pamphlet (i.e. Exhibit-01) and has denied the existence of JMM volunteers or his volunteers in Exhibit-02 (with objection). The respondent has stated that he has got his election materials pamphlet, purcha and handbill got printed from 'Bharat Traders' Press,

Ranchi. He had also even obtained the necessary permission for hiring the Vehicle and he was not confronted that he had employed any person to distribute the pamphlet (i.e. Exhibit-01) during his election campaign. Thus, R.W-9 has fully supported his case and he has won earlier also two elections earlier also prior to this election in which he has been declared Returned Candidate and he was a candidate for last several years whereas the petitioner has contested this election for the first time in the year 2019. Even the petitioner could not secure the vote of Scheduled Tribe people.

24. It is submitted that R.W-10, R.W-11 and R.W-12 namely Shrawan Kumar Yadav, Ashok Kumar Mahto and Dayamay Ghosh have supported the case of the respondent that they had neither seen the pamphlet nor the persons shown in Exhibit-02. It is submitted that R.W-10 is the Election Agent of the petitioner and who was maintaining the entire Expenditure Register and even he had not distributed any pamphlet during the election campaign of the respondent.

25. Learned counsel for the respondent further submitted that petitioner has not pleaded and proved his case as per para-17 of the election petition. He has named three witnesses i.e. Prem Kumar Hembram, Umesh Murmu and Priya Ranjan Baski in the election petition that they had informed the petitioner regarding distribution of Exhibit-01 (i.e. the pamphlet) in their villages but the petitioner has examined only Umesh Murmu as P.W-2. Thus, the petitioner has failed to examine said Prem Kumar Hembram and Priya Ranjan Baski in support of his case which is a lacuna in this election petition and hence this election petition is not maintainable.

26. It is further submitted that Exhibit-A is the Voter List of 08 Nala Assembly Constituency which reveals that there is approx around 2 lakhs votes and as per said Exhibit-A, in the related disputed Booth Nos.91 and 92 (Patanpur Booth) the petitioner had secured three (03) votes and one (01) vote respectively in Booth Nos.91 and 92, whereas the respondent had secured 111 and 255 votes in said Booth Nos.91 and 92 respectively. It is submitted that another concerned booth for which the petitioner has raised concern, is Booth No.208 at village Jabardaha, Booth No.247 at village Jaspur and Booth No.324 at village Jhantipahari, but the petitioner has secured only eleven (11) votes, thirteen (13) votes and three (03) votes in said Booth Nos.208, 247 and 324 respectively whereas the respondent has secured 395, 460 and 140 votes respectively in said Booth Nos.208, 247 and 324 respectively. Thus, the Returned Candidate has secured altogether 1521 votes out of 2764 votes in said booths for which the petitioner has raised much hue and cry. Thus, there is no violation of any provisions of Section 100(1) (b) of the Representation of People Act by the respondent. It is submitted that even if for the sake of argument, though not admitting the same, it is assumed that the respondent had got distributed said pamphlet,

then also it had not affected materially the result. It is submitted that there is no personal allegation against the petitioner in the said pamphlet (i.e. Exhibit-01) at the instance of the respondent.

27. It is submitted that Exhibit-C is the Chart prepared by the Returning Officer as per guideline of the Election Commission of India and it reveals that 32 complaints were dealt with and disposed of by the Returning Officer. It is submitted that Exhibit-C is admitted (on admission) by both the sides and thus there is no complaint seen by the Returning Officer in the said Exhibit-C.

It is submitted that Exhibit-D to Exhibit-D/14 respectively are the Letter dated 06.12.2019 to 20.12.2019 sent by the District Election Officer-cum-Deputy Commissioner, Jamtara to the Chief Election Officer-cum-Secretary, Jharkhand, Ranchi which is report with regard to Model Code of Conduct and relating to Law and Order in Vidhan Sabha General Election, 2019, which reveals that no complaint was made by the Election Petitioner against the Respondent during said period.

It is submitted that Exhibit-D/9 is the report dated 15.12.2019 and Exhibit-D/10 is the report dated 16.12.2019 prepared by the Deputy Commissioner, Jamtara which also reveal that no complaint was received from the petitioner and thus no complaint was made by the petitioner before the competent authority on 15.12.2019 and 16.12.2019 which he has alleged in the election petition.

It is submitted that Exhibit-DD-I, DD-II are the reports of Flying Squad Team Report of Booth No.193 to 332 & also for the Booth No.1 to 96 both dated 03.07.2024 from which it is evident that no complaint was made by the election petitioner even by the Flying Squad Team otherwise it would have been marked and reported in their said reports.

28. It is further submitted that Exhibit-DD-III is the report of Sector Magistrate dated 04.07.2024 for Booth No.247 which shows that no complaint was received. Similarly Exhibit DD-IV is the report of Sector Magistrate dated 04.07.2024 in support of Booth No.208 which shows that no complaint was made before the Sector Magistrate by the petitioner.

Likewise, DD-V is the report of Sector Magistrate for Booth No.91 and 92 dated 04.07.2024 which also shows that no complaint was received before the Sector Magistrate by the petitioner.

29. It is further submitted that Exhibit-F series is the report of one Vulnerability Mapping whereas the Nomadic Tribes and Scheduled Tribes people and reside and the report at Serial No.17, 22 and 23 reveals that no complaint was received for intimidating those people.

30. It is submitted that Exhibit-G and G/I are the diary of the Presiding Officer dated 20.12.2019 in support of Booth No.91 and 92 and it reveals from Serial No.21, 24 and 27

that neither any election crime was conducted nor any complaint was made by any candidate and peaceful voting was done. It is submitted that Exhibit-H and H/1 are the visit sheets of the District Election Officer dated 20.12.2019 and 20.12.2019 for Booth No.91 and 92 and which also show that no complaint was received from anyone and even no complaint was made by any candidate.

It is submitted that the petitioner had filed I.A. No.10550 of 2023 dated 08.12.2023 and which was disposed on 08.12.2023 by this Court by which documents mentioned at Serial No.1 to 7 were called for by this Court and which include the documents of the respondents. Thereafter the said documents were received from the Returning Officer and the Returning Officer has also furnished the Expenditure Register of the Respondent and which further reveals that the Respondent got printed election materials from 'Bharat Traders' Press, Ranchi but does not show the name of 'Lucky Printing' Press. Even Expenditure Register of the Respondent would show that neither pamphlets nor the handbills were printed by the Respondent from 'Bharat Traders' Press.

31. It is submitted that petitioner has not impleaded 'Lucky Printing' Press as party respondent and no person from Lucky Printing Press has been examined, thus, the onus was cast upon the petitioner to prove its case that the respondent got printed the disputed Exhibit-01 (with objection) from said Lucky Printing press.

32. It is further submitted that Exhibit-01 and Exhibit-02 are not the primary documents and particularly Exhibit-02 (marked with objection) was printed from the mobile and is a category of electronic record and therefore, it was required to be proved under the provisions of Section 65-B of Indian Evidence Act and the certificate of the petitioner or the concerned shop was not produced. Thus, Exhibit-02 (marked with objection) cannot be relied upon in the light of the judgment reported in **(2020) 7 SCC 1**.

33. It is further submitted that there is contradiction in the pleading and evidence of witnesses of the Election Petitioner. It is submitted that para 14 of election petition reveals that the petitioner got printed Exhibit-02 from his mobile. However, while examined as P.W-1, the petitioner during his cross-examination at Paragraph Nos.44, 45 and 46 stated that he does not know about Camera from which photographs were printed and he is not aware of expenditure of printing the Exhibit-01 and Exhibit-02. He also stated at para 46 that he was present at Patanpur with P.W-2 Umesh Murmu on 16.12.2019. However, P.W-2 during his cross-examination, at para 34 had stated that he does not remember when he had gone on the date of voting and he is not aware when he accompanied with the petitioner. Thus, the evidence of P.W-1 and P.W-2 are contradictory to the para 14 of the election petition. It also appears that para 17 of the election petition states about the date when the petitioner visited the disputed place. However, P.W-1 (i.e. the petitioner) during his cross-

examination at paragraph 64 admitted to have not made any complaint before the Returning Officer. Even P.W-2 during his cross-examination at Paragraph nos.26, 29 and 33 stated that he is not aware of the name of the child from which he learnt about the pamphlet (Exhibit-01) and he is also not aware about the parents of said child.

Similarly at Paragraph nos.47, 48, 53 and 72 the petitioner stated that he had not given the details of expenditure of photo print in the office of District Election Officer. He had also not made any complaint before the Presiding Officer and Security Personnels about the Pamphlet of NOTA who were present there and he submitted written complaint on 22.12.2019. Even people of other party had not made any complaint before him regarding the Pamphlet which were being propagated by the Candidate of JMM.

34. It is further submitted that P.W-3 is the Returning Officer who was examined by the petitioner after summoning him through the process of Court and he has also stated that he has not received any complaint from the petitioner and there was no complaint in writing.

It is submitted that petitioner has not pleaded anywhere in the election petition that he had moved to 22 voting places on the date of election.

35. It is further submitted that the respondent has filed his Written Statement after permission of the Court and thereafter the issues were framed on 04.11.2022 by the Co-ordinate Bench of this Court on the basis of Written Statement filed by the Respondent. Even various I.As were filed on behalf of the respondent by relying upon the averments of the Written Statement and thus it cannot be said that the Written Statement was not accepted. It is submitted that in view of the judgment reported in **(2001) 8 SCC 233 (Harishankar Jain vs. Sonia Gandhi)**, the petitioner has not made positive statements for the period he has challenged the distribution of pamphlets and purcha and in absence of the positive statements, the claim of the petitioner is not tenable.

36. It is further submitted that no voter of the petitioner turned up for giving evidence before this Court in favour of the petitioner and thus, the petitioner has failed to prove that any voter was influenced by the respondent by distributing the pamphlet (marked as Exhibit-01). It is submitted that even no independent witness was examined by the petitioner regarding distribution of pamphlet (Exhibit-01) and also regarding Exhibit-02. It is further submitted that petitioner got zero votes in sixteen (16) booths and one (01) vote each in nineteen (19) booths and he has also obtained only two (02) votes and three (03) votes in several booths, which is evident from Exhibit-A and which is the final result sheet and thus, there is no valid cause of action for filing this election petition. Hence, this election petition may be dismissed.

37. The petitioner in his reply submitted that the Written Statement of the respondent was not accepted by this Court till date and he has filed I.A No.8791 of 2022 along

with petition under Section 148 C.P.C for extension of time for accepting his written statement. It is submitted that in view of the judgment reported in the case of Smt. Rani Kusum vs. Smt. Kanchan Devi and Ors. reported in **(2005) 4 SCC 53 (SC)** the Written Statement cannot be permitted to be filed beyond the statutory period of 60 days + 60 days=120 days. However, the respondent has filed his Written Statement after much delay.

38. It is submitted that in view of the judgment in the case of **(Jamuna Prasad Mukhariya and Ors. vs. Lachhi Ram and Ors.)** reported in **AIR 1955 (1) SCR 608**, the Hon'ble Supreme Court has held that election can be declared void if a single vote has been obtained by the Returned Candidate by corrupt means by influencing and committing fraud with the voter.

39. It is submitted that in absence of pleading, no document can be relied upon by the respondent and in support of the same, learned counsel for the petitioner has relied upon the case of **Biraji Alias Brijraji and Anr. vs. Surya Pratap and Ors** reported in **(2020) 10 SCC 729**. Thus, this election petition must be allowed.

40. Perused the records of this case and considered the submission of both the sides.

41. This Election Petition was filed on 04.02.2020 and it was admitted on 09.12.2021 by a Co-ordinate Bench (Hon'ble Mr. Justice Anil Kumar Choudhary) of this Court and notice was issued upon the sole respondent by Registered Post with A/D as well as under the Ordinary process. However, the Respondent had not appeared and thereafter notice was published in the newspaper in the light of order dated 18.04.2022. Thereafter, the respondent appeared on 18.07.2022 and he was permitted to file Written Statement although earlier *ex-parte* proceeding was drawn against him vide order dated 06.07.2022 by another Co-ordinate Bench (Hon'ble Mr. Justice Gautam Kumar Choudhary) of this Court.

42. It transpires that the respondent has filed Written Statement on 12.10.2022 along with petition under Section 148 C.P.C seeking extension of time for filing Written Statement by I.A. No.8791 of 2022 and had not filed any document in support of its case. However, the above I.A. No.8791 of 2022 was not pressed during the argument.

43. Thereafter, the issues were framed by the Co-ordinate Bench (Hon'ble Justice Gautam Kumar Choudhary) on 04.11.2022 which are as follows:-

- "1. Whether the election petition in its present form is maintainable?
2. Whether Election petitioner has valid cause of action for filing the election petition?
3. Whether the sole respondent, or his polling agent has committed any corrupt practice as stated in Election Petition?
4. Whether the election result of the sole Respondent is liable to be set aside?
5. Whether the election petitioner is entitled to any relief?"

44. The petitioner in support of his case, has got examined three (03) witnesses, who are as follows:-

- (i) P.W-1 is Santosh Hembram (i.e. the petitioner)
- (ii) P.W-2 is Umesh Murmu and
- (iii) P.W-3 is Surendra Kumar (i.e. the Returning Officer)

45. The petitioner in support of his case, has got marked and proved the following documents as the Exhibits, which are as follows:-

- (i) Exhibit- 1 is Original copy of pamphlet (Marked with objection),
- (ii) Exhibit-2 is photograph downloaded from the phone of the petitioner (Marked with objection),
- (iii) Exhibit-3 is the Nomination paper of Santosh Hembram in 14 sheets (Marked with objection) which was issued vide dated 29.11.2019 by the Election Officer and
- (iv) Exhibit-4 is the Caste Certificate dated 11.01.2019 (Marked with objection) of Santosh Hembram issued by Block Officer, Jamtara

46. The petitioner in support of his case, has got marked and proved the following documents for his identification, which are as follows:-

- (i) Document - X is Form 7 K enclosed as Annexure-4 in the writ petition,
- (ii) Document -X/1 is Complain Letter dated 22.12.2019 sent by the petitioner to D.C, Jamtara,
- (iii) Document -X/2 is Form 7 K received from the Returning Officer, 08 Nala Assembly Constituency,
- (iv) Document -Y is Form 8 (blank form),
- (v) Document -Y/1 is Form 10 (blank form),and
- (vi) Document -Y/2 is Form 18 (blank form)

47. The respondent in support of his case, has got examined twelve (12) witnesses, who are as follows:-

- (i) R.W-1 is Janardhan Bhandari,
- (ii) R.W-2 is Jaydhan Hansda,
- (iii) R.W-3 is Binod Raut,
- (iv) R.W-4 is Sadhucharan Mahto,
- (v) R.W-5 is Manoranjan Hansda,

- (vi) R.W-6 is Musuhy Marandi,
- (vii) R.W-7 is Kali Pada Murmu,
- (viii) R.W-8 is Sona Yadav,
- (ix) R.W-9 is Rabindra Nath Mahto (i.e. the Respondent),
- (x) R.W-10 is Shrawan Kumar Yadav,
- (xi) R.W-11 is Ashok Kumar Mahto and
- (xii) R.W-12 is Dayamay Ghosh.

48. It transpires that the evidence of the petitioner was closed on 14.12.2023 and even the evidence of the respondent was closed on 02.05.2024.

49. However, in the light of the observation passed by Hon'ble Supreme Court in Special Leave to Appeal (C) No(s).4574 of 2024 which was dismissed on 26.02.2024 with certain observations, the respondent had filed I.A. No.1830 of 2024 for examining five (05) official witness and 33 other witnesses. However, this Court had permitted the respondent to examine twelve (12) witnesses out of thirty three (33) witnesses later on, on payment of cost of Rs.10,000/- (Rs.Ten Thousand) to the petitioner.

During pendency of this case, the respondent had filed I.A. No.9613 of 2023 under Order VII Rule 11 read with Section 151 C.P.C on the question of maintainability of the present election petition. However, this Court vide order dated 19.01.2024 had rejected the said I.A. No.9613 of 2023. Thereafter the respondent had moved before the Hon'ble Supreme Court by filing Special Leave to Appeal (C) No(s).4574 of 2024 which was dismissed on 26.02.2024 with the following observations:-

"Para-3:-The Special Leave petition is accordingly, dismissed.

"Para-4:- It goes without saying that the petitioner shall be at liberty to raise all contentions before the High Court at an appropriate stage, which shall be considered by the High Court on its own merits and in accordance with law without being influenced by the decision made herein."

50. Thus, thereafter the respondent has examined twelve (12) witnesses in support of his case.

51. The following documents were marked as the Exhibits (on Admission of both the sides) on 28.10.2024 on behalf of the Respondent, which are as follows:-

- (i) Exhibit-A (on admission of both sides) is the Final Result Sheet in Form 20 of the General Election 2019,
- (ii) Exhibit-B to Exhibit- B/9 (on admission of both sides) respectively are the Voter Facilitation Posters and its details as displayed by the District Election Officer-cum-Deputy Commissioner, Jamtara, especially in the Polling Stations,
- (iii) Exhibit-C (on admission of both sides) is the list of complaints received through the

'c-VIGIL' Application,

- (iv) Exhibit-D to Exhibit-D/14 (on admission of both sides) respectively are the Letter dated 06.12.2019 to 20.12.2019 sent by the District Election Officer-cum- Deputy Commissioner, Jamtara to the Chief Election Officer-cum-Secretary, Jharkhand, Ranchi which is report of Model Code of Conduct and relating to Law and Order in Vidhan Sabha General Election, 2019,
- (v) Exhibit-DD series (on admission of both sides) respectively are the Letters No.02 & 03 dated 03.07.2024 and Letter No.07 dated 04.07.2024 submitted by Surendra Kumar, then Additional Collector-cum-Returning Officer to Nikhil Saha, Chandradeo Murmu and Anmol Amar Baba,
- (vi) Exhibit-DD-I and DD-II (on admission of both sides) respectively are the Flying Squad Report of Booth No.193 to 332 & Booth No.1 to 96 submitted to the then Returning Officer, in original by Nikhil Saha, Chandradeo Murmu and Anmol Amar Baba.
- (vii) Exhibit-DD-III, DD-IV and DD-V (on admission of both sides) respectively are the Letters of the Sector Magistrate,
i.e. Letter dated 04.07.2024 of Pawan Kumar Dubey, Sector Magistrate, Sector 10, Letter dated 04.07.2024 of Dayanand Jamuda, Sector Magistrate, Sector No.3, Letter dated 04.07.2024 of Dr. Anmol Amar Baba, Sector Magistrate.
- (viii) Exhibit-E, E/1, E/2 and E/3 (marked on admission of both sides) respectively are the Poll Day Report of Sector Magistrate, namely Bishwanath Toppo, Dr. Md. Rizwan, Dayanand Jamuda and Anmol Amar Baba in three (03) sheets each.
- (ix) Exhibit-F series (marked on admission of both sides) are the summary of vulnerability and list of persons causing vulnerability by the Returning Officer in seven (07) sheets.
- (x) Exhibit-G and G/1(marked on admission of both sides) are the Diary of Presiding Officer of Booth No.91 and Booth No.92.
- (xi) Exhibit-H and H/1 are the Visit Sheets of Booth No.91 and 92 by the D.E.O.

52. It further transpires that vide order dated 08.12.2022 a Co- ordinate Bench (Hon'ble Justice Gautam Kumar Choudhary) had allowed I.A. No.10550 of 2022 filed on behalf of the petitioner to call for certain documents as detailed in the application from the office of 08, Nala Assembly Constituency for election of Jharkhand State Assembly Election in the year 2019 for which result was declared on 23.12.2019.

53. So far as the oral evidence of the petitioner is concerned, P.W-1 is Santosh Hembram, who has filed this Election Petition and has stated during his evidence that he has filed this Election Petition with regard to 2019 Assembly Election. Last date of filing nomination paper was 03.12.2019 and verification of nomination paper was 04.12.2019 and the date of voting was fixed on 20.12.2019 and the date of declaration of final result was on 23.12.2019. He further stated that twenty (20) candidates including the petitioner had filed their nomination paper from 08 Nala Assembly Region and he had filed his nomination paper on 04.12.2019 and four nomination papers were rejected by the Returning Officer and thus, only sixteen (16) candidates including the petitioner had contested election. The petitioner has contested election as an Independent Candidate, who was also allotted the Serial No.7 ballot symbol and he was placed at Serial No.16 in Form-7 and he was given 'Balla' (i.e. Bat) as election symbol. The Respondent-Rabindra Nath Mahto was at Serial No.7 and his election symbol was 'Tir-Kaman' (i.e. Bow and Arrow) from his party Jharkhand Mukti Morcha (hereinafter referred to as 'JMM' in short). He has proved photo of Form-7-K which was marked for identification as X.

He further stated that on the date of election on 20.12.2019, when he arrived at Booth No.91 and 92 during travelling at village Patanpur then he was surprised to see that several volunteers were sitting outside booth with Demo Machine of EVM and Posters and some JMM volunteers were sitting with Posters. When he saw then he found that 'NOTA' was mentioned at Serial No.16, upon which, he was surprised and took out photo from his mobile and on enquiry the volunteers told that there will be damage of vote and hence 'NOTA' is mentioned at Serial No.16. Thereafter he immediately rang from his mobile to the Election Observer but his phone was not received. After completion of Election on 22.12.2019 he filed his written application by way of complaint before the Deputy Commissioner, Jamtara and the petitioner had made complaint that the respondent-Rabindr Nath Mahto and his volunteers are making wrong propaganda on Serial No.16 and 'NOTA' has been mentioned at Serial No.16. He has proved the copy of Purcha, having photograph of Rabindra Nath Mahto (i.e. the Respondent) in which 'NOTA' is mentioned at his Serial No.16, said 'Purcha' (i.e. Pamphlet) is marked as Exhibit-01 (with objection). He has further proved the original copy of photo which was taken by his mobile which has been marked as Exhibit-02 (with objection). He further proved the application dated 22.12.2019 marked as X/1 which was filed before the Deputy Commissioner, Jamtara. He further proved photo copy of Form-7- K, which was deposited before the Court of Returning Officer showing his name at Serial No.16 and election symbol 'Balla' and his photograph and which is marked for identification as 'X/2'.

He further stated that the copy of Form-7-K, which was given to him from election office of Returning Officer which is marked as X/2 for identification, is completely different.

He asserted that Form-7-K which was issued by Returning Officer does not contain his photograph.

He has further proved the photo copy of Nomination Paper, in fourteen (14) sheets/pages which was issued by Returning Officer on 29.11.2019 as Exhibit-3 (with objection). He has further proved the photo copy of his Caste Certificate issued by S.D.O, Jamtara on 11.01.2019 as Exhibit-4 (with objection).

54. He further stated during his evidence that the candidate of Jharkhand Mukti Morcha had shown 'NOTA' against Serial No.16 and it has been printed and distributed by Jharkhand Mukti Morcha. He also belongs to Schedule Tribes category and he comes from Santhal Tribes and he was the only Independent Candidate from 08-Nala Assembly Constituency and due to their wrong propaganda and conspiracy committed by them his candidature has been damaged a lot. He asserted that during course of election propaganda, he was informed by villager Prem Kumar Rana of village Jhantipahari that wrong handbill was shown and even it was propagated by JMM to give vote to Rabindra Nath Mahto shown at Serial No.7 and the handbill showing Serial No.16 as 'NOTA' and it was told that vote will be wasted at Serial No.16. Similarly, the concerned villager Umesh Murmu of village Jaspur informed him that similar propaganda was made house to house in his village by showing demo that Rabindra Nath Mahto, candidate of JMM is shown at Serial No.7. Even Umesh Murmu informed that Jaydhan Hansda and Roopchand Hansda are propagating in favour of JMM to give vote at Serial No.7 and further not to give vote at Serial No.16 showing it as 'NOTA'.

Similarly, in the village Jabardaha he also learnt during his election campaign that JMM volunteers Ramdeo Soren and Much Marandi are propagating to vote in favour of Rabindra Nath Mahto at Serial No.7 and Serial No.16 was shown as 'NOTA' for not giving vote.

He belongs to Schedule Tribe and his village is highly tribal populated and due to this ill-conceived propaganda, his votes have been damaged a lot.

56. During cross-examination, he stated to have contested the election for the first time and he is an agriculturist by profession. However, he has not pointed out name of any villager for propagating his election but he has himself propagated at 332 booths of Vidhan Sabha Region and he has deposited entire cost of his election but he does not remember the details of cost.

He further stated that Umesh Murmu was his Polling Agent and he had given details of his Polling Agent on the form received from the office of Returning Officer. He had also got printed handbills in thousands but does not remember the exact number and he also does not remember as to whether the copy of the said handbill was given to the District Returning Officer or not. He had also appointed four counting agents after taking letter of right from Returning

Officer. However, he is not aware of starting time of counting but he was present at the time of declaration of result.

He admitted to have received only 1769 votes during counting and he had received zero votes from three booths.

He has denied the suggestion for receiving zero votes from ten polling booths but admitted that he has received 1-1 vote each from ten Polling Stations.

He admitted to have not mentioned the fact of taking photograph from camera during his election campaign. However, he got printed the copy from the computer in the market but he has not mentioned the name of said shop and not produced the receipt of print.

He arrived at village Patanpur at 3.00 p.m and his bodyguard and polling agent Umesh Murmu had accompanied with him.

He admitted to have not made any complain before Presiding Officer of polling booth with regard to pamphlet showing NOTA and had not complained to any security persons.

He had not made any complain before local police station which was situated at a distance of 7-8 Kilometer from Patanpur village to the effect that JMM people were distributing pamphlets of NOTA. He had not enquired about the name of such person distributing pamphlet of NOTA. He had not raised any hue and cry to enquire from people present there as to why this is happening.

He had not gone before the Presiding Officer on the date of election of Polling Booth. No other Polling Agent except his Polling Agent was present there.

Although he stated to have tried to make complain to the Election Observer by telephone but his phone was not received by them.

He admitted to have mentioned at para-19 of Election Petition to have informed concerned Election Officer through phone and also made written complaint in the office of the Deputy Commissioner on 22.12.2019.

57. He admitted that the Additional Collector was the Returning Officer and he had made written complaint on 22.12.2019 and copy of written complaint is enclosed with the Election Petition.

On being pointed out by the respondent's counsel that copy of acknowledgement is not enclosed with Election Petition, the petitioner fails to remember it. However, on being shown Election Petition, the witness states that acknowledgement of information of written complaint is enclosed with this Election Petition.

The witness on his own says that the copy of written complaint was placed before employees (office of D.C) present there. He admitted to have not mentioned printing of NOTA by volunteers of JMM at his Serial No.16 in Annexure-7 of this Election Petition.

He stated that he had also complained before Election Commission, New Delhi against mis-propaganda of JMM Party by E-mail but failed to show the date of E-mail.

On being pointed out by the respondent's counsel in his Election Petition, he admitted that E-mail was sent on 04.02.2020 and name of any candidate has not been mentioned in the E-mail and copy of complain is not enclosed with this Election Petition.

During further cross-examination, he stated to have left his house at 7.00 a.m. in the morning on 20.12.2019 on the date of election. Firstly, he arrived at Booth No.313 where he had to cast his vote situated at Primary School, Maheshmunda at his Voter Serial No.606 where he stayed for around half an hour and then he went to look into booth agents. He also admitted that there was no NOTA pamphlet on his booth. Thereafter he travelled at about 20-

22 Polling Booths but apart from Patanpur Polling Booth, no NOTA pamphlet was seen at any other booth.

He could not remember the date on which the villagers Prem Kumar Hembram of Village Jhantipahari informed him that wrong handbill was shown where election campaign was done. Prem Kumar Rana is actually Prem Kumar Hembram and about two days ago prior to election he had informed about the above election campaign but he had not made any complain before any Election Officer.

He also admitted that although Umesh Murmu had informed him in the night of 16.12.2019 regarding NOTA election campaign but said Umesh Murmu had not made any complain anywhere. He had also not asked to his Election Agent Umesh Murmu to make any complain from village Jashpur.

He stated that the villager Priya Ranjan Baski of village Jabardaha had complained of pamphlet of NOTA during election campaign by JMM candidate but despite having knowledge of this fact on 17.12.2019 from villager Priya Ranjan Baski, he had not made any complain in writing anywhere.

He stated that the voting was disturbed at village Jashpur Polling Booth as there was no line and even people of other parties had complained before Election Officer regarding light and voting. He had no seen any NOTA pamphlet at Jaspur at around 3.40 p.m. on the date of election.

He admitted that Prem Kumar Hembram, Priya Ranjan Baski and Umesh Murmu were neither his election campaigner nor his volunteers. However, he had not complained regarding NOTA against JMM candidate except Election Observer. He admitted to have only 15-20 volunteer but he had not paid any amount to his volunteer to meeting his expenses.

On being shown Annexure-6 (photo), the witness admits that there is no flag and banner of any party. He admitted to have taken only one photograph. He admitted that no background is seen at the time of taking photograph and even the place of photograph is not visible. He has not given any certificate with regard to said photo Enclosure-6 to the effect that said photo was

taken by him. He admitted that apart from him, two persons Mahadeo Kisku and Pushpa Soren were also Scheduled Tribes candidates and even one Kanhai Chandra Malpaharia was Scheduled Tribe candidate.

He stood at 7th place in order to merit in the election result

after the voting. He had received only 49 votes at his Booth No.313 but he does not remember the total number of voters of said booth. He admitted to have not complained of any pamphlet of NOTA at Booth No.313.

He is also not aware as to how many votes JMM candidate Rabindra Nath Mahto had obtained. However, he has received maximum vote from Booth No.313. He admitted his signature on Annexure-5 and Annexure-6 but having not mentioned anywhere “attested to be true”. He admits that original Signature and Muhar of Oath Commissioner are not seen in those Annexure-5 and Annexure-6 or at any other annexures. He denied the suggestion that Annexure-5 and Annexure-6 are manufactured documents. He denied the suggestion for not having seen any pamphlet of NOTA during his election campaign.

58. Thus, from scrutinizing the evidence of P.W-1, it would appear that he has tried to support his case and he has stated regarding distribution of pamphlet and handbill showing NOTA at Serial No.16 which was being distributed by the volunteers of JMM. He has even named three villagers Prem Kumar Hembram, Umesh Murmu and Priya Ranjan Baski for informing him for distribution of handbill and pamphlet of NOTA at village Jhantipahari, Jaspur and Jabardaha respectively but he failed to examine said Prem Kumar Hansda and Priya Ranjan Baski. However, his evidence will be again considered later on after the evidence of other witnesses.

59. P.W-2 is Umesh Murmu, who has stated during his evidence that the election was held in the year 2019, Rabindra Nath Mahto (i.e. the Respondent) had got printed wrong pamphlets and it was propagated during his campaign. He is the Election Agent of Election Petitioner in the year 2019 and he had done the work during the election as per direction of the petitioner. However, just prior to election on 16.12.2019 while election campaigning was done in his village then he saw that JMM volunteers namely Jaydhan Hansda, Rupchand Hansda and some other unknown volunteers were distributing pamphlets and apprising the people to give their vote and they were also informing that NOTA is written at Serial No.16 and casting vote on the same will be futile. He claimed to identify the person who was distributing the pamphlet.

On being shown the pamphlet marked as Exhibit-2/5 (it was corrected as Exhibit-1 vide order sheet dated 16.10.2024), he stated that it was written that vote has to be casted in wining of Rabindra Nath Mahto and it was also mentioned that NOTA at Serial No.16 of pamphlet i.e. Exhibit-2/5.

60. During cross-examination, he admitted that he was the Election Agent of the petitioner and he had also furnished his Voter Card and Aadhar Card to the petitioner and who had issued him certificate but does not remember as to who had granted said certificate. He admitted to have received Identity Card. He could not say the date of becoming Election Agent but stated that he became the Election Agent probably from the date of scrutiny. Election Agent is appointed for doing a work of candidate and he used to furnish expenditure of the candidate. However, he shows unawareness that the work done by the election agent is considered to be work of the contesting candidate. He could not remember the date of election campaign. However, he is acquainted with permission of vehicle to the candidate for their election campaign. His candidate had also taken permission of vehicle for the election campaign and one Bolero Vehicle was taken by his candidate during election campaign but he cannot tell the number. He denied the suggestion that the candidate Santosh Hembram had not taken Bolero Vehicle for his election campaign. However, Santosh Hembram had also taken one Motorcycle for his election campaign. They used to live separately during election campaign but for 1-2 days they had jointly made election campaign.

He had casted his vote at village Jaspur in the Polling Booth and he remained for the whole day in Jaspur. Although he had heard the distribution of wrong pamphlet by JMM volunteers on 16.12.2019 on hearsay basis but later on, the witness himself stated that he had himself seen that the wrong pamphlets were being used. Even people of the village had informed him for distributing wrong pamphlets but he does not remember the name of those persons. He was shown pamphlet i.e. Exhibit-2/5 (it was corrected as Exhibit-1) by a young child but he neither disclosed the name of that child nor the parents of that child but the age of the child was about 14-15 years. However, he had kept the said pamphlet with himself and later on he had handed over the same to the petitioner Santosh Hembram but cannot say the date of finding over pamphlet. He was on telephonic discussion also with his candidate but he had not informed him about the pamphlet by telephone. He had also not made complain before any officer that wrong pamphlet was being used by JMM candidate.

He admitted to have seen such type of pamphlet only at village Jaspur on 16.12.2019 during his entire election campaign.

He further stated in para 33 of his evidence that one pamphlet was given by one child to him but he had not seen said pamphlet in whole, outside the house of any person of village Jaspur. He could not remember on which booth he had moved on the date of election on 20.12.2019.

However, he admitted to have not made any complain regarding said pamphlet even after the election was over. He had not ascertained as to said pamphlet was got printed by

whom. He is not aware of process of printing the pamphlet. He is also not aware regarding complain made by any Voter before any officer regarding said pamphlet.

He is not aware as to whether any case was instituted against the Returned candidate-Rabindra Nath Mahto by any person, Volunteer or Voter against the candidature of such person.

He further stated that in the pamphlet of NOTA, it has been referred to vote only for Rabindra Nath Mahto.

However, he is not aware as to whether any pamphlet with regard to election was got printed by his candidate (i.e. the petitioner). He used to maintain the expenditure of his candidate. However, he used to maintain the details of election expenses made by his candidate and he used to maintain the details of election expenses in the Register and which was verified in Jamtara Treasury. However, he is not aware as to how much expense was made by his candidate during the election but his Candidate had called for Register after the election was over. He could not remember regarding the number of votes obtained by his candidate Santosh Hembram and he is also not aware about the total votes received by the petitioner-Santosh Hembram. He is not aware as to how many votes had been received by his candidate Santosh Hembram in his booth. He has passed M.A (History) and has little knowledge of computer also but he is not aware as to whether photo shop was done by computer or not.

He denied the suggestion that pamphlet marked as Exhibit- 2/5 (it was corrected as the Exhibit-1 on 16.10.2024 vide order sheet) of NOTA is a manufactured document.

61. Thus, from scrutinizing the evidence of P.W-2, it would appear that he had supported the case of the petitioner and stated that he had received the Pamphlet (i.e. Exhibit-01) from one child aged about 14-15 years but he neither disclosed the name of said child nor the name of the parents of said child. However, during cross-examination, he asserted at para-26 and 33 to have received the Pamphlet of NOTA from one child. The witness could not say about the number of votes secured/obtained by the petitioner Santosh Hembram although he was his election agent but he has supported the case of the petitioner.

62. P.W-3 is Surendra Kumar, the Returning Officer on the date of election of 08, Nala Assembly Constituency and he was posted as Additional Collector, Jamtara on the date of his evidence before this Court. P.W-3 stated during his evidence that he was posted as the Returning Officer at 08-Nala Assembly Region and date of filing nomination was fixed till 03.12.2019 at 3.00 noon and twenty (20) persons had filed their nomination paper. However, nomination paper of four (04) persons were rejected. The date of election was fixed on 20.12.2019 and the date of counting was fixed on 23.12.2019 and the counting started in the morning of 23.12.2019 and the result was declared in the night around 2.30-300 a.m. during night hours and Rabindra Nath Mahato (i.e. the Respondent) was the

winning candidate. He admitted that the petitioner Santosh Hembram was also a candidate of said election. However, he could not state as to the date of submission of concerned papers with regard to the election before the office of the High Court but he had submitted again certain papers on 09.09.2023 with regard to election and he requested for showing the date of submitting paper for refreshing his memory and which was accepted by this Court and he was allowed to peruse the papers.

The witness further stated that firstly he had submitted Letter No.03/22.02.2023 in which he had submitted Nomination Paper, Checklist of all documents of all sets of Sri Ravindra Nath Mahto, Form-8 related with appointment of Election Agent related with the Return Candidate Mr. Ravindra Nath Mahto which was obtained by Nodal Officer-cum-Treasury Officer (i.e. Annexure- 52), Registers for maintenance of accounts of election expenditure by contesting candidate as submitted by Returned Candidate Mr. Ravindra Nath Mahto along with Result sheet of election of 08- Nala, Assembly Constituency, Format 7K, list of candidates contesting election 08-Nala, Assembly Constituency.

63. Thereafter he further submitted certain papers vide Letter No.01 dated 09.09.2023 and the said letter was forwarded to Deputy Election Officer, Jamtara vide Letter No.05 dated 02.09.2023. He also submitted that Letter No.248 G.NI/G.DI dated 04.09.2023 received from Deputy Election Officer, Letter No.03/NIPKO, Returning Officer Cell dated 22.02.2023, Letter of Cell of Nodal Officer-cum-Treasury Officer, Jamtara Accounts Expenditure Cell, Letter No.410/Vyay Ko dated 26.12.2023, Letter No.43/Election dated 26.12.2022, Section 127A restrictions on the printing on pamphlets, posters etc., Letter No.03 dated 22.02.2023.

He also admitted to have committed mistake for not depositing/furnishing the three (03) documents by him on the first occasion before the Court and for which he tendered his apology. He further stated that Document No.05 Printing Materials of Returning Candidate was not in his custody because it was not deposited before him.

He also admitted to have received Document No.04, which is accounting of expenses of election and it was received by him on 26.12.2022 by Letter No.410 Vyay Kosang of Nodal Officer-cum- Expenditure Accounts Cell (Vyay Lekha Kosang).

He also stated that he had no knowledge that the election result has been challenged before this Court.

He also admitted to have seen the complaint petition of Election Petitioner in the office of the learned Deputy Commissioner, Jamtara which was enclosed with the Election Petition.

64. During cross-examination, he stated that he had seen the election petition in the office of Deputy Commissioner through his learned counsel 2-3 months ago and he had seen the enclosed papers of this election petition. He further stated that no complain regarding pamphlet, which has been enclosed with this election petition, was submitted

in his office. He also stated during his cross-examination that it is beyond his jurisdiction to entertain the complain of any complainant. There is provision of submitting complain with regard to wrong committed during election by way of portal. He further stated that after initiation of election process and till the declaration of election result any complaint can be made/furnished before Model Code of Conduct. The evidence of the witness was deferred on 06.12.2023 on account of the ailment and request was made on behalf of the learned counsel for the Respondent till 14.12.2023. He was again cross-examined on 14.12.2023 and then he stated at para 19 of his cross-examination that no complaint was made before him by the Election Petitioner with regard to wrong committed in the Pamphlet and neither his election agent had made any complaint before him.

65. Thus, from scrutinizing the evidence of P.W-3, it is evident that no complaint was made before him neither by the Election Petitioner nor by his election agent during the time of election. However, he admitted that he had committed mistake for not submitting several papers before this Court on 22.02.2023 and thereafter he had submitted paper before the office of this Court again on 09.09.2023 after being issued show cause notice for not submitting the papers. It is also evident that the result of the election was declared in the night of 23.12.2023 at around 2.30-3.00 hours.

66. R.W-1 is Janardhan Bhandari who stated during his evidence that he is a volunteer of JMM and he is also Joint Secretary of Nala Prakhanda of JMM party. He had made election campaign in favour of Sri Rabindra Nath Mahto, who was a candidate of JMM during election of 2019 and had gone to several places. Various candidates had got printed their pamphlets.

On being shown Exhibit-01 to the witness by the learned counsel for the respondent, he stated that no such Pamphlet (Election Purcha) was seen by him and Rabindra Nath Mahto (i.e. the respondent) had not got printed this Purcha (i.e. Pamphlet). He also stated that the Respondent-Rabindra Nath Mahto had obtained 61,165 votes whereas the Election Petitioner had obtained only around 1700 votes. He had not heard the name of Santosh Hembram (i.e. the petitioner) before election campaign or after the election campaign.

67. During cross-examination, he admitted to be a volunteer of JMM and resident of village Manihari, Booth No.209.

On being shown Exhibit-1 (i.e. the pamphlet with photograph of respondent and Serial No.16 NOTA) he stated that he had not seen any such Purcha during election campaign and admitted that it contains photograph of respondent and Serial No.7 is mentioned. On being further shown Exhibit-01 by the learned counsel for the petitioner, he stated that he is not aware of Hindi and English and he is not aware that NOTA is mentioned at Serial No.16 of said

Exhibit-01. Although he had admitted that at Serial No.7 the name of respondent-Rabindra Nath Mahto is mentioned on the same Exhibit-01.

He remained at Booth No.209 on the date of voting from 9.00 a.m. till 4.00 p.m. but he was not the election agent of JMM. He had casted vote between 8.30 a.m. to 9.00 a.m in the election of 2019. There was no arrangement for sitting at the booth on the Voting Centre by his party (i.e. the JMM). He is not aware of name of Santosh Hembram (i.e. the petitioner) even after institution of this election petition.

68. Thus, from scrutinizing the evidence of R.W-1, it is evident that he is a volunteer of JMM party and has denied the printing and distribution of Exhibit-01 (i.e. the pamphlet by the Respondent) during the election and he has supported the case of the Respondent. However, during cross-examination, although he admitted that the name of the respondent-Rabindra Nath Mahto with photo is mentioned at Serial No.7 of said Exhibit-01 at para 12 of his cross-examination, but in para-13 of his cross- examination, he again stated that he is not aware of Hindi and English and also not aware that NOTA is mentioned at Serial No.16 of the same Exhibit-01 when it was shown to him by the learned counsel for the petitioner. He also admitted to have arrived for evidence under the instruction of the respondent-Rabindra Nath Mahto.

Thus, R.W-1 is a formal witness although he has supported the case of the Respondent.

69. R.W-2 is Jaydhan Hansda who is the resident of Nala Assembly Region and also Block Secretary of Nala Block of Nala Assembly Region of JMM and stated that the Respondent Rabindra Nath Mahto was authorized candidate of JMM for the Assembly Election of the year 2019 and he used to remain with him during the election campaign and there were several candidates in the said election.

On being shown earlier Exhibit-01 by the learned counsel for the respondent to the witness, he stated that such Pucha i.e. Exhibit-01 was never distributed by them and he is seeing this Exhibit-01 for the first time. He denied the claim of the election petitioner that such pamphlet (Exhibit-01) was being distributed in his village on 16.12.2019 neither by the him nor by any volunteer. The claim of the petitioner is wrong that such pamphlet (Exhibit-01) had been distributed by the respondent-Rabindra Nath Mahto during his election campaign.

70. During cross-examination, he stated that he used to campaign in the election by Mike and had held meeting at different places with the people. However, he is not aware as to whether they had campaign during election by poster, banner and handbill or not. He was in his house on 16.12.2019 and had not gone anywhere for campaign. He is permanent resident of the village and identifies all people of his village and also identifies one Umesh Murmu (i.e. P.W-2) belongs to his village.

He asserted that he was not doing election campaign on 16.12.2019 as his wife was restless and she was suffering from Kidney disease and hence he had not gone for election campaign.

On being shown again Exhibit-1 by the learned counsel for the petitioner, the witness admitted that name of Sri Rabindra Nath Mahto (i.e. the respondent) is mentioned at Serial No.7 and NOTA is mentioned at Serial No.16 of said Exhibit-1.

He was informed by Rabindra Nath Mahto (i.e. the respondent) about six (06) months ago for giving evidence in this case. He shows unawareness about printing of number of posters by the respondent Rabindra Nath Mahto for election campaign through JMM.

He is unaware with this Exhibit-01 was got printed by JMM party.

71. Thus, from scrutinizing the evidence of R.W-2, it would appear that he is the Block Secretary of Nala Block during election campaign during 2019 Assembly election by the Respondent. He admitted that Serial No.16 reveals NOTA whereas Serial No.7 contains the name of the Respondent-Rabindra Nath Mahto. He admitted to be aware of his villager Umesh Murmu (i.e. P.W-2) who had made specific complaint against this witness-Jaydhan Hansda that he was distributing pamphlet (i.e. Exhibit-01) during election campaign of the Respondent. Although he had denied flatly that on 16.12.2019 he had not gone outside house for election campaign.

Thus, from the evidence of R.W-2 it is evident that he has refuted the assertion of the petitioner i.e. P.W-1 and P.W-2-Umesh Murmu.

72. R.W-3 is Binod Raut, who stated during evidence that he lives in Nala region and is a volunteer of JMM party and he had worked for 5-6 days with Rabindra Nath Mahto during the election campaign and the election was held on 20.12.2019. He was agent on the date of voting and his role was to make the people aware of voting and he was outside the booth situated at Primary School, Patanpur and had remained there from 7.00 a.m to 6.00 p.m.

On being shown Exhibit-01 by the learned counsel for the respondent, he stated to have not seen such document earlier. He denied that Exhibit-01 (i.e. the Pamphlet) was being distributed by the respondent on the date of voting. No candidate was present before him on the date of voting and there were about 450 voters at his booth.

On being shown earlier Exhibit-02 by learned counsel for the respondent, the witness stated that neither such person was there nor any person of JMM was in his booth. His candidate had received more than sixteen thousand votes.

73. During cross-examination, he stated that apart from him, 2-3 other agents were present at his Booth No.91 at Patanpur. He admitted that village Baghmara is adjacent to his village and JMM volunteer Mani Shankar Mahto is volunteer of JMM at Bghmara

village but he is not aware that volunteer namely Binod Jha is associated with JMM party or not. He was at a distance of 150 Meters from the booth on the date of voting during the election. He was made booth agent by respondent-Rabindra Nath Mahto but he does not remember whether he had filled up any form or not for the said work.

On being shown formats of Form-8 (application for correction to particulars entered in electoral roll), Form-10 (appointment of polling agent) and Form-18 (under rule 31 Election Commission of India, claim of inclusion of name in the electoral for Graduate's constituency) he shows unawareness and said forms have been marked for identification as Y, Y/1 and Y/2 respectively. He further admitted to be present at a distance of approx. 150 Meters from the booth on the date of voting during the election and because there was one another polling agent near his polling booth and on the date of election several people were going to the second booth also apart from his booth and therefore, in order to make them aware he was at a distance of 150 Meters from the booth. However, he had not asked to any voter as to whom they have to give vote to which party. He admitted that respondent-Rabindra Nath Mahto had asked him to become his booth agent but he is not aware as to by whom he had been made the booth agent.

He was sitting on Dari (i.e. Mattress) on the date of voting and he was keeping the flag of the party and he was having the Voter List. However, he had not kept the handbill. He is acquainted with the respondent candidate Rabindra Nath Mahto for the last 20 years. He asserted to have not done any work from the MLA fund of respondent-Rabindra Nath Mahto.

74. Thus, from scrutinizing the evidence of R.W-3-Binod Raut, it would appear that he has supported the case of the Respondent and he claimed to be simple volunteer of JMM party. However, he remained present throughout on the date of voting from 7.00 a.m. to 6.00 p.m. on 20.12.2019 with the Voter list of his booth and was sitting at a distance of approx 150 Meters to make the people aware of not only his booth but also regarding other booth which was adjacent to his booth and he was making the people aware.

75. R.W-4 is Sadhu Charan Mahto who admitted to be a volunteer of JMM and has got connection with JMM party. He had worked for his party candidate Rabindra Nath Mahto (i.e. the respondent) in Assembly Election 2019 which was held in December 2019. He has also done the election campaign by Mike through the Bicycle but he had not distributed any paper etc. He stated and asserted that his party had neither distributed pamphlet or handbill.

On being shown Exhibit-1 by the learned counsel for the respondent, the witness stated that he had not seen this Exhibit-1 or any paper like it since before. He had denied that this Exhibit-1 (pamphlet) was distributed by his candidate Rabindra Nath Mahto or by any volunteer of JMM. The respondent-Rabindra Nath Mahto had been declared elected from Nala Assembly Election in the year 2019 and had secured more than Sixty Thousand votes. He was

outside Manjhladih booth on the date of election and on that day none of the candidate had arrived at his booth.

76. During cross-examination, he stated that he is not in any post of JMM but he was asked by the candidate for making his election campaign. He used to go regions of Manjhaladih Middle School Booth, Patnapur Booth and Fatehpur Booth for election campaign but he was not paid any expenditure by the candidate for such campaign. He had not gone to campaign by taking any handbill and he used to campaign by Mike and people were aware that he was campaigning for JMM party.

He also stated that neither his candidate nor any volunteer of JMM had distributed any handbill.

On the date of polling, he was at a distance of 100-150 Meter outside the booth and he remained there till 2.30 p.m. In para 16 and 17, he stated that he used to inform people for giving vote to his candidate Rabindra Nath Mahto (i.e. the respondent) for JMM and he knows only two candidates namely Rabindra Nath Mahto and Satya Nath Jha. No candidate of any party had arrived at his booth on the date of election. He is not aware about number of candidates who had contested said election.

On being confronted by the learned counsel for the petitioner as to how he claimed that no candidates had arrived at his booth, when he identifies only two candidates, the witness gave evasive reply by stating that no candidate had arrived at the booth.

He also stated to have come to give evidence on the instruction of his candidate Rabindra Nath Mahto and he is doing agricultural work.

77. Thus, from scrutinizing the evidence of R.W-4, it would appear that he has flatly denied the distribution of Exhibit-1 (i.e. the pamphlet) by any JMM volunteer or by any person. However, during cross-examination, he admitted that he was present outside the booth at the distance of 100-150 Meters on the date of polling from the booth till 2.30 p.m and he used to influence the people i.e. the villagers for giving vote in favour of the respondent- Rabindra Nath Mahto for JMM.

78. R.W-5 is Manoranjan Hansda, who stated during evidence that he had worked as volunteer of JMM during Assembly Election of the year 2019 and he used to make election campaign by taking flag through his Bicycle. He had not distributed any pamphlet or flag. His party had also not distributed any pamphlet or handbill. Assembly Election was held on 20.12.2019 and he had also cast his vote at Primary School, Jaspur in the booth at around 12.00 noon but he had returned at around 2.00 p.m.

On being shown Exhibit-01 by the learned counsel for the respondent, the witness stated that he had not seen any such paper earlier.

He further stated that no papers like Exhibit-1 or pamphlet or handbill were distributed by any person of JMM. It will be wrong to say that such pamphlet was distributed in his village.

79. During cross-examination, he stated that he is volunteer of JMM for last 20 years but he is not on any post and he is acquainted with JMM candidate for last 20 years. He has come to give evidence on the instruction of Respondent-Rabindra Nath Mahto in this case, who had arrived in his village. Sometimes, he used to attend meeting of JMM. Shyam Lal Hembram is a District President of his party. He used to make campaign by Bicycle in his village and had made campaign for 8-10 days prior to election and no Mike was fixed at his Bicycle. He had not seen any handbill of his party during election campaign.

80. Thus, from scrutinizing the evidence of R.W-5, it would appear that he is a formal witness and he has given evidence under the instruction of respondent Rabindra Nath Mahto who had arrived at his village for instructing him to give evidence in this case.

81. R.W-6 is Musuhy Marandi who stated during his evidence that last election was held on 20.12.2019 and in that election he asserted he along with JMM cadre people used to campaign at his village Jabardaha. He along with his friends used to make/propagate election campaign by taking flag and he is aware of all persons of his village. However, he identifies only those volunteers who had worked with him.

He is not aware of the volunteers namely Ramdeo Soren and Much Marandi. He used to campaign by taking flag and sitting with the respondent and the Respondent-Rabindra Nath Mahto is a good person.

On being shown Exhibit-01 by the learned counsel for the respondent, the witness stated that he had not seen this pamphlet (i.e. Exhibit-01) like document earlier. It will be wrong to say that pamphlet like this Exhibit-01 was distributed in his village on any date. He had casted his vote on 20.12.2019 at his village and he had not seen any document or pamphlet like Exhibit-01 (i.e. the pamphlet). His candidate was declared elected in the election on 20.12.2019 and he had secured more than sixty one thousand (61,000) votes.

82. During cross-examination, he stated that that he used to do election campaign by Bicycle with his friends and they used to say that respondent-Rabindra Nath Mahto is a good person. He is volunteers of his party (i.e. JMM) and used to campaign by Bicycle and his party has not distributed Handbill, Poster and Mike.

83. Thus, from scrutinizing the evidence of R-W-6, it is evident that he is a formal witness and he is a volunteer of JMM party and who had participated in the election campaign of the respondent.

84. R.W-7 is Kali Pada Murmu, who stated during evidence that he is simple volunteer of JMM party. The respondent-Rabindra Nath Mahto was his party candidate and he

had made election campaign in his village Jabardaha for him and not at any other place. Neither he had distributed any pamphlet or poster nor any volunteer had distributed any paper and pamphlet.

On being shown Exhibit-01 by the learned counsel for the respondent, the witness stated that he had not seen any such pamphlet. He asserted to be in village from 15.12.2019 to 19.12.2019 and during said period he had not seen document like this Exhibit-01 in the village. The voting was held on 20.12.2019.

He denied that any pamphlet like Exhibit-01 was distributed by his party candidate or by any volunteer during election campaign.

85. During cross-examination, he stated to be acquainted with the respondent Rabindra Nath Mahto since last twenty (20) years. His party used to make election campaign through Bicycle and flag. However, he is not aware that his party used any other medium during election campaign. He used to see campaign with the respondent Rabindra Nath Mahto, who is a good person. He has come for evidence on the instruction of the respondent.

86. Thus, from scrutinizing the evidence of R.W-7, it would appear that he is a formal witness and he has appeared before this Court on the instruction of the respondent and he has mainly denied distribution of pamphlet (i.e. Exhibit-01) by the respondent or any volunteers of JMM party.

87. R.W-8 is Sona Yadav who is a businessman. However, he stated during his evidence that he is a simple volunteer of JMM party and lives in Nala Assembly Region. He had done election campaign for his party candidate Rabindra Nath Mahto. He had made election campaign for the party at the village Jhantipahari, Jaspur, Nala and Sundarpur by putting flag of his party on the Motorcycle but he had not distributed any pamphlet or poster. His party has not distributed any pamphlet or poster. He had gone to village Jhantipahari for election campaign on 14.12.2019 and 15.12.2019 respectively.

On being shown Exhibit-01 by the learned counsel for the respondent, the witness stated that he had not seen the document like Exhibit-01 earlier and he had also not seen this Exhibit-01 or any such paper earlier also. He has passed B.A and B. Ed.

He stated that any person can complain regarding wrong poster or pamphlet for violating Model Code of Conduct through C-Vigil and such person can upload his photo, video, audio at the time of making complain and its solution was to be done within hundred (100) minutes. He was at his booth on the date of election and his candidate had secured more than sixty one thousand (61,000) votes.

88. During cross-examination, he stated to be associated with JMM for last 10-12 years but he is not on any post. He used to make campaign by putting flag on his Motorcycle but he had not taken any permission from Election Commission.

On being confronted by the learned counsel for the petitioner for pointing out the name of candidate at a particular serial number, the witness stated that he does not remember as to whether he used to say during campaign that the name of the candidate of his party is mentioned on which serial number of the EVM Machine.

His party has not got printed any dummy handbill during election period.

He had not uploaded any complain through the medium of C-Vigil.

He had obtained information regarding C-Vigil through the medium of paper or also through the website of Election Commission.

He was also present on the date of voting at his booth and he was sitting at a distance of 150 Meters from the booth.

89. Thus, from scrutinizing the evidence of R.W-8, it would appear that he is a volunteer of JMM although he is a businessman and he had also participated in the election campaign for Jhantipahari, Jaspur, Nala and Sundarpur. However, he was present at a distance of 150 Meter from the booth on the date of voting.

90. R.W-9 is Rabindra Nath Mahto i.e. the Respondent himself, who is the Returned candidate of Nala Assembly Election, 2019 and presently Speaker of Jharkhand Vidhan Sabha.

R.W-9 during his evidence stated that he had contested election from Nala Assembly Constituency as a candidate of Jharkhand Mukti Morcha and he was declared elected in the said election of 2019. He was a candidate of Jharkhand Mukti Morcha (i.e. J.M.M). He was working on different post of the party prior to becoming Speaker of Jharkhand Vidhan Sabha, and after being declared Speaker he had relinquished those posts. He had secured more than sixty one thousand (61,000) votes in the election of 2019 and voting was held on 20.12.2019.

He is contesting election as party candidate of Jharkhand Mukti Morcha from the year 2000. He had won three elections but had lost in two elections. He had won the election in the year 2005 to 2009 however, he lost in the year 2009 to 2014. He had won the election in the year 2014 and in the year 2019. His election region is Nala, which is a general seat. There is general concept that candidate of all sections/castes and caste can contest on the General Category seat for the general candidate. There were fifteen (15) candidates also apart from him in the election of the year 2019 and four (04) candidates of Scheduled Tribes had also contested the election of 2019. Kanhai Chanddra Malpaharia, Pushpa Soren, Mahadeo Kisku and Santosh Hembram (i.e. the election petitioner) were candidates of Schedule Tribe.

91. On being shown Exhibit-01 by the learned counsel for the respondent, the witness stated that he is not aware of this paper. He asserted that paper like this Exhibit-01 or other pamphlet were not prepared by him. He asserted that election petitioner is wrong to contend that Handbill or any other paper like Exhibit-1 were distributed by him (i.e. R.W-9) or

volunteers of his party. (Exhibit- 01 is the poster showing photograph of respondent-Rabindra Nath Mahto and his name appears at Serial No.7 whereas Serial No.16 refers the name of election petitioner-Santosh Hembram but the word NOTA is printed against Serial No.16).

On being shown Exhibit-02 by the learned counsel for the respondent (which was exhibited on behalf of the petitioner), the witness stated that he is not aware of the picture of the person on this Exhibit-02 and he neither knows them nor he identifies them. (Exhibit-02 is the photograph downloaded from the mobile of the petitioner revealing the picture of persons. He further stated that petitioner is wrong to contend that people shown him Exhibit-02 were the volunteers of JMM party.

He was at his residence on the date of voting and had gone to the booth to cast his vote and he returned to his home after casting his vote in the booth which was situated at Primary School, Patanpur, Patnapur Village. He denied that pamphlet like Exhibit-01 or papers were being distributed by him or by the volunteers of his party at Patanpur booth.

He denied the contention of the petitioner that paper like Exhibit-01 or pamphlet were being distributed by himself or by the volunteer of his party at village Jaspur on 16.12.2019.

92. He further stated that the petitioner has incorrectly contended that his party volunteers Ramdeo Soren and Much Marandi were distributing certain pamphlet like Exhibit-01 at village Jabardaha.

He has knowledge that several precautionary measures are being carried out by the Election Commission for doing any wrong in the election so that people may not commit wrong or people may institute complaint at concerned place in case of wrong being done and the same are being dealt with.

He further stated that Election Commission of India had launched one App namely C-Vigil for the election of 2019 and in which a team arrives at every short period of time in case of filing of any complaint and veracity of complaint is being investigated and there is provision for taking action. Thereafter there is a Flying Squad Team and even photography is being done by the Video Surveillance Team and also by M.C.M.C body which monitors the Election. Apart from this, there is a team of local police and team of Central Government and there is a team for investigating the financial issue.

He is not aware as to whether election petitioner had got the matter investigated by any team for the wrongful acts/malpractice with regard to Exhibit-01 (i.e. pamphlet).

He had got his banner, poster and flag printed on 06th December for his election campaign.

There is a column 'NOTA' below the names of all the candidates in EVM as per his knowledge. Approx 600 votes were casted in NOTA in the said election. He has done his

election campaign by holding meeting, public relation, through the Motorcycle, Cycle and permitted Vehicle by the Mike.

93. During cross-examination, he could not say the exact date of filing the nomination paper after announcement of election. However, he was allotted symbol on 6th December and the election was held on 20.12.2019. He was authorized candidate of Jharkhand Mukti Morcha party and his party is a regional party and election symbol of his party is 'Bow' and 'Arrow'. He was declared authorised candidate of party on 06.12.2019 after scrutiny of all candidates at district level.

On being shown Document-X by the learned counsel for the petitioner, the witness states and admits that such paper is received by them.

On being shown Document-X/2 by the learned counsel for the petitioner, the witness stated that his name is mentioned at Serial No.7 and his address and election symbol of his party are written and this paper was probably received by him on 06.12.2019.

On being shown Document-X/2, the witness states that Serial No.16 refers the name of Santosh Hembram, an independent candidate and his election symbol is 'Balla' (i.e. Bat).

He admits that he had got prepared poster, banner and flag during the election.

His Nomination Paper was taken away by the election agent through his learned counsel but he does not remember as to whether his election agent had handed over which papers. He also states that several papers are received including the book and he also received a thick Handbook along with the papers.

Neither he nor his party nor by Election Agent, got printed any dummy ballot paper.

Voter Felicitation Paper are being affixed on every booth by Election Commission and Voters are being made aware of all the Candidates and the voters cast vote on seeing the above papers of the respective candidates.

On being confronted on the photograph of person in Exhibit- 02, who are said to be volunteers of his party, the witness stated that he is not aware of persons whose names are shown in the photograph of Exhibit-02.

He had not gone to village Jabardaha during the entire election campaign.

He got his poster, banner from the place of Ranchi through 'Bharat Traders' press.

He learnt in the month of July 2022 through the newspaper that the Election Petitioner has filed a case against him and thereafter he had received the notice of the Court.

He had not made any complaint against the election petitioner before the Election Commission.

Thus, from scrutinizing the evidence of R.W-9, it is evident that he was Returned Candidate of 08-Nala Assembly Constituency and he has denied the printing and distribution of paper like pamphlet (Exhibit-01).

94. R.W-10 is Shravan Kumar Yadav, who stated during his evidence that he is resident of Nala Assembly Election Region and he has connection with Jharkhand Mukti Morcha party as a general volunteer and the respondent-Rabindra Nath Mahto was his party candidate in the said election. He had also made election campaign with Rabindra Nath Mahto in his favour. He is also voter of Upgraded Middle School, Murabaha village for voting. He had accompanied with the Respondent in the election campaign.

He also made election campaign at his Panchayat Khamarabad by putting flag in his Bicycle.

On being shown Exhibit-01 by the learned counsel for the respondent, the witness stated that he had not seen such paper during election campaign. His village is situated at a distance of 5-6 Kilometer from the village, Patanpur. He identifies all volunteers of his party as he is a volunteer of Jharkhand Mukti Morcha party.

On being shown Exhibit-02 by the learned counsel for the respondent, the witness stated that the persons as shown in the photograph mentioned in said Exhibit-02, are not the volunteers of his party and it would be wrong to say that the persons shown in Exhibit-02 were the volunteers of Jharkhand Mukti Morcha party.

He is aware of lodging complaints through C-Vigil App, if any irregularity/misconduct is found during the election. He stated that C-Vigil is an App and any person can download on its mobile and even people can complain Election Commission, Jharkhand through C-Vigil medium, if any irregularity/malpractice are found and Election Commission acts promptly upon it. Rabindra Nath Mahto (i.e. the respondent) had won the election of 2019. He is aware of petitioner Santosh Hembram for the last 3-4 months and he was also a candidate in the said election and had got around 1700 votes during the said election.

95. During cross-examination, R.W-10 stated that he is associated with Jharkhand Mukti Morcha party since last 18-19 years and normally District In-charge is responsible for election campaign. Being member of the party, he also used to make election campaign. However, he had not taken any expenses from his party during the election campaign. He is not aware of number of votes to any candidates who had contested the 2019 Assembly Election from his region but he is aware of vote of his party. He has come to give evidence in this case on the instruction of respondent-Rabindra Nath Mahto.

96. From scrutinizing the evidence of R.W-10, it is evident that he is a formal witness and he has been brought by the respondent to deny the photographs of people found and shown on Exhibit-02 and also to deny the publication of pamphlet (i.e. Exhibit-01) by the

Jharkhand Mukti Morcha party or by the Respondent.

Thus, the evidence of R.W-10 is simply a formality.

97. R.W-11 is Ashok Kumar Mahto, who claims to be an agriculturist. However, during evidence, he stated that he is President of Fatehpur Block of Jharkhand Mukti Morcha for the last two years and he is a volunteer of JMM for the last several years. He had worked for the respondent during 2019 Assembly Election from Nala Assembly Constituency and who was candidate of his party.

He further admitted to have worked as an Election Agent for the Respondent in the year 2019 and he used to do all the works of the respondent as being his Election Agent. 08 Nala Assembly Constituency is a seat of general candidate and it is not a reserved seat. However, any person of any community/caste and even the persons of Scheduled Castes and Scheduled Tribes can appear to contest election on general seat of Assembly Constituency. He has also named four persons namely Kanhai Chandra Malpaharia, Pushpa Soren, Mahadeo Kisku and Santosh Hembram. Apart from his candidate, fifteen (15) other candidates had also contested the 2019 election.

He further stated that he had got printed the poster, banner and flag for his party candidate Rabindra Nath Mahto.

98. On being shown Exhibit-01 by the learned counsel for the respondent, the witness (i.e. R.W-11) stated that he had not seen this paper earlier and it will be wrong that this Exhibit-01 were got printed by him or by party or by any candidate. He used to move some time for election campaign. His Booth No.79 is situated at Upgraded Middle School, Village-Murabahr.

He had casted his vote on the date of voting. He claimed to identify most of the volunteers of JMM.

On being shown Exhibit-02 by the learned counsel for the respondent, the witness stated that he does not identify the person shown in Exhibit-02. He stated that there is provision for making complaint, if any irregularity/malpractice is found during the election and this matter was informed to all the candidates during the meeting. Even the general voters were made aware to make complaint in case of finding of any malpractice/irregularity. Even complaint can be made through mobile for which one App was launched but he does not remember its name but there was a provision that in case of finding any irregularity, a person can snap photo from his mobile or through his photography and can institute the complaint. Upon institution of complaint, there was provision of solving the same in hundred (100) minutes.

99. He further stated that Sector Magistrate was deputed for watching the irregularity

on the date of election and they were assigned to watch the booth in around half an hour to one hour. If any party was doing wrong then they could have seen that. Respondent-Rabindra Nath Mahto was declared elected and he had secured more than Sixty One Thousand (61,000) votes. He is aware of NOTA and approx 601 votes were casted for NOTA.

He got the banner, poster printed of his party candidate from

'Bharat Traders', Ranchi Press. He used to maintain concerned cost relating to candidate during election.

He got written the details of cost and expenditure during election by which printing were done from 'Bharat Traders' Ranchi, and its detail were mentioned in Expenditure Register. This said Expenditure Register was handed over to him by the Returning Officer and he has mentioned all details as election expenditure.

He is a volunteer of JMM party for the last 20-22 years and prior to becoming Block President of the party, he was an active volunteer of party and he became Block President two years ago. He reiterated that he was Election Agent of the respondent in the year 2019 Nala Assembly Constituency Region. He was given Form-8 by the party candidate Rabindra Nath Mahto for becoming the election agent. The candidate had spent approx 12 Lakhs in the year 2019 election.

However, he has not got printed pamphlet of his candidate but he got printed flag and banner but not a single hoarding was prepared. He had made expenditure of approx one lakh in printing and the said Rs.One lakh was paid to the Jharkhand Rajya Gramin Bank, Mohnabad through the RTGS. Bharat Traders is situated in Ranchi.

He had informed the Election Commission regarding the complaint but he could not say the date of such information that they had not printed any dummy ballot paper from the side of the candidate.

On being shown Exhibit-01 by the learned counsel for the petitioner, the witness stated that he had not seen said Exhibit-01 (i.e. handbill). On being further shown Exhibit-01, the witness stated that he is not aware of printing press mentioned in it.

His candidate Rabindra Nath Mahto had won by approx four thousand and above votes.

100. Thus, from scrutinizing the evidence of R.W-11, it is evident that he was the Election Agent of the Respondent during Nala Assembly Election 2019 and he had got printed the banner, poster and flag from 'Bharat Traders' Press, Ranchi. However, he flatly denied about Exhibit-01 and Exhibit-02.

101. R.W-12 is Dayamay Ghosh, who stated during evidence that election was held in Nala Assembly Constituency in December, 2019 on 20.12.2019. He is a general volunteer of Jharkhand Mukti Morcha party and he had done election campaign by putting flat on his Bicycle. The respondent-Rabindra Nath Mahto was his party candidate, who was

elected and won the Nala Assembly election and had got more than sixty thousand (61,000) votes.

On being shown Exhibit-01, the witness stated that he had not seen this Exhibit-01 or any paper like this during his entire election campaign. Neither he nor any volunteers of his party had distributed any paper or parcha like Exhibit-01. He had done election campaign for around 8-10 days. He is not aware of election petitioner of this case and not aware of the votes secured by him.

102. During cross-examination, he stated that he is associated with the party for the last 8-10 years and he was made Volunteer by the Committee of the Party. He is not aware of the expenditure incurred in preparing flag of the party. He used to campaign through his Bicycle. He is also not aware as to how many materials were got printed by his party during the election. He has come to give evidence on the instruction of Rabindra Nath Mahto (i.e. the Respondent).

103. Thus, from scrutinizing the evidence of R.W-12, it is evident that he is a formal witness and he has come merely to give evidence on the instruction of the respondent and he appears to be a volunteer of the party of the respondent. He has been brought only to deny the existence of the Exhibit-01.

104. It would appear that thereafter the Respondent had filed another I.A. No.5526 of 2024 on 10.06.2024 for calling the incomplete or remaining documents from the office of the District Election Officer-cum-District Commissioner, Jamtara and the learned AAG-III had filed reply to the said I.A. No.5526 of 2024 and had informed that three envelopes i.e. Envelop-A, B and C have been produced in a sealed cover.

105. The respondent had also earlier filed I.A. No.1831 of 2024 on 19.02.2024 to call for documents mentioned in Annexure-A series on record and Annexure-B series from the office of District Election Officer-cum-District Commissioner, Jamtara.

However, this Court vide order dated 23.04.2024 allowed the I.A No.1831 of 2024 in part and had allowed to call for final result sheet in Form-20 of general election, which is mentioned at Serial No.(ii) of Annexure-A only. Further this Court in order to give opportunity to the respondent to lead evidence in his defence allowed certain documents to be called for in this case, which are as follows:-

"Document at Serial No. 4 is the Voter facilitation posters and their details as displayed by the District Election Officer-cum- 4 Deputy Commissioner, Jamtara, especially in the Polling Stations mentioned in the instant Election Petition.

Document at Serial No. 5 is the Complaints received through the "cVIGIL" Application from the Office of the District Election Officer-cum-Deputy Commissioner, Jamtara. Document at Serial No. 6 is the Complaint received

by Flying Squad constituted by District Election Officer-cum Deputy Commissioner, Jamtara for monitoring of the Model code of conduct, Electoral Offence, campaign by contesting candidate/political parties in Nala (08) Assembly Constituency especially in light of the averment made in the instant Election Petition.

Document at Serial No. 7 is the Complaint received by Sector Magistrate appointed by District Election Officer for monitoring of poll and during vulnerability mapping in Nala (08) Assembly Constituency especially in light of the averments made in the instant EP.

Document at Serial No.10 is the Report of Sector Magistrate inspection done before poll especially in booths of Jhatipahari, Jabardaha and Jaspur as mentioned in the instant EP.

Document at Serial No.12 is the The Presiding Diary of polling Stations of 91 and 92 along with Visit Sheet of the said Polling Stations."

106. It further transpires that the date of this case was fixed on 08.05.2024. However, I.A. No.4652 of 2024 was filed on behalf of the District Election Officer-cum-Deputy Commissioner, Jamtara for 30 days' time for complying with the order dated 23.04.2024.

107. This Court vide order dated 08.05.2024 had called explanation from concerned Assistant Registrar, Section Officer and Dealing Assistant of High Court for sending the order by FAX on 30.04.2024 though the order was passed on 23.04.2024.

108. This Court had also called for explanation from the Deputy Commissioner, Jamtara for not producing the document in the light of the order dated 23.04.2024 passed by this Court.

109. Pursuant to this order, the Deputy Commissioner, Jamtara appeared in person on 16.05.2024 and filed the show cause and tendered unqualified and unconditional apology and thereafter the learned AAG-III had filed seven (07) sealed envelopes in the light of the order dated 23.04.2024 except the document mentioned at Serial No.5 i.e. C-Vigil application. Thereafter the parties were directed to inspect the documents in the chamber of the learned Joint Registrar (Judicial) of the High Court and the case was fixed on 12.06.2024 after Summer Vacation. Thereafter the matter was fixed on 12.06.2024.

110. However, the Respondent again filed I.A. No.5526 of 2024 for calling the incomplete or remaining documents from the office of the District Election Officer-cum-District Commissioner, Jamtara and the learned AAG-III took time to verify the prayer made in I.A. No.5526 of 2024 and on 20.06.2024 the learned AAG-III produced three (03) envelopes i.e. Envelop-A, B and C respectively in the sealed cover and this Court had further directed the Deputy Commissioner, Jamtara for producing the further necessary documents.

111. It was also pointed out by the learned AAG-III before this Court on 20.06.2024 that the documents mentioned at Serial No.4, 5 and 6 of the tabular chart of the reply dated

19.06.2024 have not been submitted by Sri Surendra Kumar then Returning Officer, 08 Nala Assembly Constituency.

112. It further transpires from the order dated 13.08.2024 that then Returning Officer, Surendra Kumar could not produce several documents and an affidavit was filed on behalf of the Deputy Commissioner, Jamtara on 19.06.2024 and 05.07.2024 and it was pointed out that several documents could not be found in the Strong Room in the office of the Deputy Commissioner, Jamtara and for which direction was issued to Sri Surendra Kumar, then Returning Officer to locate the same. However, the Returning Officer Surendra Kumar by an affidavit dated 12.07.2024, which was filed on 20.07.2024, had enclosed copies of remaining available documents instead of original documents. Sri Surendra Kumar, i.e. P.W-3 by affidavit dated 12.07.2024 and 20.07.2024 had pointed out that those certain documents could not be located earlier and hence he has produced the photo copies of those documents.

113. Thereafter the documents were inspected by both the sides in the Chamber of Joint Registrar (Judicial) on 22.08.2024.

Not satisfied with the above and the State filed another I.A. No.9043 of 2024 under Section 151 CPC on 27.08.2024 for submitting two documents i.e. Annexure-C and Annexure-D and vide order dated 27.08.2024 this Court had allowed I.A. No.9043 of 2024 again learned counsel for both the sides were permitted to inspect the documents in the Chamber of Joint Registrar (Judicial) on 28.08.2024.

114. The respondent filed I.A. No.9465 of 2024 for marking the documents (on admission) of both the sides and which was allowed on 03.09.2024 with the consent of both the sides, by this Court and the documents i.e. Exhibit-A, Exhibit-B to B/9 respectively, Exhibit-C, Exhibit-D to D/14 respectively, Exhibit- DD-I, Exhibit-DD-II and also Exhibit-DD-III, Exhibit-DD-IV and Exhibit-DD/V, Exhibit-E, Exhibit-E/I, Exhibit-E/II, Exhibit-E/III respectively, Exhibit-F series, Exhibit-G and Exhibit-G/I series and Exhibit-H and Exhibit-H/I respectively were marked (on admission) by both the sides and the evidence of the respondent was closed and the case was fixed for argument.

115. At this stage, it is relevant to refer Sections 86, 87, 100 123, 127A, 129, 130, 134 and 134A of the Representation of the People Act, 1951, which are as follows:-

"86. Trial of election petitions.—(1) The High Court shall dismiss an election petition which does not comply with the provisions of section 81 or section 82 or section 117.

Explanation.—An order of the High Court dismissing an election petition under this sub-section shall be deemed to be an order made under clause (a) of section 98.

(2) As soon as may be after an election petition has been presented to the High Court, it shall be referred to the Judge or one of the Judges who has or have been assigned by the Chief Justice for the trial of election petitions under sub-section (2) of section 80-A.

(3) Where more election petitions than one are presented to the High Court in respect of the same election, all of them shall be referred for trial to the same Judge who may, in his discretion, try them separately or in one or more groups.

(4) Any candidate not already a respondent shall, upon application made by him to the High Court within fourteen days from the date of commencement of the trial and subject to any order as to security for costs which may be made by the High Court, be entitled to be joined as a respondent.

Explanation.—For the purposes of this sub-section and of section 97, the trial of a petition shall be deemed to commence on the date fixed for the respondents to appear before the High Court and answer the claim or claims made in the petition.

(5) The High Court may, upon such terms as to costs and otherwise as it may deem fit, allow the particulars of any corrupt practice alleged in the petition to be amended or amplified in such manner as may in its opinion be necessary for ensuring a fair and effective trial of the petition, but shall not allow any amendment of the petition which will have the effect of introducing particulars of a corrupt practice not previously alleged in the petition.

(6) The trial of an election petition shall, so far as is practicable consistently with the interests of justice in respect of the trial, be continued from day to day until its conclusion, unless the High Court finds the adjournment of the trial beyond the following day to be necessary for reasons to be recorded.

(7) Every election petition shall be tried as expeditiously as possible and endeavour shall be made to conclude the trial within six months from the date on which the election petition is presented to the High Court for trial.

87. Procedure before the High Court.—(1) Subject to the provisions of this Act and of any rules made thereunder, every election petition shall be tried by the High Court, as nearly as may be, in accordance with the procedure applicable under the Code of Civil Procedure, 1908 (5 of 1908) to the trial of suits:

Provided that the High Court shall have the discretion to refuse, for reasons to be recorded in writing, to examine any witness or witnesses if it is of the opinion that the evidence of such witness or witnesses is not material for the decision of the petition or that the party tendering such witness or witnesses is doing so on frivolous grounds or with a view to delay the proceedings.

(2) The provisions of the Indian Evidence Act, 1872 (1 of 1872), shall, subject to the provisions of this Act, be deemed to apply in all respects to the trial of an election petition.

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

(a) that on the date of his election a returned candidate was not qualified, or was disqualified, to be chosen to fill the seat under the Constitution or this Act 5 [or the Government of Union Territories Act, 1963 (20 of 1963)]; or

(b) that any corrupt practice has been committed by a returned candidate or his election agent or by any other person with the consent of a returned candidate or his

election agent; or

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

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

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

(ii) by any corrupt practice committed in the interests of the returned candidate 6 [by an agent other than his election agent], or

(iii) by the improper reception, refusal or rejection of any vote or the reception of any vote which is void, or

(iv) by any non-compliance with the provisions of the Constitution or of this Act or of any rules or orders made under this Act, [the High Court] shall declare the election of the returned candidate to be void.]

[(2)] If in the opinion of [the High Court], a returned candidate has been guilty by an agent, other than his election agent, of any corrupt practice [***] but [the High Court] is satisfied—

(a) that no such corrupt practice was committed at the election by the candidate or his election agent, and every such corrupt practice was committed contrary to the orders, and [without the consent], of the candidate or his election agent;

* * * * *

(C) that the candidate and his election agent took all reasonable means for preventing the commission of corrupt practices at the election; and

(d) that in all other respects the election was free from any corrupt practice on the part of the candidate or any of his agents, then [the High Court] may decide that the election of the returned candidate is not void.

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 [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 [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 [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 [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)

(4)

(5)

(6)

(7)

(8)

127A. Restrictions on the printing of pamphlets, posters, etc.—

(1) No person shall print or publish, or cause to be printed or published, any election pamphlet or poster which does not bear on its face the names and addresses of the printer and the publisher thereof.

(2) No person shall print or cause to be printed any election pamphlet or poster—

(a) unless a declaration as to the identity of the publisher thereof, signed by him and attested by two persons to whom he is personally known, is delivered by him to the printer in duplicate; and

(b) unless, within a reasonable time after the printing of the document, one copy of the declaration is sent by the printer, together with one copy of the document,—

(i) where it is printed in the capital of the State, to the Chief Electoral Officer, and

(ii) in any other case, to the district magistrate of the district in which it is printed.

(3) For the purposes of this section,—

(a) any process for multiplying copies of a document, other than copying it by hand, shall be deemed to be printing and the expression "printer" shall be construed accordingly; and

(b) "election pamphlet or poster" means any printed pamphlet, hand-bill or other document distributed for the purpose of promoting or prejudicing the election of a candidate or group of candidates or any placard or poster having reference to an election, but does not include any hand-bill, placard or poster merely announcing the date, time, place and other particulars of an election meeting or routine instructions to election agents or workers.

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

129. Officers, etc., at elections not to act for candidates or to influence voting.—(1) No person who is 1 [a district election officer or a returning officer], or an assistant returning officer, or a presiding or polling officer at an election, or an officer or clerk appointed by the returning officer for the presiding officer to perform any duty in connection with an election shall in the conduct or the management of the election do any act (other than the giving of vote) for the furtherance of the prospects of the election of a candidate.

(2) No such person as aforesaid, and no member of a police force, shall endeavour—

(a) to persuade any person to give his vote at an election, or

(b) to dissuade any person from giving his vote at an election, or (c) to influence the voting of any person at an election in any manner.

(3) Any person who contravenes the provisions of sub-section

(1) or sub-section (2) shall be punishable with imprisonment which may extend to six months or with fine or with both.

[(4) An offence punishable under sub-section (3) shall be cognizable.]

130. Prohibition of canvassing in or near polling stations.—

(1) No person shall, on the date or dates on which a poll is taken at any polling station, commit any of the following acts within the polling station or in any public or private place within a distance of [one hundred metres] of the polling station, namely:—

(a)) canvassing for votes; or

(b) soliciting the vote of any elector, or

(c) persuading any elector not to vote for any particular candidate; or

(d) persuading any elector not to vote at the election; or

(e) exhibiting any notice or sign (other than an official notice) relating to the election.

(2) Any person who contravenes the provisions of sub-section (1) shall be punishable with fine which may extend to two hundred and fifty rupees.

(3) An offence punishable under this section shall be cognizable.

134. Breaches of official duty in connection with elections.—

(1) If any person to whom this section applies is without reasonable cause guilty of any act or omission in breach of his official duty, he shall be punishable with fine which may extend to five hundred rupees.

[(1A) An offence punishable under sub-section (1) shall be cognizable.]

(2) No suit or other legal proceedings shall lie against any such person for damages in respect of any such act or omission as aforesaid.

(3) The persons to whom this section applies are the 4*** 5 [district election officers, returning officers], assistant returning officers, presiding officers, polling officers and any other person appointed to perform any duty in connection with 6*** the receipt of nominations or withdrawal of candidatures, or the recording or counting of votes at an election; and the expression "official duty" shall for the purposes of this section be construed accordingly, but shall not include duties imposed otherwise than by or under this Act 4***.

[134A. Penalty for Government servants for acting as election agent, polling agent or counting agent.]—If any person in the service of the Government acts as an election agent or a polling agent or a counting agent of a candidate at an election, he shall be punishable with imprisonment for a term which may extend to three months, or with fine, or with both.]”

116. It is relevant to refer Rule 61 and Rule 323 of the High Court of Jharkhand Rules, which are as follows:-

"61. In administering oaths and affirmations to declarants the Commissioner shall be guided by the provisions of the Indian Oaths Act, 1873 (x of 1873) and the following forms shall be used:

Oaths

I swear in the name of God that this my declaration is true, that it conceals nothing and that no part of it is false.

Affirmation

I solemnly declare that this my declaration is true, that it conceals nothing and that no part of it is false.

323. Every election petition shall, immediately below the title, have endorsed on it "Election Petition" and shall, in addition to the grounds and date or dates specified in Section 81 and the contents required by Section 83 or any other section of the Act dealing with the presentation of such petitions, state-

- (a) the name and complete address of the petitioner;
- (b) the name and complete address with postal address of each person impleaded as respondents; and
- (c) the relief claimed."

117. It is further relevant to refer Rule 4, Rule 10, 12 and 13 and Rule 27-B, 27-C, 49(O) and Rule 92 of the **Conduct of Elections Rules, 1961**, which are as follows:-

"4. Nomination paper.- Every nomination paper presented under sub-section (1) of section 33 shall be completed in such one of the Forms 2-A to 2-E as may be appropriate:

Provided that a failure to complete or defect in completing, the declaration as to symbols in a nomination paper in Form 2-A or Form 2-B shall not be deemed to be a defect of a substantial character within the meaning of sub-section (4) of section 36.

[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.]

10. Preparation of list of contesting candidates.—(1) The list of contesting candidates referred to in subsection (1) of section 38 shall be in Form 7A or Form 7B as may be appropriate and shall contain the particulars set out therein and shall be prepared in such language or languages as the Election Commission may direct.

(3) If the list is prepared in more languages than one, the names of candidates therein shall be arranged alphabetically according to the script of such one of those languages as the Election Commission may direct.

(4) At an election in a parliamentary or assembly constituency, where a poll becomes necessary, the returning officer shall consider the choice of symbols expressed by the contesting candidates in their nomination papers and shall, subject to any general or special direction issued in this behalf by the Election Commission,—

(a) allot a different symbol to each contesting candidate in conformity, as far as practicable, with his choice; and

(b) if more contesting candidates than one have indicated their preference for the same symbol decide by lot to which of such candidates the symbol will be allotted.

(5) The allotment by the returning officer of any symbol to a candidate shall be final except where it is inconsistent with any directions issued by the Election Commission in this behalf in which case the Election Commission may revise the allotment in such manner as it thinks fit.

(6) Every candidate or his election agent shall forthwith be informed of the symbol allotted to the candidate and be supplied with a specimen thereof by the returning officer.

12. Appointment of election agent.—[(1) Any appointment of an election agent under section 40 shall be made in Form 8 and the notice of such appointment shall be given by forwarding the same in duplicate to the returning officer who shall return one copy thereof to the election agent after affixing thereon his seal and signature in token of his approval of the appointment.]

(2) The revocation of the appointment of an election agent under sub-section (1) of section 42 shall be made in Form 9.

13. Appointment of polling agents.—(1) The number of polling agents that may be appointed under section 46 shall be one agent and two relief agents.

(2) Every such appointment shall be made in Form 10 and shall be made over to the polling agent for production at the polling station or the place fixed for the poll, as the case may be.

(3) No polling agent shall be admitted into the polling station or the place fixed for the poll unless he has delivered to the presiding officer the instrument of his appointment under sub-rule (2) after duly completing and signing before the presiding officer the declaration contained therein.

27B. Special provisions for voting by the notified class of electors.—Notwithstanding anything contained in Part III, the provisions of this Part shall apply to a notified elector who wishes to vote by post at an election.

27C. Intimation by a notified elector.—A notified elector, who wishes to vote by post at an election shall send an application in Form 12-C to the Assistant Returning Officer

for the notified class of electors so as to reach him at least ten days before the date of the poll and on receipt of the intimation such Assistant Returning Officer shall issue a postal ballot paper to him:

Provided that an application which does not furnish complete particulars as required in Form 12-C may be rejected if such Assistant Returning Officer, despite making reasonable efforts, is not in a position to ascertain the requisite information:

Provided further that an application in Form 12-C without a certificate from the authorised officer as required under Part II of Form 12-C shall be rejected.

49-O. Elector deciding not to vote.—If an elector, after his electoral roll number has been duly entered in the register of voters in Form 17-A and has put his signature or thumb impression thereon as required under sub-rule (1) of rule 49-L, decided not to record his vote, a remark to this effect shall be made against the said entry in Form 17-A by the presiding officer and the signature or thumb impression of the elector shall be obtained against such remark.

92. Custody of ballot boxes and papers relating to election. —

(1) All ballot boxes used at an election shall be kept in such custody as the chief electoral officer may direct.

[(1A) All voting machines used at an election shall be kept in the custody of the concerned district election officer.]

[(2) The district election officer shall keep in safe custody—

(a) the packets of unused ballot papers with counterfoils attached thereto;

(b) the packets of used ballot papers whether valid, tendered or rejected;

(c) the packets of the counterfoils of used ballot papers;

[(cc) the printed paper slips sealed under the provisions of rule 57-C;]

(d) the packets of the marked copy of the electoral roll or, as the case may be, the list maintained under sub-section (1) or sub-section (2) of section 152;

[(dd) the packets containing registers of voters in Form- 17A;]

(e) the packets of the declarations by electors and the attestation of their signatures; and

(f) all other papers relating to the election:

Provided that in the case of an election in an assembly constituency or a parliamentary constituency or a council constituency which extends over more districts than one, the said papers shall be kept in the custody of such one of the district election officers having jurisdiction over the constituency as the Election Commission may direct:

Provided further that in the case of an election by assembly members the said papers shall be kept in the custody of the returning officer.]"

118. Both the issues are the crux of the matter and hence they are being taken together and tried simultaneously.

119. It has been pleaded in the plaint that the election of the sole Respondent/Returned Candidate is void under Section 100(1)(b) of the R.P. Act in view of the fact that the Returned Candidate and his election agent have committed corrupt practice by publication of materials to prejudice the prospects of the petitioner. It has also been stated that the petitioner could not obtain the certified copy of his nomination paper as well as nomination paper of all the candidates including the Returned Candidate. However, he obtained the downloaded all the nomination paper from the official website of the Election Commission of India. However, during the time of election, the sole respondent got printed handbills/pamphlets of specimen of EVM showing the name of all the contesting candidates and their position as given in Format-7- K. The sole respondent depicted his name, photograph and symbol of Serial No.7 and he also got deliberately printed the name of the petitioner at Serial No.16 with his name as Santosh Hembram.

The petitioner stated that he is a member of Schedule Tribe Community and 08-Nala Assembly Constituency consists of 32% of population belonging to Tribal Community. However, the Returned Candidate got printed/published handbills/pamphlets and it shows that NOTA is printed at Serial No.16 of said handbills/pamphlets. Even the Respondent and his agents got pasted these handbills on the places of the villages wherein Schedule Tribes Community reside in large number so that the Schedule Tribes people may not cast their vote in favour of the petitioner. It is also pleaded that the respondent has committed corrupt practices at village Jhantipahari, village Jaspur and village Jabardaha and got elected in 08-Nala Assembly Election. However, neither the Returning Officer nor other Election Official had taken cognizance of the conduct of the respondent.

120. Learned counsel for the petitioner has submitted that P.W-1 and P.W-2 namely Santosh Hembram and Umesh Murmu have fully supported the case of the election petitioner and they have stated that the respondent has committed corrupt practices and serious misconduct during election campaign of 08-Nala Assembly Election. It is submitted that Exhibit-01 is the pamphlet which shows that the name of the respondent is shown at Serial No.7 and the name of the petitioner is shown at Serial No.16 and the photographs of the sole respondent-Rabindra Nath Mahto got printed over it. Exhibit-02 is the downloaded photographs of the persons had taken the handbill/Purcha showing the photographs of some people who are the volunteers of sole respondent and set up the Jharkhand Mukti Morcha party. It is submitted that the evidence of R.W-1 to R.W-12 is not reliable. It is submitted that even the petitioner has filed Written Statement after delay of two years in the year 2022 whereas the election petition was filed in the year 2020. The evidence of R.W-1 to

R.W-12 respectively is not reliable as they are not truthful witnesses. It is submitted that the election of the Respondents is liable to be set aside even if the same is not affected by number of votes rather casting of single votes by deceitful means would render the election illegal. Even the complaint of the petitioner was not entertained by the Deputy Commissioner, Jamtara as well as the Returning Officer and even the officials of District Administrative are helping the sole respondent. It is submitted that in view of the above, the petitioner has valid cause of action for filing this election petition on the ground of corrupt practices committed by the election agent of the respondent as well as the volunteers of the respondent-Rabindra Nath Mahto of the Jharkhand Mukti Morcha party.

121. On the other hand, the learned counsel for the Respondent has submitted that petitioner has got no cause of action in filing this election petition and no corrupt practices has been committed either by the respondent-Rabindra Nath Mahto or by his volunteers or even the volunteers of the Jharkhand Mukti Morcha party. It is submitted that the petitioner had campaigned himself in all the Assembly Constituencies areas during the election period but he did not notice any NOTA handbill printed and distributed by the sole Respondent. Neither the petitioner's supporters nor any voter nor any well-wishers noticed or saw NOTA handbill like pamphlet being distributed by the Respondent Even the petitioner did not receive any information that the Respondent or his election agent (i.e. the respondent's Election Agent) and his supporters are canvassing with the Pamphlet i.e. Exhibit-01. Although it is alleged that the Prem Kumar Hembram of village Jhantipahari had informed the petitioner that Sri Sabut Murmu along with JMM workers in door to door campaign have persuaded the people not to cast any vote at Serial No.16 but the election petitioner failed to examine him and said Prem Kumar Hembram has not been examined by the petitioner.

It is submitted that P.W-2-Umesh Murmu had pointed out that a boy aged between 14-15 years was distributing wrong pamphlet but apart from that village he had not seen the said handbill anywhere. It is submitted that the petitioner had not made complaint before the Returning Officer or the Deputy Commissioner, Jamtara.

It is submitted that even the voter list would reveal that the petitioner has secured lesser vote whereas the respondent is a winning candidate and after the election was over the petitioner has formally made complaint before the Election Commission of India on 04.02.2020 i.e. after three months of election of the year 2019. It is submitted that the alleged photographs (marked as Exhibit-02 also does not have any legal proof in view of provision of Section 65-B of Indian Evidence Act because Exhibit-02 as alleged by the election petitioner, is a photograph taken by him from his mobile phone camera on Polling Day at the village Patanpur. It is submitted that the Hon'ble Supreme Court in the case of

Arjun Panditrao Khotkar vs. Kailash Kushanrao Gorantyal and Ors. reported in (2020) 7 SCC 1 has held that non-compliance of the provisions of Section 65-B of Indian Evidence Act would render the Exhibit as tempered and manufactured. The petitioner had not filed any written complaint on the date of voting. Thus, the respondent has not committed any error.

122. From perusal of the deposition of witnesses of the petitioner, it would appear that the petitioner was examined as P.W-1 in this case and he has stated that on 20.12.2019 while he arrived at Patanpur Booth Nos.91 and 92 then he was surprised to see that several JMM volunteers were sitting with Demo Machine of EVM and posters and it was seen by him that Serial No.16 is written as NOTA and saw that Serial No.16 on the poster depicts his name. Thereafter he immediately got the said photograph from his mobile and even later on volunteers informed that NOTA is printed against Serial No.16 and it would be useless to cast vote on it. Thereafter the petitioner tried to contact Election Observer through his mobile but he could not receive the phone. He had also submitted written application to the Deputy Commissioner, Jamtara on 22.12.2019 after the election was over regarding the above aspect that NOTA is printed at Serial No.16 against his name. He has proved the Purcha i.e. Exhibit-01 (with objection). He further proved the original photograph of the persons which was snapped from his mobile marked as Exhibit-02 (with objection). He further proved the photo copy of application submitted to D.C., Jamtara on 22.12.2019 and which is marked as X/1 for identification. He further proved the document X/2 which is photo copy of Prapatra-7 K (Format-7 K). He further proved the photo copy of the nomination paper marked as Exhibit-3 (with objection) and which is in 14th pages issued by the Returning Officer on 29.11.2019. He further proved his Caste Certificate marked as Exhibit-4 (with objection). Even during his election campaign he was informed by villager Prem Kumar Rana i.e. Prem Kumar Hembram that wherever election campaign is being done wrong pamphlet was being shown and it is circulated/campaigned by Jharkhand Mukti Morcha volunteers to cast vote at Serial no.7 to the Respondent-Rabindra Nath Mahto whereas his name is shown at Serial No.16 of the said handbill and it was ensured that the vote will be useless at Serial NO.16. He also admitted that he does not remember that the petitioner has filed written complaint before the Deputy Commissioner, Jamtara and the other available employee are not entitled to grant relief to such an employee. He further could not say that he is being shown wrong handbill.

123. P.W-2 is Umesh Murmu who is the election agent of the petitioner and stated during his evidence that while there was election campaign on 16.12.2019 at his village Jaspur then JMM volunteers namely Jaydhan Hansda, Rupchand Hansda and other volunteers were submitting and distributing pamphlet and influencing the voters to not give vote at Serial No.16 upon which NOTA is mentioned.

During cross-examination, he admitted for having certificate of Election Agent from the petitioner-Santosh Hembram. He became Election Agent on the date of scrutiny. However, he was not aware that works done by the election agent on behalf of the informant will be treated as work of the candidate. However, he could not take the name of the children who had handed over that pamphlet i.e. marked as Exhibit-1 (with objection). Even after voting he had not made any complaint before any officer. Thus, P.W-2 has not able to support the case of the petitioner.

124. P.W-3 is Surender Kumar then Returning Officer, who has been examined on behalf of the petitioner. He has merely stated that counting was started in the morning on 23.12.2017 and the result was declared in the night between 2.30 to 3.00 a.m and the Returning Candidate was the respondent-Rabindra Nath Mahto. He admitted for submitting the documents for the first time vide letter dated 22.02.2023. He further submitted the required documents vide letter dated 09.09.2023. He admitted his mistake for not submitting three documents due to mistake.

During Cross-examination, he stated that hearing of complaint by any complainant was beyond his jurisdiction and any malpractice in election was to be complained through Portal (in Para-16 and 17 of his evidence) and that can be lodged in Model Code of Conduct Cell after initiation of election proceeding till the declaration of the result and he also stated that no complaint was made by the election petitioner with regard to dispute of pamphlet before him nor his election agent had made any complaint before him.

125. On the other hand, the respondent has examined twelve (12) witnesses in support of his case including himself and has denied for distributing any pamphlet like Exhibit-01.

R.W-1 to R.W-8 namely, Janardhan Bhandari, Jaydhan Hansda, Binod Raut, Sadhucharan Mahto, Manoranjan Hansda, Musuhy Marandi, Kali Pada Murmu and Sona Yadav respectively and R.W-10 to R.W-12 namely Shrawan Kumar Yadav, Ashok Kumar Mahto and Dayamay Ghosh respectively have stated that they had made election campaign on behalf of the Returned candidate-Rabindra Nath Mahto and they had not seen any pamphlet (i.e. Exhibit-1) during the election campaign and the respondent-Rabindra Nath Mahto had not got printed any pamphlet like Exhibit-01. They have stated that the respondent-Rabindra Nath Mahto had secured more than 61,000 (Sixty one thousand) votes whereas the election petitioner has got only 1700 votes.

126. R.W-1 namely Janardhan Bhandari is a volunteer of JMM and also Joint Secretary of Nala Block of JMM and stated during evidence that he had made election campaign on behalf of the respondent-Rabindra Nath Mahto and different candidates have contested. On being shown Exhibit-01 (i.e. pamphlet) to the witness, he flatly denied to have seen the Exhibit-01 and stated that the respondent-Rabindra Nath Mahto had not got printed such pamphlet.

During cross-examination, he denied about publication of pamphlet by the respondent. On being shown pamphlet (i.e. Exhibit-01) by the learned counsel for the petitioner, he admitted that Exhibit-01 contains the photograph of the respondent- Rabindra Nath Mahto and his name is mentioned at Serial No.7.

127. Thus, from scrutinizing the evidence of R.W-1, it is evident that he had denied regarding distribution of pamphlet (i.e. Exhibit- 01) by the respondent namely Rabindra Nath Mahto. Thus, the evidence of R.W-1 has supported the case of the petitioner.

128. R.W-2 is Jaydhan Hansda who is a Block Secretary of Nala Block of JMM and he stated that he had remained with the respondent-Rabindra Nath Mahto during the election campaign sometimes together and sometimes separately they used to make election campaign. On being shown Exhibit-01, he stated that they had not distributed any pamphlet like Exhibit-01 and he is seeing this Exhibit-01 for the first time. He denied the assertion of the election petitioner that such pamphlet (Exhibit-01) was being distributed in his village on 16.12.2019 by any election agents or volunteers. He asserted that election petitioner has wrongly contended that respondent-Rabindra Nath Mahto or his election agents were distributing pamphlet like Exhibit-01.

During cross-examination, he stated that he used to make election campaign at different places but he is not aware as to whether they had campaigned by poster, banner and handbill or not.

He further stated that he was at his house on 16.12.2019 and had not gone for election campaign. He claims to have identify all the persons of his village. He admitted in para 14 that he identifies Umesh Murmu-P.W-2 who belongs to his village.

He asserted that he was not making election campaign on 16.12.2019 as his wife was not well and she was suffering from Kidney disease.

On being shown Exhibit-01 by the learned counsel for the petitioner, he admits that name of respondent-Rabindra Nath Mahto is mentioned at Serial No.7 of Exhibit-01 and NOTA is mentioned at Serial No.16 of said Exhibit-01. He is not aware as to how many posters were got printed by the respondent-Rabindra Nath Mahto.

129. Thus, from scrutinizing the evidence of R.W-2, it is evident that he is Block Secretary of Nala Block which is election constituency of petitioner as well as the respondent. He claims to be in his house on 16.12.2019. He had denied the fact that he was seen by P.W-2-Umesh Murmu on 16.12.2019 when he along with other volunteers were campaigning for the Respondent-Rabindra Nath Mahto. Thus, R.W-2-Jaydhan Hansda has refuted the case of the petitioner.

130. R.W-3 is Binod Raut who stated to be volunteer of JMM party. He stated that he had also made election campaign with the respondent-Rabindra Nath Mahto during the

Assembly Election held in the year 2019 and claimed to work with him for 5-6 days and voting took place on 20.12.2019. He admitted himself to be the agent and his work was to make the people understand at the outside the polling booth at Primary School, Patanpur. He has also denied the existence of Exhibit-01 wherein it was shown to him by the learned counsel for the respondent and stated that the respondent was not distributing Exhibit-01 on the date of polling. He asserted that no candidate of any party was present before him on the date of voting. There were around 450 voters at his voting booth. On being shown Exhibit-02 (i.e. downloaded photograph from the phone) the witness stated that neither any such person was present there nor any person of JMM were present at the booth.

During cross-examination, he admitted to be present at Booth No.91 at Patanpur and apart from him 2-3 agents were also present on that day. He stated that village Baghmara is adjacent to his village and one Mani Shankar Mahto is worker of JMM but he is not aware as to whether one Binod Jha is also worker of JMM party or not.

He admitted to be booth agent and was available at a distance of approx 150 Meters from the booth on the date of voting during the election. He was made booth agent by his candidate Rabindra Nath Mahto but he does not remember whether he filled any form or not for the said work.

He further admitted that there was another polling booth adjacent to his polling booth and several persons were arrived at his booth and also on another booth and hence in order to make the people aware and understand he was present at a distance of 150 Meters from the booth, but he was not telling any voter to whom they have to give vote to which party. He was sitting on the mat on the date of voting and he was having the flag of his party and had kept voter list of the voters, however, there was no handbill on that day with him. He is acquainted with the respondent-Rabindra Nath Mahto for about 20 years however he has not done any work from the MLA fund of the respondent-Rabindra Nath Mahto.

131. Thus, from scrutinizing the evidence of R.W-3, it is evident that he was the Booth Agent of Respondent No.3 who was contesting on behalf of JMM party and was sitting at a distance of 150 Meters from the booth to make people aware about voting. He has denied the distribution of Exhibit-01 by the respondent- Rabindra Nath Mahto and he has also denied the existence of Exhibit-01 and Exhibit-02 respectively. He has denied the identification of the persons shown on the Exhibit-02. The conduct of R.W-3 shows that he was all through present on the date of voting from 7.00 a.m. to 6.00 p.m. to influence the voters.

132. R.W-4 is Sadhucharan Mahto. He also claims to be worker of JMM party form 08-Nala Assembly Constituency. He had also worked for the respondent-Rabindra Nath Mahto who was candidate of his party and had persuaded in the election campaign and he

used to make campaign by his Cycle but he has not distributed any pamphlet etc. and his party has also not distributed any pamphlet or handbill.

On being shown Exhibit-01 by the learned counsel for the respondent, the witness denied to have seen any document like this Exhibit-01. He asserted that the workers of respondent-Rabindra Nath Mahto had not distributed any pamphlet like Exhibit-01. His candidate has secured more than 61,000 votes. He was also present outside the booth at Manjhuladih on the date of voting and on that day none of the candidate had arrived at his booth.

During cross-examination, he stated that he had visited Manjhuladih Middle School Booth, Patnapur Booth and Fatehpur Booth for campaign by his Cycle but he was not paid any expenses by the candidate for the said campaign. He had never carried any handbill during campaign and he used to campaign by Mike for JMM party. Neither his candidate nor any volunteer of JMM party had distributed any handbill. He was also present outside booth on the date of voting at a distance of 100-150 Meters and he remained there around 2.30 p.m.

He is aware of only two candidates namely his candidate Rabindra Nath Mahto and one Satyanand Jha but he is not aware of others. He claimed that none of the candidate of any party had arrived on the date of voting and he is not aware of candidate contesting the said election.

133. Thus, from scrutinizing the evidence of R.W-4, it is evident that he is the Booth agent of the respondent who had contested from JMM party and he was present at a distance of approx 100- 150 Meters from the Polling Booth Center. He has also denied the existence of Exhibit-01 and Exhibit-02.

Thus, R.W-4 is a formal witness and has supported the case of the Respondent.

134. R.W-5 is Manoranjan Hansda, who stated that he worked as a worker of JMM party during Assembly Election of the year 2019 and he used to campaign by Bicycle by taking the flat. However, he had not distributed any pamphlet or flag and his party had also not distributed any pamphlet or handbill. He has also casted his vote at Primary School, Jaspur on the date of Assembly Election on 20.2.2019. He casted his vote around 12.00 noon and had returned by 2.00 p.m.

On being shown Exhibit-01 by the learned counsel for the respondent the witness denied to have seen any such paper and no such paper like Exhibit-01 was not distributed by any person of JMM party. He denied that such pamphlet was distributed at his village Jaspur.

During cross-examination, he stated to be a worker of JMM party for last 20 years. He used to attend the meeting of JMM sometimes and Shyamlal is District President of his party. He used to make campaign in election by Bicycle and had campaigned for around 8-10 days but he was not having any Mike on his Bicycle. He had casted his vote on Primary School, Jaspur.

135. Thus, from scrutinizing the evidence of R.W-5, it would appear that he is a

formal witness and has supported the case of the Respondent he has denied regarding non-distribution of any pamphlet like Exhibit-01 and handbill by his party and by any volunteer of his party. He has been examined only on the point of not distributing pamphlet (i.e. Exhibit-01) by the respondent- Rabindra Nath Mahto.

136. R.W-6 is Musuhy Marandi who stated during evidence that last election was held on 20.12.2019 and he was associated with JMM in said election and he used to make election campaign with his friends by taking the flag and he is aware of all workers namely Ramdeo Soren and Much Marandi. They used to make election campaign for the respondent-Rabindra Nath Mahto who is a good person. He has also denied the existence of pamphlet (i.e. Exhibit-01) when it was shown to him by the learned counsel for the petitioner. He denied the distribution of such pamphlet like Exhibit-01 in his village. He also casted his vote in his village on 20.12.2019 and had not seen any pamphlet like Exhibit-01. His candidate had got more than 61,000 (Sixty one Thousand) votes.

During cross-examination, he stated to have made election campaign by Bicycle for the Respondent-Rabindra Nath Mahto but his party had not distributed handbill, poster. He returned to his village after casting his vote.

137. Thus, from scrutinizing the evidence of R.W-6, it is evident that he had been examined only on the denial of Exhibit-01 and he has stated that he made election campaign for the respondent- Rabindra Nath Mahto. Thus, R.W-6 is a formal witness. However, he has supported the case of the Respondent.

138. R.W-7 is Kalipada Murmu, who is also a volunteer of JMM party and stated to have made election campaign orally at village Jabardaha for the Respondent-Rabindra Nath Mahto. However, neither he nor any volunteer of his party had distributed any pamphlet or any poster.

On being shown Exhibit-01 by the learned counsel for the respondent, the witness denied to have seen any such pamphlet. He also casted his vote on 20.12.2019 and he remained in the village from 15.12.2019 to 19.12.2019 and during the said period he had not seen any pamphlet like Exhibit-01. He denied that any pamphlet like this Exhibit-01 was distributed by his party candidate or by any volunteer.

During cross-examination, he stated to be acquainted with respondent-Rabindra Nath Mahto since last 20 years. He claimed that his party used to make election campaign by Cycle and Jhanda but not aware that his party also used to campaign by other medium.

139. Thus, from scrutinizing the evidence of R.W-7, it would appear that he is also a formal witness and he has been examined on behalf of the respondent for denying the existence and distribution of any document like pamphlet (i.e.Exhibit-01).

140. R.W-8 is Sona Yadav who is also a worker of JMM party. He had also

participated in the election campaign for his candidate-Rabindra Nath Mahto and made campaign at village Jhantipahari, Jaspur, Nala and Sunderpur by putting flag on his Motorcycle. However, neither he nor anyone from his party had distributed any pamphlet or poster.

On being shown pamphlet (i.e.Exhibit-01), R.W-8 stated to see this paper for the first time and he had not seen any document like Exhibit-01 earlier. However, he further stated that any person can make complain for poster or pamphlet through C-Vigil and the said person can upload his photo, video and audio and on receiving such complaint, its solution was to be done within hundred (100) minutes. He was also present in his booth on the date of voting and his candidate has secured more than 61000 (Sixty one Thousand) votes.

During cross-examination, he stated to be associated with JMM party for the last 10-12 years but not on any post. He used to make election campaign by his Motorcycle. His party had not distributed any dummy handbill during election. He had not uploaded any complaint by C-Vigil app medium. He obtained information about C-vigil through paper and also from the website of Election Commission. He admitted to be standing outside booth at a distance of 150 Meters on the date of voting but his party had not distributed any poster or pamphlet.

141. Thus, from scrutinizing the evidence of R.W-8, it would appear that he is a businessman but claims to be simple volunteer of JMM party and he is an educated person as he is aware of C- vigil App through which any complaint can be lodged by uploading his photo or of any person. He also claimed to be present outside the booth at a distance of 150 Meter on the date of polling. Thus R.W-8 has supported the case of the Respondent.

142. R.W-10-Shrawan Kumar Yadav, who is an Agriculturist and stated to be a simple worker of JMM party. He had also campaigned for his candidate by Cycle by putting flag upon it at his Panchayat Khamarbad. He also denied to have seen Exhibit-01 when it was shown to him by the learned counsel for the respondent. His village is situated at a distance of 5-6 Kilometer from village Patanpur and he claimed to identify all the volunteers of JMM.

On being shown Exhibit-02, the witness stated that the photo of the persons shown in the Exhibit-02 are not the volunteers of his party and none of the volunteers of the JMM are seen in said Exhibit-02. He is also aware that any complainant can lodge his complaint through C-Vigil App, if any wrong is found in election. C-Vigil App can be downloaded from any person from his mobile phone and any person can make complain to Election Commission, Jharkhand by C-Vigil. His candidate has secured for more than 61,000 (Sixty one Thousand) votes whereas the petitioner-Santosh Hembram has secured approx. 1700 votes in the said election.

During cross-examination, he stated that he is associated with the respondent for the last 18-19 years and they used to campaign for his party but he had not taken any expenses of campaigning from his party.

On being confronted on the question of securing vote by other contestants, the witness stated that he is aware of the votes of his party candidate only.

143. Thus, R.W-10 is also a formal witness and he is a party worker and he has denied the existence of Exhibit-01 (i.e. Pamphlet), Exhibit-02 (i.e. downloaded photo of the persons on the poster). However, he has supported the case of the Respondent.

144. R.W-11 is Ashok Kumar Mahto and he is also an agriculturist and President of Fatehpur Block of JMM for the last two years and worker of JMM party for several years and he had worked for the respondent-Rabindra Nath Mahto as an Election Agent. He also stated that 08-Nala Assembly Constituency is a general seat and not a reserved seat and any person of any category can contest as a general candidate and even SC/ST candidate can contest from said region. He had got printed poster, banner and flags for his party candidate Rabindra Nath Mahto.

On being shown Exhibit-01 (i.e. Pamphlet), the witness claimed to have not seen it and denied that such Exhibit-01 was got printed by his party or contesting candidate. His Booth No.79 was situated at Upgraded Middle School, Village Murabahal and on the date of voting he was at his residence and had gone to cast vote.

On being shown Exhibit-02 by the learned counsel for the respondent, the witness stated that he does not identify the persons who are shown in Exhibit-02.

He also stated that there is provision for making complaint, if anything wrong is found during election campaign and such complaint can be made by mobile and for which an App has been lodged although he could not say the name of App in which there was provision to make complaint by taking a photo from his mobile or by photograph or by doing photography if any wrong was found during election and when complaint was to be disposed of within hundred (100) minutes. Even complaint can be made to Election Commission of India and even Observer/Returning Officer and some other persons used to hear the complaints and they used to dispose of the same. Even Sector Magistrate were deputed to see the wrong/error on the date of election and their work was to visit the booth within half an hour to one hour and they could have seen any party doing wrong. The respondent- Rabindra Nath Mahto had secured more than 61,000 (Sixty one Thousand) votes and he was the Returned Candidate. He is aware of NOTA and approx 601 votes were casted for NOTA. He got the banner, poster of the party candidate from M/s Bharat Traders, Ranchi press. He used to maintain the expenditure and accounting of his candidate relating to expenses of election during the period of election. He had written full details of election expenses which were printed from Bharat Traders, Press,

Ranchi and which were mentioned in Expenditure Register and that Expenditure Register was handed over to him by the Returning Officer and he has given all details of election expenses in the said Register.

145. During cross-examination, R-W-11 stated that he is a volunteer of JMM party for the last 20-22 years prior to becoming Block President. He was handed over Form-8 of his party candidate-Rabindra Nath Mahto for becoming his Election Agent and there was expenditure of approx Rs.Twelve Lakhs in the said election of his party candidate.

He asserted that he had not got printed pamphlet of his candidate but he had got printed flag and banner but not a single hoarding was affixed. He has incurred expenditure of Rs.One lakh in the said printing and said Rs.One Lakh was paid through RTGS from Jharkhand Rajya Gramin Bank, Mohnabad. Bharat Traders, Ranchi press is situated in Ranchi. His party had not printed any handbill or poster.

He denied for got printed dummy Ballot Paper from the side of his candidate.

On being shown Exhibit-01 by the learned counsel for the petitioner, he has stated that he had not seen such handbill or any such paper like Exhibit-01 during election period.

On being confronted on the name of printing press of Exhibit-01, R.W-11 stated that he is not aware of printing press mentioned in it. His party candidate has secured victory for more than Four Thousand (4,000) votes. However, he could not say the percentage of Scheduled Tribe votes in 2019 Assembly Election. He had not made any complaint before Election Commission prior to the date of polling till the date of polling.

146. Thus, from scrutinizing the evidence of R.W-11, it is evident that he is Election Agent of the Respondent and he had maintained the records of expenditure during the election period of respondent-Rabindra Nath Mahto. He had denied for getting the Exhibit-01 published from Lucky Press, Ranchi during his cross- examination.

He stated and admitted about the making expenditure of Rs.Twelve Lakh in printing materials of the respondent-Rabindra Nath Mahto. He had flatly denied the printing of handbill and poster.

Thus, R.W-11 has supported the case of the Respondent.

147. R.W-12-Dayamay Ghosh, who is also an agriculturist and said to be simple volunteer of JMM party and stated that he used to move village to village from his Cycle during 2019 Assembly Election. His candidate has secured more than 61,000 (Sixty one Thousand) votes from 08-Nala Constituency.

On being shown Exhibit-01 by the learned counsel for the respondent, he denied to have seen Exhibit-01 or any paper like Exhibit-01 during election. He further denied to have distributed such paper or Purcha. He had made election campaign for around 8-10 days. However, he is not aware of election petitioner and also not aware of votes secured by him.

During cross-examination, he again stated to be volunteer of JMM party for the last 8-10 years and he has been made volunteer by the Committee. However, he is not aware of the expenditure of flag by his party. He is also not aware of materials which were printed by his party during the period of election.

148. Thus, from scrutinizing the evidence of P.W-12, it is evident that he is a formal witness and he has come only to deny Exhibit-01 but he has supported the case of the Respondent.

149. R.W-9 is Rabindra Nath Mahto and who is the Returned Candidate and presently nominated as the Speaker in Jharkhand Vidhan Sabha.

R.W-9 has stated during his evidence that he was Jharkhand Mukti Morcha (JMM) candidate from 08-Nala Assembly Constituency and he was declared winner in the election of 2019. His election region is Nala Constituency which is a general seat and people of any caste may contest from general seat. There were fifteen (15) other candidates apart from him in the said election.

On being shown Exhibit-01 by the learned counsel for the respondent, the witness stated that he is not aware of the paper. He asserted that it is wrong on the part of the election petitioner to content that he had got prepared the pamphlet or any document like Exhibit-01 and he had also not got distributed any pamphlet like Exhibit-01 or by his party volunteers.

On being shown Exhibit-02, the witness stated that he is not aware of the photo of the persons shown in Exhibit-02 and the people shown in Exhibit-02 were not the volunteers of JMM party.

He was at his house on the date of election and he had gone to cast vote in his booth and returned back to his house and remained in his house for the whole day. His booth is situated at Primary School in Patanpur village. Neither he nor the volunteers of his party had distributed any pamphlet like Exhibit-01 at Patanpur booth. He also denied that either he or the volunteer of his party had distributed any paper or pamphlet like Exhibit-01 on 16.12.2019 at village Jaspur.

He asserted that his party volunteers were not working with Ramdeo Soren and Much Marandi. He is aware of the fact that various precautionary measures have been taken by the Election Commission for dealing with any wrong committed in the election so that people may not commit mistake or they may be able to lodge complain at concerned places in case of wrong committed and so that it can be resolved.

150. He also stated that Election Commission of India has issued an App C-Vigil for election to be held in the year 2019 and in which a team arrives at a very short time on finding complain and veracity of the complaint is tested and there is provision for taking action. Apart from this, there is a Flying Squad team and photography is being done by

Video Surveillance team and there is MCMC Body which monitors the election. Apart from this, there is a team of local police and team of Central Government and there is a team for investigating financial issue. Thus, a team is constituted by Election Commission of India for finding the wrong in the election.

He has no information that this election petitioner had filed any application regarding Exhibit-01 (i.e. Pamphlet) before any team within his Assembly Region.

He had also got printed his banner, poster and flag on 06.12.2019. There is a provision of NOTA in the EVM below the names of the list of candidates. So far as NOTA is concerned, approx 600 votes were casted in NOTA. He had adopted the mode of election campaign by holding meeting, public relation, Motorcycle and permitted Vehicle through the Mike.

151. During cross-examination, he stated that symbol was allotted to him on 06.12.2019 and election was held on 20.12.2019. He was authorized representative of JMM which is a Regional Party. His party is having sign of 'Bow' and 'Arrow'.

On being shown Document-X (photo copy of Format-7 K) the witness stated that such papers are given to them.

On being shown Document-X/2 (photo copy of Format-7 K in which the name of Election Petitioner is mentioned at Serial No.16 and election symbol is 'Balla' and his photo is affixed), he stated and admitted that the name of the petitioner is shown at Serial No.16 as an Independent Candidate with having his election symbol 'Balla'.

He admitted to have got printed poster and banner during the election period.

His nomination paper was taken by his election agent, lawyer, however, he does not remember as to what papers has been handed over to his election agent. The witness himself stated that several papers were received by him in which a thick Handbook was also given to him.

Neither he nor his party with his election agents had got printed dummy Ballot Paper. Election Commission fixes Voter Felicitation Paper on every booth and all the candidates are being aware to the voters and on seeing those paper, the voters cast their vote to their respective candidate.

On being ask in question and answer form at para-47 as to how he is aware of the fact that the photograph of the persons shown in Exhibit-02 belongs to the volunteers of his party or not and how he is aware and upon which, the witness R.W-9 has stated that he does not know the person who has been shown in the photographs of Exhibit-02.

He had not visited village Jabardaha during his entire election. He got his poster, banner from the press of Ranchi where his poster and banner were printed by 'Bharat Traders' press.

He learnt about notice of filing of this case against him by the Election Commissioner in the month of July, 2022 through the newspaper and thereafter he had received the notice of the Court. However, he had not made any complaint before the Election Commission.

152. Thus, from scrutinizing the evidence of R.W-9, it is evident that he is respondent in this case and also the Returned Candidate, who has declared elected from the 08-Nala Assembly Constituency. He denied the photographs of Ramdeo Soren and Much Marandi on the document marked as Exhibit-02 (with objection) and has stated that he and his party had not taken any assistance from Ramdeo Soren and Much Marandi during Assembly Election in 08-Nala Constituency. He has denied the existence of Exhibit-01 and he has refuted the Pamphlet i.e. Exhibit-02.

153. Learned counsel for the petitioner has confronted the witness-R.W-9 on the point of variation in the Nomination Paper Format-7 K and to which witness stated that such paper was seen by him and handed over to him by the Returning Officer. However, this aspect is disputed question.

Learned counsel for the petitioner has asserted during his argument that the certified copy of the Nomination Paper in Format-7 K was not handed over to him till date rather he had downloaded his Nomination Paper in format of Form-7 K from the website of Election Commission of India and despite his best efforts, the certified copy of the Nomination paper was not handed over to him.

The submission of the learned counsel further reveals that the Nomination Paper filed by him in format Form-7 K and Nomination Paper handed over to him in Form-7 K by the Returning Officer are different as he has filed the Nomination Paper with Photo. However, the Nomination Paper which was served to him by the Returning Officer do not contain his photograph. Thereafter, there is a variation in Nomination Paper. However, this has not caused any prejudice to the petitioner and even the petitioner has failed to show as to what prejudice has been caused to him. Thus, the contention raised on behalf of the petitioner is rejected.

154. It has been held by Hon'ble Supreme Court in the case of **Jamuna Prasad Mukhariya and Ors. vs. Lachhi Ram and Ors.** reported in **1955 (1) SCR 608:(1954) 2 SCC 306** at para-3, 6, 7, 8 and 13 as follows:-

“Para-3:- The Tribunal finds, among other things, that Appellant 1 (1st respondent) published certain pamphlets which contain statements listed as (a), (b), (c), (e), (f) and (g) by the Tribunal. The Tribunal holds that these statements are false and that the 1st appellant (1st respondent) did not believe them to be true. It also holds that these statements reflect on the personal character and conduct of the 6th respondent and are reasonably calculated to prejudice his prospects in the election. These findings were contested and the learned counsel for the appellants contended that the attack was on the public and political character of the 6th respondent and was a legitimate attack. We do not intend to examine this as a court of appeal because this is a special appeal and all we are concerned to

see is whether a Tribunal of reasonable and unbiased men could judicially reach such a conclusion. We have had some of these pamphlets read out to us and we are of the opinion that the conclusion of the Tribunal is one which judicial minds could reasonably reach. We decline to examine the matter further in special appeal. Under the law the decision of the Tribunal is meant to be final. That does not take away our jurisdiction but we will only interfere when there is some glaring error which has resulted in a substantial miscarriage of justice. On those findings a major corrupt practice on the part of the 1st respondent (1st appellant here) under Section 123(5) of the Representation of the People Act, 1951 is established.

Para-6:- *In addition to these findings, the Tribunal found that both the appellants committed an illegal practice within the meaning of Section 125(3) in that they issued a leaflet and a poster which did not have the name of the printer on them. This is a pure question of fact.*

Para-7:- *The result of committing any corrupt practice is that the election of the candidate is void under Section 100(2)(b). It is not necessary to prove that the result of the election was materially affected thereby because clause (b) is an alternative that stands by itself. All that need be proved is that a corrupt practice has been committed, and that the Tribunal finds to be the fact. The Tribunal was accordingly justified in declaring the election of the first appellant to be void.*

Para-8:- *In addition to this the Tribunal found that the corrupt practice committed by the second appellant (Respondent 2) also materially affected the result of the election. This was challenged but we need not go into that because the finding that the second appellant committed a minor corrupt practice and also an illegal practice is clear and so his case falls under clause (a) of sub-section (2) of Section 100.*

Para-13:- *We set aside this part of the order. The result is that the appeal fails insofar as it attacks the Tribunal's declaration voiding the election of the two appellants but succeeds against that part of the order which declares the 6th and 7th respondents to have been elected. In the circumstances there will be no order about costs in either Court."*

155. However, the above judgment is not applicable in the case of the petitioner as in the above case corrupt practice by the Returned Candidate was proved but in the present case the petitioner has failed to prove corrupt practice against the Respondent.

156. It has been held by Hon'ble Supreme Court in the case of **Biraji Alias Brijraji and Anr. vs. Surya Pratap and Ors.** reported in (2020) 10 SCC 729 at para-8 and 11 as follows:-

“Para-8:- Having heard the learned counsel on both sides, we have perused the impugned orders [Biraji v. Surya Pratap, 2013 SCC OnLine All 14640] ’ [Biraji v. Surya Pratap, 2013 SCC OnLine All 14641] and other material placed on record. The suit in Original Suit No. 107 of 2010 is filed for cancellation of registered adoption deed and for consequential injunction orders. In the adoption deed itself, the ceremony which had taken place on 14-11-2001 was mentioned, hence it was within the knowledge of the appellant-plaintiffs even on the date of filing of the suit. In the absence of any pleading in the suit filed by the appellants, at belated stage, after evidence is closed, the appellants

have filed the application to summon the record relating to leave/service of Ramesh Chander Singh on 14-11-2001 from the Rajput Regiment Centre, Fatehgarh. It is fairly well settled that in absence of pleading, any amount of evidence will not help the party. When the adoption ceremony, which had taken place on 14-11-2001, is mentioned in the registered adoption deed, which was questioned in the suit, there is absolutely no reason for not raising specific plea in the suit and to file application at belated stage to summon the record to prove that the second respondent Ramesh Chander Singh was on duty as on 14-11-2001. There was an order from the High Court for expeditious disposal of the suit and the application which was filed belatedly is rightly dismissed by the trial court and confirmed by the Revisional Court and the High Court.

Para-11:- In our view the reasons recorded in the orders

passed by the trial court, as confirmed by the Revisional Court and High Court are valid and are in accordance with the settled principles of law. It is clear from the conduct of the appellants, that in spite of directions from the High Court, for expeditious disposal of the suit, appellant-plaintiffs were trying to protract the litigation."

157. It has been held by Hon'ble Supreme Court in the case of **Lalit Kishore Chaturvedi vs. Jagdish Prasad Thada and Ors.** reported in **AIR 1990 SC 1731: 1990 (Supp) SCC 248** at para-9 and 10 as follows:-

"Para-9:- Similarly even though it was pleaded that the leaflets were false but there is no whisper if the appellant believed it to be false or did not believe it to be true. The petition is silent on the vital aspects if any meeting took place on March 1, 1985 and whether the Congress M.P. participated in it. Merely pleading false, more statement of law than fact, without necessary factual foundation could not be said to give rise to any triable issue. Attempt was made to argue that even if the first part of speech was taken to be correct the second part using the words "inke" and "inhone" clearly referred to personal character of the candidate and that being false a triable issue arose. Assistance was sought from observations, shorn of their context, in *Avtar Singh Brar v. Tej Singh* [(1984) 1 SCC 752

: (1984) 2 SCR 415] and *Manubhai Nandlal Amersey v. Popat Lal Manilal Joshi* [(1969) 1 SCC 372 : (1969) 3 SCR 217] in support of the submission that even without mention of name of candidate it may be established that it related to him. True, but that is at later stage, stage when evidence is led in support of the petition. What is germane in this petition is if the averments made in this petition *prima facie* raised any cause of action. Extract in first part of the leaflet is either correct or false. For either necessary averments are missing. If the first part is omitted then second does not make any sense. And to make it intelligible if the top of the leaflet is read with last part then it refers to Congress party and not to candidate. If the first part, namely, the speech was correct then the second part becomes an opinion and not a statement of fact as was held in *Kumar Nand v. Brijmohan Lal Sharma* [(1967) 2 SCR 127

: AIR 1967 SC 808 : 1967 Cri LJ 823]. In either case the pleadings were wholly vague and insufficient to raise any adjudicatory issue. Averments in paragraph 3(j) relating to distribution and circulation did not remove the defect in pleadings under Section 123(4). In the absence of denial of meeting on March 1, 1985, and necessary averments about the knowledge of appellant that

the leaflet was false, which he believed to be false, or did not believe it to be true, the respondent could not have succeeded even if the appellant would not have put in appearance, therefore it is squarely covered by the principle laid down in *Azhar Hussain case* [1986 Supp SCC 315]. Mere allegations that the appellant got a leaflet published which was false or it was false to the knowledge of the appellant did not meet the requirements of Section 83(1)(b). It was neither precise statement of fact nor furnishing of material facts or particulars as far as possible. Even this much was not said that no meeting took place on March 1, 1985. No facts or circumstances were mentioned to give even the haziest picture for the basis of averment that the leaflet was false to the knowledge of the appellant or that he did not believe it to be true.

Para-10:- Effort was made to distinguish *Hardwari Lal case* [(1972) 1 SCC 214 : (1972) 2 SCR 742] and *Azhar*

Hussain case [1986 Supp SCC 315] by urging that the leaflet or pamphlets were not produced in these cases whereas it was made annexure to the petition therefore it became a part of pleading under Section 83(2). May be, but it did not do away with mandatory requirements of Section 83(1)(b). Even assuming it to be so could the leaflet on its own without necessary averment in the petition raise any triable issue? As observed earlier it did not. If there was no pleading that the speech delivered by Shri Dhariwal was not made on March 1 then no evidence could be led on it. And if that is omitted, then the second part irrespective of evidence could not be said to refer to personal character of the Congress candidate. In *Azhar Hussain case* [1986 Supp SCC 315] a poster published painting rival candidate as supporter of Khalistan and in conspiracy with terrorists was found to be vague not because poster was not produced but because the petitioner failed to disclose names of relevant persons who were associated with its distribution etc."

158. It has been held by Hon'ble Supreme Court in the case of **Laxmi Narayan Nayak vs. Ramratan Chaturvedi and Ors.** reported in (1990) 2 SCC 173 at para-5, 23 and 24 as follows:-

"Para-5:- This Court in a catena of decisions has laid down the principles as to the nature of pleadings in election cases, the sum and substance of which being:

(1) The pleadings of the election petitioner in his petition should be absolutely precise and clear containing all necessary details and particulars as required by law vide *Dhartipakar Madan Lal Agarwal v. Rajiv Gandhi* [1987 Supp SCC 93] and *Kona Prabhakara Rao v. M. Seshagiri Rao* [(1982) 1 SCC 442].

(2) The allegations in the election petition should not be vague, general in nature or lacking of materials or frivolous or vexatious because the court is empowered at any stage of the proceedings to strike down or delete pleadings which are suffering from such vices as not raising any triable issue vide *Manphul Singh v. Surinder Singh* [(1973) 2 SCC 599: (1974) 1 SCR 52], *Kona Prabhakara Rao v. M. Seshagiri Rao* [(1982) 1 SCC 442] and *Dhartipakar Madan Lal Agarwal v. Rajiv Gandhi* [1987 Supp SCC 93].

(3) The evidence adduced in support of the pleadings should be of such nature leading to an irresistible conclusion or unimpeachable result that the allegations made, have been committed rendering the election void under

Section 100 vide *Jumuna Prasad Mukhariya v. Lachhi Ram* [(1955) 1 SCR 608: AIR 1954 SC 686] and *Rahim Khan v. Khurshid Ahmed* [(1974) 2 SCC 660] .

(4) The evidence produced before the court in support of the pleadings must be clear, cogent, satisfactory, credible and positive and also should stand the test of strict and scrupulous scrutiny vide *Ram Sharan Yadav v. Thakur Muneshwar Nath Singh* [(1984) 4 SCC 649] .

(5) It is unsafe in an election case to accept oral evidence at its face value without looking for assurances for some surer circumstances or unimpeachable documents vide *Rahim Khan v. Khurshid Ahmed* [(1974) 2 SCC 660] , *M. Narayana Rao v. G. Venkata Reddy* [(1977) 1 SCC 771: (1977) 1 SCR 490] , *Lakshmi Raman Acharya v. Chandan Singh* [(1977) 1 SCC 423: (1977) 2 SCR 412] and *Ramji Prasad Singh v. Ram Bilas Jha* [(1977) 1 SCC 260] .

(6) The onus of proof of the allegations made in the election petition is undoubtedly on the person who assails an election which has been concluded vide *Rahim Khan v. Khurshid Ahmed* [(1974) 2 SCC 660] , *Mohan Singh v. Bhanwarlal* [(1964) 5 SCR 12: AIR 1964 SC 1366] and *Ramji Prasad Singh v. Ram Bilas Jha* [(1977) 1 SCC 260] .

Para-23:- According to Section 123 (1)(A)(b)(ii) of the Act, 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 an elector to vote or refrain from voting at an election is a corrupt practice. See *Harjit Singh Mann v. S. Umrao Singh* [(1980) 1 SCC 713] .

Para-24:- It is an accepted principle that an election petition where corrupt practices are imputed must be regarded as proceedings of a quasi-criminal nature wherein strict proof is necessary. Since, a charge of corrupt practices, the consequence of which is not only to render the election of the returned candidate void, but in some cases to impose upon him a disqualification must be proved on appraisal of the evidence adduced by both the parties particularly by the election petitioner who assails the election of a returned candidate. This principle has been reiterated and approved in a series of decision. See *Manphul Singh v. Surinder Singh* [(1973) 2 SCC 599: (1974) 1 SCR 52] , *Rahim*

Khan v. Khurshid Ahmed [(1974) 2 SCC 660] , *M. Narayana Rao v. G. Venkata Reddy* [(1977) 1 SCC 771: (1977) 1 SCR

490] , *Ram Sharan Yadav v. Thakur Muneshwar Nath Singh* [(1984) 4 SCC 649] , *Ramji Prasad Singh v. Ram Bilas Jha* [(1977) 1 SCC 260] and *Lalroukung v. Haokholal Thangjom* [41 ELR 35 (SC)] ."

159. It has been held by Hon'ble Supreme Court in the case of **H.D. Revanna vs. G. Puttaswamy Gowda and Ors.** reported in (1999) 2 SCC 217 at para-14 to 17, 22 and 26 as follows:-

"Para-14. The argument is no doubt attractive. But the relevant provisions in the Act are very specific. Section 86 provides for dismissal of an election petition in limine for non-compliance with Sections 81, 82 and 117. Section 81 relates to the presentation of an election petition. It is not the case of the appellant before us that the requirements of Section 81 were not complied with though in the High Court, a contention was urged that a true copy of the election petition was not

served on the appellant and thus the provisions of Section 81 were not complied with. Sections 82 and 117 are not relevant in this case. Significantly, Section 86 does not refer to Section 83 and non-compliance with Section 83 does not lead to dismissal under Section 86. This Court has laid down that non-compliance with Section 83 may lead to dismissal of the petition if the matter falls within the scope of Order 6 Rule 16 or Order 7 Rule 11 CPC. Defect in verification of the election petition or the affidavit accompanying the election petition has been held to be curable and not fatal.

Para-15:- In *Murarka Radhey Shyam Ram Kumar v. Roop Singh Rathore* [AIR 1964 SC 1545 : (1964) 3 SCR 573] a

Constitution Bench has held in unmistakable terms that a defect in the verification of an election petition as required by Section 83(1)(c) of the Act was not fatal to the maintainability of the petition and that a defect in the affidavit was not a sufficient ground for dismissal of the petition. Another Constitution Bench held in *Ch Subbarao v. Member, Election Tribunal, Hyderabad* [AIR 1964 SC 1027 : (1964) 6 SCR 213] that even with regard to Section 81(3), substantial compliance with the requirement thereof was sufficient and only in cases of total or complete non-compliance with the provisions of Section 81(3), it could be said that the election petition was not one presented in accordance with the provisions of that part of the Act.

Para-16:- It is the said principle of substantial compliance which was adopted in *K.M. Mani v. P.J. Antony* [(1979) 2 SCC 221] . Reliance has rightly been placed thereon by learned counsel for the respondent.

Para-17:- In *F.A. Sapa v. Singora* [(1991) 3 SCC 375] this Court held that a defect in the verification of the petition as well as a defect in the affidavit can be cured and it is not fatal to the maintainability of the petition. Neither in *Virendra Kumar Saklecha v. Jagjiwan* [(1972) 1 SCC 826] nor in *L.R. Shivaramagowda v. T.M. Chandrashekar* [(1999) 1 SCC 666 : (1998) 6 Scale 361] this Court went to the extent of holding that the election petition should be dismissed in limine for a deficiency in the affidavit or verification. In fact, the question was expressly left open in the former case and it did not arise in the latter.

Para-22:- The third contention of learned counsel for the appellant relates to the allegations of corrupt practices. We are unable to accept his contention that they are vague and do not contain material facts. The High Court has extracted the relevant portions of the election petition which deal with corrupt practices. After perusing the entire petition, the High Court has observed as follows:

"Therefore, from a perusal of these and other paragraphs of the election petition, it appears that the petitioner has stated about the corrupt practices alleged to have been committed or practised by the first respondent. After a perusal of the grounds taken in the election petition, I find force in the contention of the learned counsel for the petitioner that necessary facts constituting the cause of action for invalidating the election and the corrupt practices committed by Respondent 1 have been substantially pleaded. The allegations made in the election petition may be true or false, but it is not possible to hold that the election petition does not disclose any material fact or give the material particulars of any of the corrupt practices. It is required to be stated that even if the court is satisfied that in respect of one of the corrupt practices alleged, material facts and full particulars thereof have not been stated, still the election petition cannot be thrown out at the threshold, if in respect of other corrupt practices, the material facts and full particulars have been given in

accordance with the requirement of Section 83(1) of the Act. As rightly argued by the learned counsel for the petitioner, the contents of the election petition are to be read as a whole and not to disjoint them from the context. They cannot be read in a truncated manner. If this test is applied to the averments made in paras 2 and 3 of the election petition, it will be quite clear that these paragraphs, taken as a whole, relate to the allegations regarding the commission of the corrupt practice under Section 123 of the Act and also with regard to the other irregularities which invalidates the election of Respondent 1."

We are entirely in agreement with the aforesaid view expressed by the High Court.

Para-26:- Learned counsel for the appellant has drawn our attention to *Dharamvir v. Amar Singh* [(1996) 3 SCC 158] . A Bench of two Judges held that sub-sections (2) and (7) of Section 123 of the Act are applicable only to cases of corrupt practices indulged at the stage prior to the casting of the votes and not at the post-voting stage. The facts in the case were entirely different. It was also pointed out in the judgment that the election and counting were over in that case prior to insertion of Sections 128(8) and 135-A(d) of the Act and those provisions were not retrospective in operation and therefore not applicable to the facts of the case. In the present case, the election was itself held only in 1994 long after the insertion of the said provisions and the ruling has therefore no applicability in this case."

160. It has been held by Hon'ble Supreme Court in the case of ***Hari Shanker Jain vs. Sonia Gandhi*** reported in **(2001) 8 SCC 233** at para-4, 5, 10, 23, 24 and 25 as follows:-

"Para-4:- At the hearing of these appeals, the two election petitioners, appellants in this Court, appeared in person and each of them addressed this Court at length. Shri Milon Banerjee, the learned Senior Counsel ably assisted by Shri Gaurab Banerjee appearing for the respondent, supported the impugned order of the High Court assigning same additional reasons in support thereof. The following questions arise for decision in this appeal:

(1) Whether a designated Election Judge of the High Court can entertain and decide a plea relating to validity of any law?

(2) Whether the plea that a returned candidate is not a citizen of India can be raised in an election petition before the High Court?

(3) Whether a plea questioning the citizenship of the returned candidate is entertainable by the High Court hearing an election petition in spite of the returned candidate holding a certificate of citizenship granted under Section 5(1)(c) of the Citizenship Act?

(4) Whether on the pleadings of the two election petitioners, a cause of action and a triable issue was raised which should have been put to trial calling upon the respondent to file her written statement?

We proceed to deal with these issues.

Para-5:- Article 329 of the Constitution provides as under:

"329. Bar to interference by courts in electoral matters.— Notwithstanding anything in this Constitution—

(a) the validity of any law relating to the delimitation of constituencies or the allotment of seats to such constituencies, made or purporting to be made under

Article 327 or Article 328, shall not be called in question in any court;

(b) no election to either House of Parliament or to the House or either House of the Legislature of a State shall be called in question except by an election petition presented to such authority and in such manner as may be provided for by or under any law made by the appropriate legislature."

Para-10:- The learned designated Election Judge was not, therefore, right in laying down as a wide and general proposition of law, that in an election petition question of validity of a statute cannot be gone into at all.

Para-23:- Section 83(1)(a) of RPA, 1951 mandates that an election petition shall contain a concise statement of the material facts on which the petitioner relies. By a series of decisions of this Court, it is well settled that the material facts required to be stated are those facts which can be considered as materials supporting the allegations made. In other words, they must be such facts as would afford a basis for the allegations made in the petition and would constitute the cause of action as understood in the Code of Civil Procedure, 1908. The expression "cause of action" has been compendiously defined to mean every fact which it would be necessary for the plaintiff to prove, if traversed, in order to support his right to the judgment of court. Omission of a single material fact leads to an incomplete cause of action and the statement of claim becomes bad. The function of the party is to present as full a picture of the cause of action with such further information in detail as to make the opposite party understand the case he will have to meet. (See *Samant N. Balkrishna v. George Fernandez* [(1969) 3 SCC 238 : (1969) 3 SCR 603] , *Jitendra Bahadur Singh v. Krishna Behari* [(1969) 2 SCC 433] .) Merely quoting the words of the section like chanting of a mantra does not amount to stating material facts. Material facts would include positive statement of facts as also positive averment of a negative fact, if necessary. In *V.S. Achuthanandan v. P.J. Francis* [(1999) 3 SCC 737] this Court has held, on a conspectus of a series of decisions of this Court, that material facts are such preliminary facts which must be proved at the trial by a party to establish existence of a cause of action. Failure to plead "material facts" is fatal to the election petition and no amendment of the pleadings is permissible to introduce such material facts after the time-limit prescribed for filing the election petition.

Para-25:- There are two features common to both the election petitions. Firstly, both the petitions are verified as

"true to personal knowledge" of the two petitioners respectively which is apparently incorrect as the very tenor of pleadings discloses that any of the petitioners could not have had personal knowledge of various facts relating to the respondent personally and during the course of hearing we had put this across to the two petitioners and they responded by submitting only this much that the verification if incorrect was capable of being cured. The second common feature in the two petitions is that there are bald assertions made about the Italian law without stating what is the source of such law as has been pleaded by the election petitioners or what is the basis for raising such pleadings. These averments also have been verified as "true to my knowledge" by each of the election petitioners, a position wholly unacceptable."

161. It has been held by Hon'ble Supreme Court in the case of **Kailash vs. Nanhku and Ors. reported in 2005 (4) JLJR 1 (SC)** at para-2, 16, 43, 44 and 45 as follows:-

“Para-2:-The appellant was served with the summons, accompanied by a copy of the election petition, requiring his appearance before the Court on 6.4.2004. On the appointed day, the appellant appeared through his counsel and sought for one month's time for filing the written statement. The Court allowed time till 13.5.2004 for filing the written statement. On 13.5.2004, the appellant again filed an application seeking further time for filing the written statement on the ground that copies of several documents were required to be obtained. The Court adjourned the hearing to 3.7.2004 as, in between, from 13.5.2004 to 2.7.2004, the High Court was closed for summer vacation. On 22.6.2004, appellant's advocate's nephew expired. However, the written statement was drafted and kept ready for filing. The registered clerk of the advocate was deputed for filing the same in the Court on the appointed day. The clerk reached Allahabad, the seat of the High Court, from Gazipur where the appellant and his advocate resided. On 1.7.2004, that is, two days prior to the day of hearing, the affidavit of the appellant annexed with the written statement, was sworn in at Allahabad. However, (as is later on stated), on account of lack of understanding on the part of the registered clerk, the written statement could not be filed on 3.7.2004 but the same was filed on 8.7.2004 accompanied by an application for condonation of delay in filing the written statement briefly stating the reasons set out hereinbefore. On 23.8.2004, the High Court rejected the application filed by the appellant and refused to take the written statement on record for the reason that the same was filed beyond a period of 90 days from the date of service of summons, the period of limitation as provided by the Proviso to Rule 1 of [Order VIII of the Code of Civil Procedure, 1908](#) (hereinafter '[the CPC](#)', for short), as introduced by Act 22 of 2002 with effect from 1.7.2002. Feeling aggrieved by the said order, the winning candidate i.e. the defendant-respondent before the High Court, has filed this appeal by special leave.

Para-16:- Once we are clear about the meaning of the word 'trial' in the context of election petition, certain consequences follow. Sub-section (6) of [Section 86](#) of the Act would empower the High Court trying an election petition to adjourn the trial beyond the following day if necessary and for reasons to be recorded. The filing of a written statement being a stage in the trial of an election petition, this provision would empower the High Court to grant a reasonable time for filing of a written statement though for reasons to be recorded. The availability of this power finds support from Rules 5 and 12 of the High Court Rules. Under Rule 5, the High Court has power to fix a date for filing the written statement which power would include the power to fix such date not merely once but again and again depending on the discretion of the High Court. Power to extend time for filing the written statement being a matter of practice and procedure the High Court would be within its power to give such directions in that regard as it shall consider just and expedient within the meaning of Rule 12. This discretion vested in the Court by Rules made under [Article 225](#) for purposes of any special act would not be controlled by the proviso to sub-rule (1) of [Order VIII of the CPC](#).

Para-43:-The extension of time shall be only by way of exception and for reasons to be recorded in writing, howsoever brief they may be, by the court. In no case, the defendant shall be permitted to seek extension of time when the court is satisfied that it is a case of laxity or gross negligence on the part of the defendant or his counsel. The court may impose costs for dual purpose: (i) to deter the defendant from seeking any extension of time just for asking and (ii) to compensate the plaintiff for the delay and inconvenience caused to him.

Para-44:- However, no straitjacket formula can be laid down except that the observance of time schedule contemplated by Order VIII Rule 1 shall be the rule and departure therefrom an exception, made for satisfactory reasons only. We hold that Order VIII Rule 1, though couched in mandatory form, is directory being a provision in the domain of processual law.

Para-45:- We sum up and briefly state our conclusions as under:-

(i) The trial of an election petition commences from the date of the receipt of the election petition by the Court and continues till the date of its decision. The filing of pleadings is one stage in the trial of an election petition. The power vesting in the High Court to adjourn the trial from time to time (as far as practicable and without sacrificing the expediency and interests of justice) includes power to adjourn the hearing in an election petition affording opportunity to the defendant to file written statement. The availability of such power in the High Court is spelled out by the provisions of the [Representation of the People Act, 1951](#) itself and Rules made for purposes of that Act and a resort to the provisions [of the CPC](#) is not called for.

(ii) On the language of [Section 87\(1\)](#) of the Act, it is clear that the applicability of the procedure provided for the trial of suits to the trial of election petitions is not attracted with all its rigidity and technicality. The rules of procedure contained in [the CPC](#) apply to the trial of election petitions under the Act with flexibility and only as guidelines.

(iii) In case of conflict between the provisions of the [Representation of the People Act, 1951](#) and the Rules framed thereunder or the Rules framed by the High Court in exercise of the power conferred by [Article 225](#) of the Constitution on the one hand, and the Rules of Procedure contained in [the CPC](#) on the other hand, the former shall prevail over the latter.

(iv) The purpose of providing the time schedule for filing the written statement under [Order VIII, Rule 1 of CPC](#) is to expedite and not to scuttle the hearing. The provision spells out a disability on the defendant. It does not impose an embargo on the power of the Court to extend the time. Though, the language of the proviso to Rule 1 of [Order VIII of the CPC](#) is couched in negative form, it does not specify any penal consequences flowing from the non-compliance. The provision being in the domain of the Procedural Law, it has to be held directory and not mandatory. The power of the Court to extend time for filing the written statement beyond the time schedule provided by [Order VIII, Rule 1 of the CPC](#) is not completely taken away.

(v) Though [Order VIII, Rule 1 of the CPC](#) is a part of Procedural Law and hence directory, keeping in view the need for expeditious trial of civil causes which persuaded the Parliament to enact the provision in its present form, it is held that ordinarily the time schedule contained in the provision is to be followed as a rule and departure therefrom would be by way of exception. A prayer for extension of time made by the defendant shall not be granted just as a matter of routine and merely for asking, more so when the period of 90 days has expired. Extension of time may be allowed by way of an exception, for reasons to be assigned by the defendant and also be placed on record in writing, howsoever briefly, by the Court on its being satisfied. Extension of time may be allowed if it was needed to be given for the circumstances which are exceptional, occasioned by reasons beyond the control of the defendant and grave injustice would be occasioned if the time was not

extended. Costs may be imposed and affidavit or documents in support of the grounds pleaded by the defendant for extension of time may be demanded, depending on the facts and circumstances of a given case."

162. It has been held by Hon'ble Supreme Court in the case of ***Mercykutty Amma vs. Kadavoor Sivadasan***, reported in (2004) 2 SCC 217 at para-20, 21, 24, 27, 28, 29, 31, 32 and 33 as follows:-

"Para-20:- In terms of sub-section (4) of Section 123, corrupt practices may be committed by: (a) the candidate; (b) his agent, that is to say – (i) an election agent, (ii) a polling agent, (iii) any person who is held to have acted as an agent in connection with the election with the consent of the candidate; (c) by any other person with the consent of the candidate or his election agent.

Para-21:- The categories of agents enumerated in sub- clauses (i) and (ii) of clause (b) are to be notified by the candidate, before the statutory authorities. Such agents, thus, are not only to the appropriate authorities but also to his opponents and other persons concerned. However, so far as category (iii) is concerned, the name of such agent is not required to be notified. He must have an express or implied authority to act on behalf of the candidate. For the purpose of proving corrupt practices on the part of such agent, there would not be any material difference between the third category of "agent" or "any other person" inasmuch as in both the cases consent of the candidate being the material factor, would be required to be pleaded and proved. Thus, the appellant was required to prove that the alleged corrupt practices were committed by the aforementioned Marydasan and Vellimon Vijayanandan with the consent and knowledge of the elected candidate. The first respondent herein, as noticed hereinbefore, in his written statement denied or disputed that a pamphlet has been published defaming the appellant herein at his instance or with his knowledge or consent. The appellant sought to prove such consent on the part of the first respondent vis-à-vis Marydasan on the ground that not only the same was printed in Karthika Press but the expenditure incurred by Respondent 1 on the printing and publishing thereof was intimated to the Election Commission in his election expenditure account. **Para-24:-** It is, therefore, clear that the evidence of the said witness is not conclusive on the question that offending material was printed and published by Karthika Press or the expenditure therefor was borne by Respondent 1.

Para-27:- Allegations of corrupt practices are quasi- criminal charges and the proof that would be required in the support thereof would be as in a criminal charge. The charges of corrupt practices are to be equated with criminal charges and proof thereof would be not preponderance of probabilities as in civil action but proof beyond reasonable doubt as in a criminal trial. (See *Surinder Singh v. Hardial Singh* (1985) 1 SCC 91 : (1985) 1 SCR 1059).

Para-28:- From the materials on record, therefore, in our opinion, it has not been proved that the offending article was printed and published with the consent and knowledge of the first respondent herein.

Para-29:- Admittedly, Shri Marydasan was not issued any notice. He was not given any opportunity to cross- examine the witnesses examined on behalf of the appellant or adduce evidence on his own behalf.

Para-31:- *The requirement to apply the provisions of Section 99 is in respect of a person who is not a party to the proceeding. The statute mandates that before a person is named as having indulged in corrupt practices he must be given the same opportunity which is given to a party to the petition. By reason of such a notice and giving an opportunity to the noticee to cross-examine the witnesses examined on behalf of the parties to the said petition and examining witnesses on behalf of his defence, he is placed in the same position as that of a party in the petition. (See: Ramesh Yeshwant Prabhoo (Dr.) v. Prabhakar Kashinath Kunte ((1996) 1SCC 130)).*

Para-32:- *Naming of a person as having indulge in corrupt practices has serious consequences. A person indulged in corrupt practices whether party to the petition in terms of Section 82 or subsequently receives a notice in terms of Section 99 would stand on the same footing having regard to the provision contained in Section 8-A of the Act. Such a person may not be a necessary party within the meaning of Section 82 of the Act but it is beyond any cavil that no finding could be recorded by naming such a person unless the mandatory provisions of Section 99 are complied with. (See: Patangrao Kadam v. Prithviraj Sayajirao Yadav Deshmukh ((2001) 3SCC 594.).*

Para-33:- *Even if Marydasan was agent of the first respondent within the meaning of Section 123 of the Act, the High court was required to comply with the aforementioned statutory mandate. It has not been disputed that the provisions of Section 99 are mandatory. Marydasan, thus, could not have been named as having indulge himself in corrupt practices without complying with the mandatory provisions of Section 99 of the Act."*

163. It transpires from the election petition that the petitioner has specifically pleaded in Para 14 that the Respondent got printed Handbill/Pamphlet of Specimen of EVM Machines wherein the seriatim of the name of the Candidates is/are photographed and election symbols from Lucky Printing Press. However, during evidence he has not supported this fact and has not stated anything during the Examination-in Chief that the Respondent has printed Handbill or Pamphlet from the Lucky Printing Press and thus, this allegation is not proved that the Pamphlet was published from Lucky Printing Press and therefore, the assertion of printing the name of the petitioner at Serial No.16 and showing NOTA is not correct.

Even P.W-2-Umesh Murmu has not stated during his evidence that the Respondent got printed Handbill from the Lucky Printing Press.

Thus, this assertion is not proved.

The petitioner has further pleaded in para 17 (a) of his election petition that he learnt from Prem Kumar Hembram of village Jhantipahari that cadre of JMM along with Sh. Sabut Murmu came to village Jhantipahari on 15.12.2019 and distributed the said Handbill/Pamphlet and Specimen of EVM among the villagers in door to door campaign and organized meeting at Chaupal and influenced the villagers by persuading them to cast phot in Serial No.16 that any vote cast in Serial No.16 would go in vain. However, the

petitioner has not examined said Prem Kumar Hembram during his evidence although he has given the name of Prem Kumar Hembram in the list of witnesses which was allowed by this Court on 02.05.2023

Similarly the petitioner further pleaded at para 17 (c) that Priya Ranjan Baski informed him that on 17.12.2019 Ramdeo Soren and Much Marandi came to village Jabardaha along with other party workers of JMM with Specimen of EVM demonstrating and influencing to cast their vote to his party at Serial No.7 and influenced the villager not to cast any vote at Serial No.16 as it will go in vain.

However, the petitioner has also not examined Priya Ranjan Baski in support of his case during his evidence. Thus, this allegation is also not proved.

164. It further transpires that even the petitioner has not stated as to when he learnt from Prem Kumar Hembram regarding the distribution of Pamphlet/Handbill on 15.12.2019 etc. and distribution of Pamphlet/Handbill with Specimen of EVM on 17.12.2019 as to when they had informed the petitioner about the above incident. Thus, the pleading is vague and cannot be relied upon. Even the petitioner has not given this information to the Deputy Commissioner, Jamtara as well as the Returning Officer, Jamtara while filing his representation.

165. The petitioner has merely given the name of Umesh Murmu-P.W-2 who informed him that Jaydhan Hansda and Rupchand Hansda came to his village Jaspur on 16.12.2019 and were distributing the Pamphlet. However, during evidence in this Court, P.W-2-Umesh Murmu merely stated that JMM Volunteers Jaydhan Hansda, Rupchand Hansda and others were distributing Pamphlets. During cross-examination, he admitted that he is the Election Agent of Santosh Hembram and he himself asserted in para 24 and 25 to his cross-examination that he had heard distribution of wrong Pamphlets i.e. Exhibit-01 by the Volunteers of JMM on 16.12.2019 through the villagers but does not remember their name. Even in para 26 he admitted and stated that a small boy has given a Pamphlet to him but he neither knows the name of the boy nor the name of his parents. He had handed over the said Pamphlet to Santosh Hembram but he does not remember the date of handing over the Pamphlet.

Thus, it is evident that even the P.W-2 had not seen the distribution of Pamphlet by Jaydhan Hansda and Rupchand Hansda rather he disclosed this fact before the petitioner like hearsay witness/person for hearing this fact. Though he claims to hand over the Pamphlet to the petitioner which was given to him by a boy but he does not know the boy and the name of said boy and thus, in this view of the matter the evidence of P.W-2-Umesh Murmu has not supported the case of the petitioner.

166. It further reveals that neither the petitioner nor his Election Agent P.W-2 made any

complaint before the District Election Officer-cum-Deputy Commissioner, Jamtara and Returning Officer, Jamtara-08 Nala Assembly Constituency regarding the distribution of Pamphlet i.e. Exhibit-01 (marked with objection) on 15.12.2019, 16.12.2019 and 17.12.2019 before any authorities i.e. Deputy Commissioner, Jamtara or any other authority.

167. It further transpires that even in the written complaint dated 22.12.2019 given by the petitioner before the Deputy Commissioner, Jamtara marked as 'X' for identification, he has not disclosed the names of Prem Kumar Hembram, Umesh Murmu and Priya Ranjan Baski that who had informed him that the JMM Party workers were distributing Pamphlet. Even this written complaint was filed on 22.12.2019 i.e. after two days of completion of election and even if, it is taken on its face value, does not appear to be correct.

168. On the other hand Respondent-R.W-9 and his Election Agent and R.W-11 namely Ashok Kumr Mahto have stated during their evidence that the Respondent got printed election material from Bharat Traders Press, Ranchi and which is evident from the record called for by the petitioner in I.A No.10550 of 2022 passed by the Co-ordinate Bench of this Court and which was submitted by the Returning Officer-Sri Surendra Kumar before the office of this High Court. Thus, the petitioner has failed to prove his case on the pleading as well as even during evidence.

It is evident that Exhibit-01 can be prepared and manufactured by any person. Even the petitioner has not examined the owner of Lucky Printing Press and the concerned person of Lucky Press although the mobile number of Lucky Press was printed on Exhibit-01 and no effort was made by the petitioner to examine the Proprietor/Owner/Manager of Lucky Press, if any.

169. The petitioner has placed much emphasis upon Exhibit-02 (marked as objection) in which some persons were shown in keeping certain Pamphlets and which the petitioner has claimed to have taken their photograph from his Mobile phone and got it developed and enlarged from the nearby shop or from any shop. However, the petitioner has not disclosed his Mobile number and even the Mobile showing marked as Exhibit during the evidence of the petitioner before this Court which should have been done easily. It was the Mobile of the petitioner from which the petitioner has claimed to have snapped the photograph of those people on 20.12.2019 at around 3.00 p.m. i.e. on the date of election, even the petitioner has not disclosed the name of Shopkeeper/Studio or any other Service Provider from which the photo (i.e. Exhibit-02) was enlarged which was taken by the petitioner from his Mobile phone. This is also serious lacunae.

170. It has been held by Hon'ble Supreme Court in the case of **Arjun Panditrao Khotkar v. Kailash Kushanrao Gorantyal** reported in (2020) 7 SCC 1 at para-81 to 85 as follows:-

"Para-81:- What is laid down in Section 65-B as a precondition for the admission of an electronic record, resembles what is provided in the second part of Section 136. For example, if a fact is sought to be proved through the contents of an electronic record (or information contained in an electronic record), the Judge is first required to see if it is relevant, if the first part of Section 136 is taken to be applicable.

Para-82:- But Section 65-B makes the admissibility of the information contained in the electronic record subject to certain conditions, including certification. The certification is for the purpose of proving that the information which constitutes the computer output was produced by a computer which was used regularly to store or process information and that the information so derived was regularly fed into the computer in the ordinary course of the said activities.

Para-83:- In other words, if we go by the requirements of Section 136, the computer output becomes admissible if the fact sought to be proved is relevant. But such a fact is admissible only upon proof of some other fact, namely, that it was extracted from a computer used regularly, etc. In simple terms, what is contained in the computer output can be equated to the first mentioned fact and the requirement of a certification can be equated to the last mentioned fact, referred to in the second part of Section 136 read with Illustration (b) thereunder.

Para-84:- But Section 65-B(1) starts with a non obstante clause excluding the application of the other provisions and it makes the certification, a precondition for admissibility. While doing so, it does not talk about relevancy. In a way, Sections 65-A and 65-B, if read together, mix up both proof and admissibility, but not talk about relevancy. Section 65-A refers to the procedure prescribed in Section 65-B, for the purpose of proving the contents of electronic records, but Section 65-B speaks entirely about the preconditions for admissibility. As a result, Section 65-B places admissibility as the first or the outermost checkpoint, capable of turning away even at the border, any electronic evidence, without any enquiry, if the conditions stipulated therein are not fulfilled.

Para-85:- The placement by Section 65-B, of admissibility as the first or the border checkpoint, coupled with the fact that a number of "computer systems" [as defined in Section 2(l) of the Information Technology Act, 2000] owned by different individuals, may get involved in the production of an electronic record, with the "originator" [as defined in Section 2(za) of the Information Technology Act, 2000] being different from the recipients or the sharers, has created lot of acrimony behind Section 65-B, which is evident from the judicial opinion swinging like a pendulum.

171. Thus, in the above case, the Hon'ble Supreme Court has put emphasis for taking Certificate. It was incumbent upon the petitioner to obtain the Certificate of Service Provider of the photographer which he had obtained from the shop. The petitioner was also required to prove the date of taking such Certificate from the shop owner from where he has taken the photograph of alleged JMM workers from his Mobile phone otherwise such a photograph can be prepared by means of Photo Shopping or by means of tampering with the photographs. The petitioner further required to prove the date of sending such photograph and Pamphlet before the District Election Officer-cum-Deputy Commissioner, Jamtara as well as Returning Officer, Jamtara but he failed to prove the same. There is

time gap between 20.12.2019 to 04.02.2020 i.e. the date on which the Election Petition was filed before this Court. The petitioner has also not named the Election Observer and the Election Officers with whom he had tried to make complaint through his Mobile and even he has not shown the specific time on the date of talking with him by specific mobile number. Even the petitioner admitted during cross-examination that he received the complaint of distributing such Pamphlet (i.e. Exhibit-1) on 16.12.2019, 17.12.2019 but he failed to make any complaint.

172. Thus, in absence specific date of getting the photograph i.e. Exhibit-01 and Exhibit-02 prepared coupled with the fact of not complaining before the appropriate authority i.e. the District Election Officer-cum Deputy Commissioner and Returning Officer, this Court finds that the petitioner has failed to make prima facie case against the respondent for distributing the Pamphlet (i.e. Exhibit-01) through the party cadre of the JMM or his Volunteers and also for influencing the Voter by the persons as shown in Exhibit-02. Even P.W-2-Umesh Murmu who claims to identify all the persons of his village Jaspur, has failed to identify those two persons in the photograph of Exhibit-02 (marked with objection).

173. It is well settled from the judgment of Hon'ble Supreme Court that corrupt practice has to be proved like a criminal trial, if committed by any Candidate and oral evidence, particularly coming from a tainted service cannot form the sole basis of proof of corrupt practices.

174. It has been held by Hon'ble Supreme Court in the case of **(Surinder Singh vs. Hardial Singh and Ors.)** reported in **AIR 1985 SC 89** at para 16, 23, 33, 34 and 45 as follows:-

“Para-16:- We shall now turn to the other submission of Mr Shanti Bhushan. By a catena of decisions of this Court it has by now been very well settled that allegations of corrupt practice are quasi-criminal charges and the proof that would be required in support of such allegations would be as in a criminal charge. Mr Shanti Bhushan has canvassed that the standard of proof required in such a case would be dependent upon the gravity of the charge and there is no justification to adopt the rule that in every case of allegation of corrupt practice the standard applicable to a criminal trial involving a grave charge like murder should be adopted. He has drawn support from the observations of this Court in M. Chenna Reddy v.V. Ramachandra Rao [40 ELR 390 (SC)] . It may be pointed out here that the ratio in Chenna Reddy case [40 ELR 390 (SC)] runs counter to the current of judicial thought on the point. In fact, quite close in point of time after Chenna Reddy case [40 ELR 390 (SC)] came the case of Magraj Patodia v.R.K. Birla [(1970) 2 SCC 888 : AIR 1971 SC 1295 : (1971) 2 SCR 118] Hegde, J. indicated :

(SCC p. 895, para 14)

"It is true that as observed in M. Chenna Reddy v.V. Ramachandra Rao [40 ELR 390 (SC)] that a charge of corrupt practice cannot be equated to a criminal

charge in all respects. While the accused in a criminal case can refuse to plead and decline to adduce evidence on his behalf and yet ask the prosecution to prove its case beyond reasonable doubt such is not the position in an election petition. But the fact remains that burden of proving the commission of corrupt practice pleaded is on the petitioner and he has to discharge that burden satisfactorily. In doing so he cannot depend on preponderance of probabilities. Courts do not set at naught the apparent verdict of the electorate except on good grounds."

Charges of corrupt practice have been dealt with by this Court for over 20 years now in election appeals under the Act. The first important case which came before this Court was disposed of by a five-Judge Bench in the case of Mohan Singh v. Bhanwarlal [AIR 1964 SC 1366 : (1964) 5 SCR 12] . Shah, J. (as he then was), spoke for the Court thus:

"The onus of establishing a 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 a civil suit : the corrupt practice must be established beyond reasonable doubt by evidence which is clear and unambiguous."

Para-23:- *It is thus clear beyond any doubt that for over 20 years the position has been uniformly accepted that charges of corrupt practice are to be equated with criminal charges and proof thereof would be not preponderance of probabilities as in civil action but proof beyond reasonable doubt as in criminal trials. We are bound by the decision of the larger Bench in Mohan Singh case [AIR 1964 SC 1366 : (1964) 5 SCR 12] as also by decisions of coordinate benches and do not feel inclined to take a different view. We also find no warrant for the contention of Mr Shanti Bhushan that a fresh look is necessary in the matter. On the other hand we feel advised to follow the dictum of Lord Devlin when he observed:*

"Precedents keep the law predictable and so more or less ascertainable."

Lord Chancellor Hailsham very appropriately summed up the English practice when he said in Cassell & Co. Ltd. v. Broome [(1972) 1 All ER 801] ":

"Their Lordships regard the use of precedents (1) as an indispensable foundation upon which to decide what is the law and its application to individual cases. It provides at least some degree of certainty upon which individuals can rely in the conduct of their affairs, as well as a basis for orderly development of legal rules. [See Note (1966) 3 All ER 77 : (1966) 1 WLR 1234] "

Para-33:- *The question that has next to be considered is whether disturbing such a meeting would also amount to undue influence under Section 123(2) of the Act. Direct or indirect interference or attempt to interfere with free exercise of the electoral right by a candidate, his agent or any person with his consent or the candidate's election agent has been made a corrupt practice. "Electoral Right" has been defined in Section 79(d) of the Act to mean "the right of a person to stand or not to stand as or to withdraw or not to withdraw from being a candidate or to vote or refrain from voting at any election". In para 5 of the election petition there is no allegation of any threat. It is proper at this stage to refer to the pleadings in para 6 of the election petition where it has been pleaded:*

"That later on the same day aforesaid assailants threatened that anybody who will support or vote for Respondent 2 shall meet the same fate as Daya Singh.

Gurdial Singh son of Tara Singh along with others created such a terror in the village that subsequently it became very difficult and risky for anyone to canvass for Respondent 2 in this village."

Para-34:- *Disturbing the meeting as alleged in para 5 of the election petition in our view is not covered under sub-section*

(2) of Section 123 of the Act and is clearly an electoral offence dealt with by Section 127 of the Act. The allegations contained in para 6 of the election petition would perhaps come within Section 123(2)(a)(i) of the Act. In para 5 of the election petition the following fact had been pleaded:

"Then Respondent 1 told them not to allow the meeting to proceed at any cost and himself stayed behind."

If this statement of fact is accepted consent of the appellant for disturbing the meeting can be found but in the absence of any specific plea that it was appellant's instruction that the electors should be threatened, the facts alleged in para 6 of the election petition cannot be accepted to have been with the consent of the appellant. Mr Shanti Bhusan, learned counsel for Respondents 1 and 2 has not disputed, and in our opinion rightly, that allegations of corrupt practice have to be strictly pleaded with material particulars and evidence beyond the ambit of plea would not be permitted to be led. Though there is some oral evidence to implicate the appellant, even for what followed the disturbance to the meeting, we do not think in the absence of the requisite plea such evidence can be entertained for any effective purpose.

Para-45:- *A candidate is entitled to canvass for votes. One who is in the field to be an electoral representative is also entitled to nourish his constituency. As pointed out by this Court in Bhanu Kumar Shastri case [(1971) 1 SCC 370 : AIR 1971 SC 2025 : (1971) 3 SCR 522] amelioration of grievances of the public is innocuous and cannot be construed against a candidate. We agree that while nourishing is a legitimate activity, it is of paramount importance that nourishing should not transgress the limit so as to corrupt the electoral process. The appellant was already in the field as a candidate for the Legislature and was entitled to help the people in his constituency in a legitimate way. Once the allegation that he had deposited the amount of Rs 944 is discarded, his taking up of the cause of Bagicha Singh for early shifting of the electric wires overhanging the first floor of his house would not amount to*

"bribe". At any rate, the evidence on record is only of PW

12. We do not think that evidence even if accepted as a whole would be sufficient to establish the charge of corrupt practice on this score. This Court has rightly indicated that oral evidence, particularly, coming from a tainted source cannot form the sole basis of proof of corrupt practice. In Younus Kunju case [(1984) 3 SCC 346] it has been stated : (SCC p. 350, para 5)

"Admittedly all these witnesses were the workers of the appellant. There is overwhelming material on the record, and even counsel fairly admitted, that the election was fought on party basis and there was sharp division of the electorate on the basis of political parties. That being the position, workers at the election with party alignment would necessarily be political supporters of the respective candidates and when called as witnesses they would support their stand. Instances are not uncommon where such witnesses support their respective candidates and their

cases even though the same be far from truth. In such circumstances we do not think on the oral testimony of these four witnesses the charge of publication, of objectionable materials can be said to have been established."

175. It is further evident that the Written Statement of the Respondent was filed on 12.10.2022 within 90 days after his appearance after the permission of the Co-ordinate Bench vide order dated 08.07.2022. Thus, this Court finds no illegality in filing the Written Statement by the Respondent.

On the question of filing of Written Statement by the Respondent is concerned, it would appear that the respondent has appeared in this case on 18.07.2022 and the Co-ordinate Bench of this Court had recalled the earlier order of ex-parte proceeding dated 06.07.2022 and permitted the respondent to file the Written Statement by allowing I.A. No.6081 of 2022 filed on behalf of the respondent.

176. It has been held by Hon'ble Supreme Court in the case of ***Kailash vs. Nanhku and Ors.*** reported in **2005 (4) JLJR 1 SC** that High Court has power to fix a date for filing the Written Statement and even the High Court has discretionary power and to extend the time for filing the Written Statement being a matter of practice and procedure. The discretion vested in the Court by rules made in Article 225 for the purpose of any special Act would not be controlled by the proviso to Rule 1 of Order VIII of CPC.

177. It has been held by Hon'ble Supreme Court in the case of ***Smt. Rani Kusum vs. Smt. Kanchan Devi and Ors.*** reported in **2005 (4) JLJR 53 (SC)** at para-6, 10, 13 and 19 as follows:-

"Para-6:-The scope and ambit of [Order VIII Rule 1 of CPC](#) has been examined in detail by this Court in [Kailash v. Nanhku and Ors.](#) (2005 (4) SCC 480).

***Para-10:-** Order VIII, Rule 1 after the amendment casts an obligation on the defendant to file the written statement within 30 days from the date of service of summons on him and within the extended time falling within 90 days. The provision does not deal with the power of the court and also does not specifically take away the power of the court to take the written statement on record though filed beyond the time as provided for. Further, the nature of the provision contained in Order VIII, Rule 1 is procedural. It is not a part of the substantive law. Substituted Order VIII, Rule 1 intends to curb the mischief of unscrupulous defendants adopting dilatory tactics, delaying the disposal of cases causing inconvenience to the plaintiffs and petitioners approaching the court for quick relief and also to the serious inconvenience of the court faced with frequent prayers for adjournments. The object is to expedite the hearing and not to scuttle the same. While justice delayed may amount to justice denied, justice hurried may in some cases amount to justice buried.*

***Para-13:-** The processual law so dominates in certain systems as to overpower substantive rights and substantial justice. The humanist rule that procedure should be the handmaid, not the mistress, of legal justice compels consideration of*

vesting a residuary power in judges to act ex debito justitiae where the tragic sequel otherwise would be wholly inequitable. - Justice is the goal of jurisprudence - processual, as much as substantive. (See [Sushil Kumar Sen v. State of Bihar](#) (1975 (1) SCC 774).

Para-19:- After elaborating the purpose for introduction of Order VIII Rule 1, this Court in [Kailash's Case](#) (supra) at paragraph 45 observed that no straightjacket formula can be laid down except that observance of time schedule contemplated by Order VIII Rule 1 shall be the rule and departure therefrom an exception, made for satisfactory reasons only. The conclusions have been summed up in Para 46. The relevant portion reads as follows:

"(iv) the purpose of providing the time schedule for filing the written statement under [Order VIII Rule 1 CPC](#) is to expedite and not to scuttle the hearing. The provision spells out a disability on the defendant. It does not impose an embargo on the power of the Court to extend the time. Though the language of the proviso to Rule 1 [Order VIII CPC](#) is couched in negative form, it does not specify any penal consequences flowing from the non-compliance. The provision being in the domain of the procedural law, it has to be held directory and not mandatory. The power of the Court to extend time for filing the written statement beyond the time schedule provided by [Order VIII Rule 1 CPC](#) is not completely taken away.

(v) Though [Order VIII Rule 1 CPC](#) is a part of procedural law and hence directory, keeping in view the need for expeditious trial of civil cases which persuaded Parliament to enact the provision in its present form, it is held that ordinarily the time schedule contained in the provision is to be followed as a rule and departure therefrom would be by way of exception. A prayer for extension of time made by the defendant shall not be granted just as a matter of routine and merely for the asking, more so when the period of 90 days has expired. Extension of time may be allowed by way of an exception, for reasons to be assigned by the defendant and also be placed on record in writing, howsoever briefly, by the court on its being satisfied. Extension of time may be allowed if it is needed to be given for circumstances which are exceptional, occasioned by reasons beyond the control of the defendant and grave injustice would be occasioned if the time was not extended. Costs may be imposed and affidavit or documents in support of the grounds pleaded by the defendant for extension of time may be demanded, depending on the facts and circumstances of a given case."

178. Thus, in view of the discussion made above, it is evident that the High Court can extend power in filing the Written Statement even if it is filed beyond the statutory period. However, in the present case, the respondent had appeared, although of course after publication of notice in Hindi Newspaper i.e. 'Dainik Jagran' but his appearance can be counted from the date of appearance before this Court and not from the date of tracking report of registered post, which cannot be a conclusive proof of service of notice upon any person. Therefore, the Co-ordinate Bench has rightly permitted the respondent to file his Written Statement and the petitioner has thus filed his Written Statement within time. Therefore, this Court finds no merit in the submission of the learned counsel for the petitioner

that Written Statement has been filed beyond statutory period.

179. Learned counsel for the petitioner has made much emphasis that evidence marked on admission by the Respondent, is against the provisions of Order VIII Rule 2 of CPC as there is no such pleading in the Written Statement of the respondent. However, this Court, finds no merit in the submission as the respondent can be permitted to adduce his evidence once he has filed his Written Statement and he has denied the alleged handbill/pamphlet distributed by his Volunteers or cadre of JMM party. He may not require to give specific evidence in his Written Statement as he has denied the fact of printing his election articles from Lucky Printing Press, Ranchi. Although he has not made any specific pleading in his Written Statement that his election materials/articles were published from Bharat Traders Press, Ranchi but R.W-9 i.e. the respondent and R.W-11 i.e. the Election Agent of the respondent have clearly stated in the evidence that the Election Materials were published from 'Bharat Traders Press', Ranchi and those fact is also evident from the documents received before this Court from District Administration in the light of I.A. No.10550 of 2022 filed by the learned counsel for the petitioner.

180. It further transpires that even the Hon'ble Supreme Court in Special Leave to Appeal (C) No(s).4574 of 2024 vide order dated 26.02.2024 has given liberty to the Respondent to raise all his contentions at an appropriate stage before this Court.

181. It is evident from the documents marked as Exhibit-DD-I and DD-II, DD-III, DD-IV, DD-V respectively that no complaint was received by the team of the Flying Squad and Sector Magistrate during the period of posting.

Exhibit-DD-I, DD-II (marked on admission) respectively are Flying Squad Reports of Booth No.193 to 332 & Booth No.1 to 96 which reveal that no complaint was received by the Flying Squad Team on 20.12.2019 including Booth No.91 and 92 as alleged by the petitioner.

Even Exhibit-DD-III, DD-IV and DD-V reveal that no complaint of any corrupt practice or distribution of any tainted Pamphlet was made by the petitioner or any other person.

182. It is further evident from Exhibit-E, E/1, E/2 and E/3 (on admission) that even on the polling day nothing was found on 19.12.2019 by the Sector Magistrate namely Bishwanath Toppo, Dr. Md. Rizwan, Dayanand Jamuda and Anmol Amar Baba of proof of any corrupt practices.

183. Exhibit-G and G/1(on admission) are the Diary of Presiding Officer of Booth No.91 and Booth No.92 on 20.12.2019 which also do not disclose any report of corrupt practices

made by the respondent or regarding distribution of Pamphlets i.e. Exhibit- 01 by the persons shown in photograph marked as Exhibit-02 (with objection).

184. Exhibit-H and H/1 are the Visit Sheets of Booth No.91 and 92 by the prepared by the Presiding Officers of Booth No.91 and Booth No.92 which also do not disclose any corrupt practices made by the Respondent or his Volunteers or by any JMM cadre.

185. Thus, in view of the discussion made above, it is evident that the petitioner has failed to make out any alleged corrupt practices as per the Act under Section 100 (1) (b) and 123 of the R.P. Act, 1951.

186. Thus, in view of the law laid down by the Hon'ble Supreme Court and also discussion made above, this Court finds that petitioner has no valid cause of action for filing the election petition and the Respondent and his Polling Agent have not committed any corrupt practices as stated in the election petition.

187. Thus, Issue No.2 and 3 are decided against the Petitioner and in favour of the Respondent.

Issue No.4

188. It is evident that the Respondent had secured 61,356 votes whereas the petitioner has secured 1769 votes only. The petitioner has failed to prove the charges of corrupt practice against the respondent.

Hence, this Court is of the view that the result of the Respondent is not liable to be set aside.

Accordingly, this Issue No.4 is decided against the petitioner and in favour of the Respondent.

Issue No.1 and 5

189. In view of the discussion made above and law laid down by the Hon'ble Supreme Court this Election Petition is not maintainable and the petitioner is not entitled to the relief(s).

190. Thus, Issue No.1 and 5 are decided against the petitioner and in favour of the respondent.

191. Accordingly, this Election Petition No.06 of 2020 is hereby dismissed but without costs.

192. All the pending I.As., if any, stand disposed of.

193. Let a copy of this Judgment be communicated to the Election Commission of India, the State Election Commission and Office of Jharkhand Vidhan Sabha and to all concerned by the Office at once.

194. Office is directed to return the document to the parties after keeping the photo copy of the same.

(Sanjay Prasad, J.)

Saket/-

AFR

आदेश से,

(अरविन्द आनन्द)

प्रधान सचिव

भारत निर्वाचन आयोग

ELECTION COMMISSION OF INDIA

Nirvachan Sadan, Ashoka Road, New Delhi-110001

Dated: 10 February, 2025

21 Magha, 1946 (Saka)

NOTIFICATION

No. 82/ES-1/JKD-LA/(06/2020)/2025: In pursuance of Section 106(B) of the Representation of the People Act, 1951 (43 of 1951), the Election Commission hereby published Order dated the 29th October, 2024 of the High Court of Jharkhand, Ranchi in Election Petition No. 06 of 2020.

IN THE HIGH COURT OF JHARKHAND AT RANCHI

Election Petition No.06 of 2020

Santosh Hembram, age about 42 years, S/o Late Resendra Hembram R/o Pitwasol, Village-G.P. Maheshmunda, PO-Sagjuria, PS-Nala, District Jamtara, Jharkhand, PIN 815355

..... Petitioner

Versus

Rabindra Nath Mahto, S/o Golak Bihari Mahto, R/o-Vill-Patanpur, P.O-Mohanabanka, P.S-Bindapathata, District Jamtara, Jharkhand

..... Respondent

CORAM:HON'BLEMR. JUSTICE SANJAY PRASAD

For the Petitioner	:Mr. Mukesh Kumar Dubey, Advocate
	:Mr. Deb Nandan Rajak, Advocate
For the Respondent	:Mr. Arbind Kumar Lal, Advocate
	:Mr. Anil Kumar, Advocate
For the State	:Mr. Ashutosh Anand, AAG-III

CAV on:17th October,2024**Delivered on:29.10.2024**

The instant Election Petition has been filed on behalf of the petitioner-Santosh Hembram under Section 80(A) (2) and 81 of the Representation of Peoples Act, 1951 challenging the election of the sole respondent, who was elected on 23.12.2019 from 08, Nala Assembly Constituency as a member of the Jharkhand Legislative Assembly.

2. The case of the election petitioner, in brief, is that:-

(i) The Notification was issued by the Returning Officer for holding the election and the dates were fixed for filing of nomination paper, scrutiny of nomination papers and withdrawal of nomination paper and also the date of election and the date of counting of votes as well as the date of declaration of the result were published, which was fixed on 03.12.2019, 04.12.2019, 06.12.2019, 20.12.2019, 23.12.2019 and 23.12.2019 respectively.

(ii) The Returning Officer had accepted the nomination paper party wise for sixteen (16) persons and the Returning Officer has rejected the nomination paper of four persons also. As per election petition the name of the petitioner is shown at Serial No.16 whereas the Respondent is shown at Serial No.7 from Jharkhand Mukti Morcha (JMM).

(iii) According to the result sheet prepared by the Returning Officer, the respondent had secured 61356 votes whereas his rival Satyanand Jha of Bhartiya Janta Party had secured 57836 votes whereas the election petitioner had secured 1769 votes and as such the sole respondent was declared as a Returned Candidate from 08, Nala Assembly Constituency.

(iv) The election of the sole Respondent/Returned Candidate is void on the ground that the sole Respondent/Returned Candidate and his election agent and other persons have committed in connivance and with consent, the corrupt practice wherein the sole Respondent/Returned Candidate and his election agent by publication and statement. The ground comes within the mandate of Section 100(1) (b) of Representation of People Act, 1951.

(v) The sole Respondent-Rabindra Nath Mahato had filed his nomination paper in three sets. The Election Agent of Returned Candidate was Ashok Kumar Mahto R/o Village Barmosia, Panchayat Khamaarbad, PO Tilaki, District Jamtara. The petitioner has tried his best to obtain the certified copy of all the sets of the nomination paper filed by the sole Respondent but it is yet to be received, albeit

requisition for certified copy was filed before the competent authority on 25.01.2020.

(vi) The petitioner herein has filed his nomination paper as independent candidate on 03.12.2019. The petitioner has tried his best to obtain the certified copy of the nomination paper filed by the petitioner but it is yet to be received, albeit requisition for the same was filed on 25.01.2020.

(vii) The petitioner belongs to Schedule Tribes community more specifically the petitioner belongs to Santhal Tribes.

(viii) The list of candidates were published in Format-7(k) as per Rule 10(1) of the Representation of People Act.

(ix) After finalization of name of all the contesting candidates and their position as given in Format-7(k) the present sole respondent got printed handbill/pamphlet of specimen of EVM Machines wherein the serial no., name of candidates his/her photograph and election symbols from Lucky Printing Press.

(x) It has been stated that the present petitioner is member of Schedule Tribes community more specially Santhal community. The Nala Assembly Constituency is a tribal dominated constituency where near about 32% of the population belongs to Tribal Community. They got pasted these handbills in the prominent place of the villages wherein Schedule Tribes community resided in large numbers. They persuade/advised the villagers not to cast vote at Serial No.16 (i.e. the petitioner).

(xi) Some of the corrupt practices committed by the Returned Candidate (i.e. the Respondent) and/or his agents and other person are as follows:-

(a) Village Jhantipahari-Prem Kumar Hembram has informed the petitioner that the cadre of JMM (Jharkhand Mukti Morcha) alongwith Sh. Sabut Murmu came to village Jhantipahari on 15.12.2019 at evening and distributed the above said handbill/pamphlet and specimen of EVM among villagers in door-to-door campaign and organized meeting at Chaupal for campaign and influenced the villagers by persuading that any vote cast in Serial No.16 would go in vain. They advised to not give vote in Serial No.16.

(b) Village Jaspur-Umesh Murmu has informed the petitioner that Jaydhan Hansda and Rupchand Hansda came to his village Jaspur on 16.12.2019 in the evening and in door-to-door campaign distributed and pasted the above said handbill in many places and requested to cast their vote his party at Serial No.7 and influenced the villager by persuading them that any vote cast in Serial No.16 would go in vain. Thus, thereby advised to

not give vote in Serial No.16.

(C) Village Jabardaha-Priya Ranjan Baski has informed the petitioner that on 17.12.2019 Ramdeo Soren and Much Marandi came to village Jabardaha along with other party worker of JMM with a specimen EVM demonstrating and influencing to cast their vote his party at Serial No.7 and influenced the villager by persuading that any vote cast in Serial No.16 would goes in vain.

(xii) The petitioner had arrived on 20.12.2019 at 3.00 p.m at village Patanpur at Booth No.91 and 92 then he found the members of the JMM and cadre of the sole respondent were undue influencing voters and distributed the dummy EVM Machines and copy of said handbill depicting the position of the sole respondent at Serial No.7 and at Serial No.16 Nota was shown. The said event was photographed by the present petitioner himself on 20.12.2019 at the village Patanpur, Block Nala, District Jamtara and photo copy of the event has been annexed as Annexure-6.

(xiii) Being aggrieved with the corrupt conduct and practice of the sole Respondent, the petitioner herein telephonically complained to the election officers on the same day. Thereafter he has given written complaint to the official posted at District Level and State Election Commission as well as Election Commission of India.

Photo copy of written complaint filed by the present petitioner dated 22.12.2019 and acknowledgement has been annexed as Annexure-7.

(xiv) It has been stated that the handbill/pamphlet printed and distributed by sole respondent or his election agent or other agents with consent and connivance of sole respondent were aimed at furthering the election prospect of the sole respondent by means of corrupt practice as stipulated in Section 100(1) (b) r/w Section 123 (4) of Representation of People Act, 1951 which is against the electoral prospect of present election petitioner.

(xv) It has been stated that the petitioner has deposited the required security deposited as contemplated under Section 117 of the Representation of People Act, 1951 in this Hon'ble Court vide Challan No.J-185 dated 03.02.2020.

3. The case of the respondent-Rabindra Nath Mahto as per Written Statement dated 12.10.2022, in brief, is as follows:-

(i) This election petition is not maintainable in the eye of law and as such liable to be dismissed with heavy compensatory cost.

(ii) The petitioner has failed to make out any prima facie case against the respondent. It has been stated that the affidavit sworn by the election petitioner has also not been sworn in accordance with Rule 61 of Jharkhand High Court Rules.

(iii) It has been stated that the election petition has stated several statements in the election petition but the same are not supported by affidavit in Form-25 as required under proviso to Section 81 (1) of the Act read with Rule 94 A of the Conduct of Elections Rules 1961.

(iv) The election petitioner has annexed several documents as annexures of the election petition and on perusal of the same, it is crystal clear that each and every annexure has not been properly verified nor affidavitated in accordance with law, hence the election petition is liable to be dismissed accordingly.

(v) The copy of the election petition and the affidavit therein as supplied to the Respondent No.1 does not contain the affirmation by the Oath Commissioner. Under these circumstances such defect is not curable defect. Therefore, the present election petition deserves to be dismissed in accordance with law.

(vi) It has been stated that in view of non-compliance of Section 83 of Representation of Peoples Act, 1951 the election petition deserves to be dismissed. Since the full particular of material facts and particular of relating to corrupt practices in the election petition has not been complied with, the election petition deserves to be summarily dismissed.

(vii) The respondent denied that he and his election agent and other persons, have committed in connivance and with consent the corrupt practice bearing the sole respondent has declared successful.

(viii) It has been denied by the respondent that the ground taken by the election petitioner comes within the mandate of Section 100 (1) (b) of the Representation of Peoples Act, 1951.

(ix) The respondent denied to have got printed handbill/pamphlets of specimen of EVM Machine wherein the serialim, name of candidates his/her photographs and election symbols from Lucky Printing Press. He also denied that he got printed and depicted his name, photographs and symbol at Serial No.7 and he got deliberately printed the name of the petitioner at Serial No.16 (Nota). It is stated that the copy of printed handbill/pamphlets has been annexed as Annexure-5.

(x) The alleged handbill wherein in Serial No.16 as NOTA has been shown is frivolous and malicious. The same has neither been printed nor distributed whatsoever either by this respondent or any of his part worker or supporter. The

question of pasting the alleged handbill in the prominent places of the villages also does not arise. The petitioner has made false allegation only to malign his image. The election petitioner has not mentioned as to in which place and village or villages, the respondent has distributed the alleged handbill/pamphlets etc. and on which date and time as neither the respondent nor his election agent got published/printed the alleged handbills/pamphlets and as such no prejudice is caused to the election petitioner.

(xi) Distribution of alleged handbill in village Jhantipahari and other villages on 15.12.2019, 16.12.2019 and 17.12.2019 respectively is nothing but a totally false story. As such, the election petitioner has not mentioned anywhere as to whom, which voter the alleged handbill/pamphlet was given and as such without prejudice it is hereby submitted that at the time of such alleged occurrence, what the supporters of election petitioner has done to protest the same.

(xii) That the date 20.12.2019 was the date of polling and at the place of polling Presiding Officers of such booths of Booth no.91 and 92 along with other administrative personnel were present there. But in spite of this fact no complain whatsoever was made by the election petitioner to them. As such it is crystal clear that no such alleged occurrence happened as alleged and as such question of taking photographs by the election petitioner himself is nothing but a photo shopping through computers with full of ulterior motive and bad intention in order to misuse the process of law.

(xiii) It has been stated that this respondent is a very popular leader in his area as such he secured the highest vote

i.e. 61,356 whereas the election petitioner has got only 1769 votes. Thus, it is clear that there is a huge difference of 59587 votes. As such the result of the election has not been materially affected and hence the election of this respondent is not at all liable to be declared void but instead the election petition itself deserves to be dismissed with heavy compensatory cost. Hence this Election Petition may be dismissed.

4. Heard Mr. Mukesh Kumar Dubey, learned counsel assisted by Mr. Deb Nandan Rajak, learned counsel for the petitioner, Mr. Arbind Kumar Lal, learned counsel for the respondent assisted by Mr. Anil Kumar.

5. Learned counsel for the petitioner submitted that the election of the respondent may be declared void and illegal, who has been illegally elected from 08-Nala Assembly Constituency from the Jharkhand Mukti Morcha political party. It is submitted that the petitioner and several other persons and the respondent had contested 08-Nala Assembly

election which was held on 20.12.2019. However, the respondent by adopting unfair means and corrupt practices became the Returned Candidate. The petitioner has contested the said election of 2019 as an Independent Candidate and he is a member of Scheduled Tribe and the number of votes in the said constituency is very high and the petitioner is a very popular among the people of Scheduled Tribes at 08-Nala Assembly Constituency and he was confident of winning the said seat. However, during course of election campaign, he learnt from one Prem Kumar Hembram that the cadre of JMM (Jharkhand Mukti Morcha) along with Sh. Sabut Murmu came to village Jhantipahari on 15.12.2019 at evening and distributed the above said handbill/pamphlet and specimen of EVM among villagers in door-to-door campaign and organized meeting at Chaupal for campaign and influenced the villagers by persuading that any vote cast in Serial No.16 would go in vain. It is submitted that Umesh Murmu has informed the petitioner that Jaydhan Hansda and Rupchand Hansda came to his village Jaspur on 16.12.2019 in the evening and in door-to-door campaign distributed and pasted the above said handbill in many places and requested to cast their vote his party at Serial No.7 and influenced the villager by persuading them that any vote cast in Serial No.16 would go in vain. It is submitted that Priya Ranjan Baski has informed the petitioner that on 17.12.2019 Ramdeo Soren and Much Marandi came to village Jabardaha along with other party worker of JMM with a specimen EVM demonstrating and influencing to cast their vote his party at Serial No.7 and influenced the villager by persuading that any vote cast in Serial No.16 would go in vain. It is submitted that the petitioner on 20.12.2019 when arrived at village Patanpur at Booth No.91 and 92 then he found the members of the JMM and cadre of the sole respondent for undue influencing voters distributed the dummy EVM Machines. It is submitted that the Respondent got distributed the handbills and pamphlets through his Election Agent or other agents among the general public by adopting corrupt practices and due to which the Petitioner has lost significant votes and as such the election of the Respondent may be declared void.

6. It is further submitted that villager Umesh Murmu of village Jaspur informed him that similar propaganda was made house to house in his village by showing demo that Rabindra Nath Mahto, candidate of JMM is shown at Serial No.7. Even Umesh Murmu informed that Jaydhan Hansda and Roopchand Hansda were propagating in favour of JMM to give vote at Serial No.7 and further not to give vote at Serial No.16 showing it as 'NOTA'.

Similarly, in the village Jabardaha he also learnt during his election campaign that JMM volunteers Ramdeo Soren and Much Marandi are propagating to vote in favour of Rabindra Nath Mahto at Serial No.7 and Serial No.16 was shown as 'NOTA' for not giving vote.

7. It is further submitted that the respondent has failed to file his Written Statement

before this Court within time and the Written Statement filed by the respondent has not been accepted till date by this Court. It is submitted that the respondent has filed I.A No. 8791 of 2022 under Section 148 C.P.C for extension of time in filing his Written Statement. It is submitted that as per provisions of Civil Procedure Code, the Written Statement was required to be filed within 60 days from the side of the respondent and which can be extended only for further 60 day by the Court on its discretion and thus, the period of filing the limitation petition in the suit is only 60 days + 60 days=120 days only and which could not be condoned by the Court also. It is submitted that the Hon'ble Supreme Court has held that the Written Statement cannot be accepted beyond the statutory period. It is further submitted that under Order VIII Rule 2 of the C.P.C, the evidence adduced on behalf of the respondent is not admissible as there is no proper pleading of any document. It is submitted that although vide order dated 11.07.2022, the Co-ordinate Bench (Hon'ble Mr. Justice Gautam Kumar Chaudhary) of this Court had permitted the respondent to file his Written Statement but mere filing of Written Statement is not sufficient as the same has not been accepted by this Court till date. It is submitted that even single vote obtained by the respondent by adopting the corrupt means would render the entire election vitiated. It is submitted that the document marked as Exhibits (on admission) of both the sides are not admissible in evidence.

8. In support of his contention, learned counsel for the petitioner has relied upon the judgment reported in *AIR 1955 (1) SCR 608 (Jamuna Prasad Mukhariya and Ors. vs. Lachhi Ram and Ors.)* in which Hon'ble Supreme Court has held that vote obtained through corrupt practice and fraud would render the election void and illegal against the sole respondent. It is further submitted that the petitioner had himself visited several sites and had gone to several booths including the Booth No.91 and 92 at Patanpur and he had also noticed that the volunteers of JMM were distributing pamphlets and handbills in which the name of the respondent was printed at Serial No.7 whereas the name of the petitioner has been printed at Serial No.16 and he took photograph of the same from his mobile phone and got it enlarged through the nearby shop and which reveals that several JMM volunteers were distributing illegal pamphlets. The Respondent got printed the said illegal pamphlet from Lucky Printing Press and thus has adopted the corrupt practices. It is submitted that evidence of R.W-1 to R.W-8 namely, Janardhan Bhandari, Jaydhan Hansda, Binod Raut, Sadhucharan Mahto, Manoranjan Hansda, Musuhy Marandi, Kali Pada Murmu and Sona Yadav respectively are not reliable as they are interested witnesses and they have given evidence before this Court under the influence of the respondent-Rabindra Nath Mahto. It is submitted that R.W-9 is the respondent himself and he has also failed to show the expenses incurred towards the election campaign. It is submitted that R.W-9 has himself

admitted during cross-examination that he had got prepared poster and banner from 'Bharat Traders' Press but he had not examined any person from 'Bharat Traders' Press, Ranchi in support of his case. Neither the candidate nor the representative of the said 'Bharat Traders' Press has been examined nor the Respondent has not filed any Expenditure Register to show that he had got printed the pamphlet from said Bharat Traders Press.

9. It is submitted that Much Marandi and Ramdeo Soren were distributing pamphlet like Exhibit-01 at village Jabardaha and they have not been examined on behalf of the respondent to show that they were not doing the illegal acts of corrupt practices. It is submitted that the petitioner has sent complaint to Deputy Commissioner, Jamtara and also to the Returning Officer, Jamtara and also to the Election Commission of India on 22.12.2019 and also on 18.02.2020 but no action was taken by the State authorities against the said Respondent and hence the petitioner has been compelled to file this election petition. It is submitted that even the complaint of the petitioner has not been taken care of by the authorities of the State as they were in connivance with the respondent. Thus, the election of the respondent may be declared void and illegal.

10. On the other hand, learned counsel for the Respondent has submitted that this election petition is not maintainable. It is submitted that all the contestants have not been made parties in this election petition. It is submitted that original copy of the Election Petition has not been served upon the Respondent. It is submitted that respondent got knowledge of this case only after paper publication of notice issued by the petitioner and thereafter, he had been given the photo copy of the election petition.

It is submitted that this election petition has been filed under Section 80(A) (2) and 81 of the Representation of Peoples Act, 1951 (hereinafter in short referred to as 'R.P. Act'), however no averments has been made in regard to Section 100 (1) and 101 of R.P. Act which relates to corrupt practice made by the candidate in terms of Section 123 of the Representation of People Act. There is no averment with regard any corrupt practice allegedly made by the Respondent at the time of filing this election petition. There is neither any pleading nor any cogent evidence has been led down on behalf of the petitioner. It is submitted that there is no allegation in the election petition as to who had done corrupt practices at the instance of the respondent. It is submitted that Section 123 of the R.P. Act deals with the corrupt practices but nothing has been mentioned in the election petition regarding any of the corrupt practices adopted by the respondent or his election agent or his volunteer. It is submitted that none of the provisions of Section 123 of the R.P. Act is applicable. It is submitted that no case of doing any corrupt practice is made out in this election petition by the election petitioner.

11. Learned counsel for the respondent has relied upon the judgment reported in **AIR**

1990 SC 1731 (Lalit Kisore Chaturvedi vs. Jagdish Prasad Thada and Ors.) and submitted that in the above case, even after publishing the poster by the candidate of one political party against the candidate of other political party, the Hon'ble Supreme Court had not found for doing any corrupt practices.

It is submitted that in the above case, there were serious allegations and aspersions were cast/made upon the election petitioner against the winning candidate and also serious allegations were made against one political party by printing and publishing the pamphlet, yet the Hon'ble Supreme Court held that no such case of corrupt practices was made out.

12. It is further submitted that petitioner has not made any complaint before the Returning Officer regarding the corrupt practices made by the Respondent or his volunteers at any time on the date of election or even before publication of the result on 23.12.2019.

It is further submitted that there is no evidence to show that the respondent has distributed pamphlet to any person or through his any agent and hence, in view of the above, this election petition is not maintainable.

13. It is submitted that even as per Rule 25 of Conduct of Election Rule, no affidavit has been filed in terms of Form-25. It is submitted that election petition should be decided like a criminal trial and the trial starts from the date of filing of election petition. It is submitted that vague allegation has been made out against the respondent and this Court may not consider the wide allegations made by the petitioner against the respondent for distributing the pamphlet. It is submitted that neither the name of the owner of Lucky Printing Press nor the city of press nor the place of the press has been mentioned by the petitioner in the election petition. It is submitted that petitioner has secured only approx. sixteen (16) hundred votes whereas respondent has secured more than sixty- one thousand (61,000) votes.

14. It is submitted that respondent had filed Written Statement as per Order VIII Rule 1 of the C.P.C and also in the light of the judgment reported in **2005 (4) JLJR 1 (SC) (Kailash vs. Nanhku and Ors.)**. It is submitted that Written Statement of the respondent is deemed to be admitted and accepted in view of the judgment reported in **2005 (4) JLJR 53 (SC) (Smt. Rani Kusum vs. Smt. Kanchan Devi and Ors.)**.

15. It is submitted that a Co-ordinate Bench (Hon'ble Mr. Justice Gautam Kumar Choudhary) of this Court vide order dated 18.07.2022 had permitted the respondent to file his Written Statement and thus, the Written Statement of the Respondent is properly filed after the order passed by the Co-ordinate Bench. It is submitted that the Respondent had filed his Written Statement on 12.10.2022 within time. Thereafter, the Co-ordinate Bench (Hon'ble Mr. Justice Gautam Kumar Choudhary) vide order dated 04.11.2022 has settled the

issues. It is submitted that in view of the judgment reported in **2004 (2) JLJR 604 (Narayan Chandra Mahto vs. Suraj Mahto and Ors.)**, it is well settled that Written Statement can be accepted even after delay of eight years.

16. Learned counsel for the respondent submitted that there were more than two lakhs voters in Nala Assembly Election Constituency in which the petitioner had secured only approx 1700 (seventeen hundred) votes whereas this respondent had secured 61356 votes and the margin of vote is very high to disbelieve the case of the petitioner and relied upon the judgment passed in E.P. No.02 of 2014 passed by the Co-ordinate Bench of this Court and which was affirmed by the Hon'ble Supreme Court.

17. Further in support of his contention, learned counsel for the respondent has relied upon the judgment reported in **AIR 1985 SC 89 (Surinder Singh vs. Hardial Singh and Ors.)** at para 34, 39 and 45 and submitted that corrupt practices has to be proved in this election petition like the criminal trial and mere suspicion cannot show the proof of committing the corrupt practices.

It is further submitted that petitioner has made complaint before the Election Commission of India in the year 2020 only after the result was declared on 23.12.2019 and there is no proof that any voter complained before the Deputy Commissioner, Jamtara or before the Returning Officer.

18. It is submitted that P.W-3-Surendra Kumar, who was the Returning Officer of said 2019 08-Nala Assembly Election has clearly stated during the evidence that no complaint was received from the petitioner on the date of election regarding any corrupt practices. It is further submitted that even the petitioner had filed representation before the Deputy Commissioner, Jamtara on 22.12.2019 but he has failed to show the photo copy of EVM sample which was enclosed with the application dated 22.12.2019 filed by the petitioner before the Deputy Commissioner, Jamtara. It is submitted that even the tainted source was not produced by the petitioner.

19. Learned counsel for the Respondent further submitted that all material facts have to be pleaded by the petitioner in his election petition otherwise this case will fail and in support of his contention, learned counsel for the Respondent has relied upon the judgment reported in **2023 SCC OnLine SC 573 (Kanimozhi Karunanidhi vs. A. Santhana Kumar and Ors.)**. It is submitted that there is no personal allegation against the respondent and even there is no personal allegation against the election agent of the respondent for distributing the 'Pamphlet or any 'Purcha' or any 'Handbill'.

20. It is further submitted that petitioner had stated during his evidence that pamphlet was being distributed but he had not stated that pamphlet was being distributed either by the

Respondent himself or by the election agent or by his party workers rather he has merely stated that some volunteers of JMM were distributing the disputed pamphlet i.e. Exhibit-01 (with objection) and had produced the photographs of some person marked as Exhibit-02 (with objection). However, the persons who are seen in Exhibit-02 (with objection) are neither the volunteers of JMM nor they were employed for by the respondent or by the election agent of the respondent. The petitioner has made casual statement by merely blaming corrupt practices by the respondent but he had failed to substantiate the charges against the respondent during his evidence. It is further submitted that the petitioner even during cross-examination, has himself stated that he himself had not seen the respondent and his agent for distributing purcha or pamphlet.

21. It is submitted that P.W-2 is Umesh Murmu who was the Election Agent of the petitioner and although he also stated that pamphlet was being distributed but he could not say the name of the boy, who had informed him about the distribution of pamphlet nor could he say the name of the parents of the boy of his village. Thus, the evidence of P.W-2 is also not reliable.

It is submitted that apart from P.W-1 and P.W-2 namely Santosh Hembram and Umesh Murmu, no witness has been examined on behalf of the petitioner to substantiate the election of corrupt practices allegedly made by the respondent. It is submitted that the petitioner had not examined any co-villagers or any other person of his voting area to substantiate his claim against the respondent.

22. It is submitted that P.W-3 was the Returning Officer and who has been examined as P.W-3 on behalf of the petitioner but, even said P.W-3 has not stated anything against the respondent for doing any corrupt practices. Even the petitioner had not filed any complaint before him. Thus, the evidence of P.W-3 supports the case of the respondent.

23. It is further submitted that R.W-1 to R.W-8, namely Janardhan Bhandari, Jaydhan Hansda, Binod Raut, Sadhucharan Mahto, Manoranjan Hansda, Musuhy Marandi, Kali Pada Murmu and Sona Yadav respectively have fully supported the case of the respondent and they have clearly stated in their evidence that they had neither seen the pamphlet i.e. Exhibit-01 (with objection) nor the persons shown in photograph of Exhibit-02 during the election campaign. They had denied the existence of Exhibit-01 and Exhibit-02 completely. Even the petitioner had not cross-examined proper whereas on the point of distributing the said Exhibit-01 and Exhibit-02. Although R.W-1 to R.W-8 respectively are the volunteers of JMM and the respondent but they had completely denied the distribution of such pamphlet. Thus, the claim of the petitioner is ill founded. It is submitted that R.W-9 is the Respondent himself and who has stated that he had not made any corrupt practices during the election campaign. The respondent has completely denied for distributing

the pamphlet (i.e. Exhibit-01) and has denied the existence of JMM volunteers or his volunteers in Exhibit-02 (with objection). The respondent has stated that he has got his election materials pamphlet, purcha and handbill got printed from 'Bharat Traders' Press, Ranchi. He had also even obtained the necessary permission for hiring the Vehicle and he was not confronted that he had employed any person to distribute the pamphlet (i.e. Exhibit-01) during his election campaign. Thus, R.W-9 has fully supported his case and he has won earlier also two elections earlier also prior to this election in which he has been declared Returned Candidate and he was a candidate for last several years whereas the petitioner has contested this election for the first time in the year 2019. Even the petitioner could not secure the vote of Scheduled Tribe people.

24. It is submitted that R.W-10, R.W-11 and R.W-12 namely Shrawan Kumar Yadav, Ashok Kumar Mahto and Dayamay Ghosh have supported the case of the respondent that they had neither seen the pamphlet nor the persons shown in Exhibit-02. It is submitted that R.W-10 is the Election Agent of the petitioner and who was maintaining the entire Expenditure Register and even he had not distributed any pamphlet during the election campaign of the respondent.

25. Learned counsel for the respondent further submitted that petitioner has not pleaded and proved his case as per para-17 of the election petition. He has named three witnesses i.e. Prem Kumar Hembram, Umesh Murmu and Priya Ranjan Baski in the election petition that they had informed the petitioner regarding distribution of Exhibit-01 (i.e. the pamphlet) in their villages but the petitioner has examined only Umesh Murmu as P.W-2. Thus, the petitioner has failed to examine said Prem Kumar Hembram and Priya Ranjan Baski in support of his case which is a lacuna in this election petition and hence this election petition is not maintainable.

26. It is further submitted that Exhibit-A is the Voter List of 08 Nala Assembly Constituency which reveals that there is approx around 2 lakhs votes and as per said Exhibit-A, in the related disputed Booth Nos.91 and 92 (Patanpur Booth) the petitioner had secured three (03) votes and one (01) vote respectively in Booth Nos.91 and 92, whereas the respondent had secured 111 and 255 votes in said Booth Nos.91 and 92 respectively. It is submitted that another concerned booth for which the petitioner has raised concern, is Booth No.208 at village Jabardaha, Booth No.247 at village Jaspur and Booth No.324 at village Jhantipahari, but the petitioner has secured only eleven (11) votes, thirteen (13) votes and three (03) votes in said Booth Nos.208, 247 and 324 respectively whereas the respondent has secured 395, 460 and 140 votes respectively in said Booth Nos.208, 247 and 324 respectively. Thus, the Returned Candidate has secured altogether 1521 votes out of 2764 votes in said booths for which the petitioner has raised much hue and cry. Thus, there

is no violation of any provisions of Section 100(1) (b) of the Representation of People Act by the respondent. It is submitted that even if for the sake of argument, though not admitting the same, it is assumed that the respondent had got distributed said pamphlet, then also it had not affected materially the result. It is submitted that there is no personal allegation against the petitioner in the said pamphlet (i.e. Exhibit-01) at the instance of the respondent.

27. It is submitted that Exhibit-C is the Chart prepared by the Returning Officer as per guideline of the Election Commission of India and it reveals that 32 complaints were dealt with and disposed of by the Returning Officer. It is submitted that Exhibit-C is admitted (on admission) by both the sides and thus there is no complaint seen by the Returning Officer in the said Exhibit-C.

It is submitted that Exhibit-D to Exhibit-D/14 respectively are the Letter dated 06.12.2019 to 20.12.2019 sent by the District Election Officer-cum-Deputy Commissioner, Jamtara to the Chief Election Officer-cum-Secretary, Jharkhand, Ranchi which is report with regard to Model Code of Conduct and relating to Law and Order in Vidhan Sabha General Election, 2019, which reveals that no complaint was made by the Election Petitioner against the Respondent during said period.

It is submitted that Exhibit-D/9 is the report dated 15.12.2019 and Exhibit-D/10 is the report dated 16.12.2019 prepared by the Deputy Commissioner, Jamtara which also reveal that no complaint was received from the petitioner and thus no complaint was made by the petitioner before the competent authority on 15.12.2019 and 16.12.2019 which he has alleged in the election petition.

It is submitted that Exhibit-DD-I, DD-II are the reports of Flying Squad Team Report of Booth No.193 to 332 & also for the Booth No.1 to 96 both dated 03.07.2024 from which it is evident that no complaint was made by the election petitioner even by the Flying Squad Team otherwise it would have been marked and reported in their said reports.

28. It is further submitted that Exhibit-DD-III is the report of Sector Magistrate dated 04.07.2024 for Booth No.247 which shows that no complaint was received. Similarly Exhibit DD-IV is the report of Sector Magistrate dated 04.07.2024 in support of Booth No.208 which shows that no complaint was made before the Sector Magistrate by the petitioner.

Likewise, DD-V is the report of Sector Magistrate for Booth No.91 and 92 dated 04.07.2024 which also shows that no complaint was received before the Sector Magistrate by the petitioner.

29. It is further submitted that Exhibit-F series is the report of one Vulnerability Mapping whereas the Nomadic Tribes and Scheduled Tribes people and reside and the report at Serial No.17, 22 and 23 reveals that no complaint was received for intimidating those

people.

30. It is submitted that Exhibit-G and G/I are the diary of the Presiding Officer dated 20.12.2019 in support of Booth No.91 and 92 and it reveals from Serial No.21, 24 and 27 that neither any election crime was conducted nor any complaint was made by any candidate and peaceful voting was done. It is submitted that Exhibit-H and H/1 are the visit sheets of the District Election Officer dated 20.12.2019 and 20.12.2019 for Booth No.91 and 92 and which also show that no complaint was received from anyone and even no complaint was made by any candidate.

It is submitted that the petitioner had filed I.A. No.10550 of 2023 dated 08.12.2023 and which was disposed on 08.12.2023 by this Court by which documents mentioned at Serial No.1 to 7 were called for by this Court and which include the documents of the respondents. Thereafter the said documents were received from the Returning Officer and the Returning Officer has also furnished the Expenditure Register of the Respondent and which further reveals that the Respondent got printed election materials from 'Bharat Traders' Press, Ranchi but does not show the name of 'Lucky Printing' Press. Even Expenditure Register of the Respondent would show that neither pamphlets nor the handbills were printed by the Respondent from 'Bharat Traders' Press.

31. It is submitted that petitioner has not impleaded 'Lucky Printing' Press as party respondent and no person from Lucky Printing Press has been examined, thus, the onus was cast upon the petitioner to prove its case that the respondent got printed the disputed Exhibit-01 (with objection) from said Lucky Printing press.

32. It is further submitted that Exhibit-01 and Exhibit-02 are not the primary documents and particularly Exhibit-02 (marked with objection) was printed from the mobile and is a category of electronic record and therefore, it was required to be proved under the provisions of Section 65-B of Indian Evidence Act and the certificate of the petitioner or the concerned shop was not produced. Thus, Exhibit-02 (marked with objection) cannot be relied upon in the light of the judgment reported in **(2020) 7 SCC 1**.

33. It is further submitted that there is contradiction in the pleading and evidence of witnesses of the Election Petitioner. It is submitted that para 14 of election petition reveals that the petitioner got printed Exhibit-02 from his mobile. However, while examined as P.W-1, the petitioner during his cross-examination at Paragraph Nos.44, 45 and 46 stated that he does not know about Camera from which photographs were printed and he is not aware of expenditure of printing the Exhibit-01 and Exhibit-02. He also stated at para 46 that he was present at Patanpur with P.W-2 Umesh Murmu on 16.12.2019. However, P.W-2 during his cross-examination, at para 34 had stated that he does not remember when he had gone on the date of voting and he is not aware when he accompanied with the petitioner.

Thus, the evidence of P.W-1 and P.W-2 are contradictory to the para 14 of the election petition. It also appears that para 17 of the election petition states about the date when the petitioner visited the disputed place. However, P.W-1 (i.e. the petitioner) during his cross-examination at paragraph 64 admitted to have not made any complaint before the Returning Officer. Even P.W-2 during his cross-examination at Paragraph nos.26, 29 and 33 stated that he is not aware of the name of the child from which he learnt about the pamphlet (Exhibit-01) and he is also not aware about the parents of said child.

Similarly at Paragraph nos.47, 48, 53 and 72 the petitioner stated that he had not given the details of expenditure of photo print in the office of District Election Officer. He had also not made any complaint before the Presiding Officer and Security Personnels about the Pamphlet of NOTA who were present there and he submitted written complaint on 22.12.2019. Even people of other party had not made any complaint before him regarding the Pamphlet which were being propagated by the Candidate of JMM.

34. It is further submitted that P.W-3 is the Returning Officer who was examined by the petitioner after summoning him through the process of Court and he has also stated that he has not received any complaint from the petitioner and there was no complaint in writing.

It is submitted that petitioner has not pleaded anywhere in the election petition that he had moved to 22 voting places on the date of election.

35. It is further submitted that the respondent has filed his Written Statement after permission of the Court and thereafter the issues were framed on 04.11.2022 by the Co-ordinate Bench of this Court on the basis of Written Statement filed by the Respondent. Even various I.As were filed on behalf of the respondent by relying upon the averments of the Written Statement and thus it cannot be said that the Written Statement was not accepted. It is submitted that in view of the judgment reported in **(2001) 8 SCC 233 (Harishankar Jain vs. Sonia Gandhi)**, the petitioner has not made positive statements for the period he has challenged the distribution of pamphlets and purcha and in absence of the positive statements, the claim of the petitioner is not tenable.

36. It is further submitted that no voter of the petitioner turned up for giving evidence before this Court in favour of the petitioner and thus, the petitioner has failed to prove that any voter was influenced by the respondent by distributing the pamphlet (marked as Exhibit-01). It is submitted that even no independent witness was examined by the petitioner regarding distribution of pamphlet (Exhibit-01) and also regarding Exhibit-02. It is further submitted that petitioner got zero votes in sixteen (16) booths and one (01) vote each in nineteen (19) booths and he has also obtained only two (02) votes and three (03) votes in several booths, which is evident from Exhibit-A and which is the final result sheet and thus, there is no valid cause of action for filing this election petition. Hence, this

election petition may be dismissed.

37. The petitioner in his reply submitted that the Written Statement of the respondent was not accepted by this Court till date and he has filed I.A No.8791 of 2022 along with petition under Section 148 C.P.C for extension of time for accepting his written statement. It is submitted that in view of the judgment reported in the case of Smt. Rani Kusum vs. Smt. Kanchan Devi and Ors. reported in **(2005) 4 SCC 53 (SC)** the Written Statement cannot be permitted to be filed beyond the statutory period of 60 days + 60 days=120 days. However, the respondent has filed his Written Statement after much delay.

38. It is submitted that in view of the judgment in the case of **(Jamuna Prasad Mukhariya and Ors. vs. Lachhi Ram and Ors.)** reported in **AIR 1955 (1) SCR 608**, the Hon'ble Supreme Court has held that election can be declared void if a single vote has been obtained by the Returned Candidate by corrupt means by influencing and committing fraud with the voter.

39. It is submitted that in absence of pleading, no document can be relied upon by the respondent and in support of the same, learned counsel for the petitioner has relied upon the case of **Biraji Alias Brijraji and Anr. vs. Surya Pratap and Ors** reported in **(2020) 10 SCC 729**. Thus, this election petition must be allowed.

40. Perused the records of this case and considered the submission of both the sides.

41. This Election Petition was filed on 04.02.2020 and it was admitted on 09.12.2021 by a Co-ordinate Bench (Hon'ble Mr. Justice Anil Kumar Choudhary) of this Court and notice was issued upon the sole respondent by Registered Post with A/D as well as under the Ordinary process. However, the Respondent had not appeared and thereafter notice was published in the newspaper in the light of order dated 18.04.2022. Thereafter, the respondent appeared on 18.07.2022 and he was permitted to file Written Statement although earlier *ex-parte* proceeding was drawn against him vide order dated 06.07.2022 by another Co-ordinate Bench (Hon'ble Mr. Justice Gautam Kumar Choudhary) of this Court.

42. It transpires that the respondent has filed Written Statement on 12.10.2022 along with petition under Section 148 C.P.C seeking extension of time for filing Written Statement by I.A. No.8791 of 2022 and had not filed any document in support of its case. However, the above I.A. No.8791 of 2022 was not pressed during the argument.

43. Thereafter, the issues were framed by the Co-ordinate Bench (Hon'ble Justice Gautam Kumar Choudhary) on 04.11.2022 which are as follows:-

"1. Whether the election petition in its present form is

maintainable?

6. Whether Election petitioner has valid cause of action for filing the election

petition?

7. *Whether the sole respondent, or his polling agent has committed any corrupt practice as stated in Election Petition?*
8. *Whether the election result of the sole Respondent is liable to be set aside?*
9. *Whether the election petitioner is entitled to any relief?"*

44. The petitioner in support of his case, has got examined three

(4) witnesses, who are as follows:-

- (i) P.W-1 is Santosh Hembram (i.e. the petitioner)
- (ii) P.W-2 is Umesh Murmu and
- (iii) P.W-3 is Surendra Kumar (i.e. the Returning Officer)

45. The petitioner in support of his case, has got marked and proved the following documents as the Exhibits, which are as follows:-

- (i) Exhibit- 1 is Original copy of pamphlet (Marked with objection),
- (ii) Exhibit-2 is photograph downloaded from the phone of the petitioner (Marked with objection),
- (iii) Exhibit-3 is the Nomination paper of Santosh Hembram in 14 sheets (Marked with objection) which was issued vide dated 29.11.2019 by the Election Officer and
- (iv) Exhibit-4 is the Caste Certificate dated 11.01.2019 (Marked with objection) of Santosh Hembram issued by Block Officer, Jamtara

46. The petitioner in support of his case, has got marked and proved the following documents for his identification, which are as follows:-

- (i) Document - X is Form 7 K enclosed as Annexure-4 in the writ petition,
- (ii) Document -X/1 is Complain Letter dated 22.12.2019 sent by the petitioner to D.C, Jamtara,
- (iii) Document -X/2 is Form 7 K received from the Returning Officer, 08 Nala Assembly Constituency,
- (iv) Document -Y is Form 8 (blank form),
- (v) Document -Y/1 is Form 10 (blank form),and
- (vi) Document -Y/2 is Form 18 (blank form)

47. The respondent in support of his case, has got examined twelve (12) witnesses,

who are as follows:-

- (i) R.W-1 is Janardhan Bhandari,
- (ii) R.W-2 is Jaydhan Hansda,
- (iii) R.W-3 is Binod Raut,
- (iv) R.W-4 is Sadhucharan Mahto,
- (v) R.W-5 is Manoranjan Hansda,
- (vi) R.W-6 is Musuhy Marandi,
- (vii) R.W-7 is Kali Pada Murmu,
- (viii) R.W-8 is Sona Yadav,
- (ix) R.W-9 is Rabindra Nath Mahto (i.e. the Respondent),
- (x) R.W-10 is Shrawan Kumar Yadav,
- (xi) R.W-11 is Ashok Kumar Mahto and
- (xii) R.W-12 is Dayamay Ghosh.

48. It transpires that the evidence of the petitioner was closed on 14.12.2023 and even the evidence of the respondent was closed on 02.05.2024.

49. However, in the light of the observation passed by Hon'ble Supreme Court in Special Leave to Appeal (C) No(s).4574 of 2024 which was dismissed on 26.02.2024 with certain observations, the respondent had filed I.A. No.1830 of 2024 for examining five (05) official witness and 33 other witnesses. However, this Court had permitted the respondent to examine twelve (12) witnesses out of thirty three (33) witnesses later on, on payment of cost of Rs.10,000/- (Rs.Ten Thousand) to the petitioner.

During pendency of this case, the respondent had filed I.A. No.9613 of 2023 under Order VII Rule 11 read with Section 151 C.P.C on the question of maintainability of the present election petition. However, this Court vide order dated 19.01.2024 had rejected the said I.A. No.9613 of 2023. Thereafter the respondent had moved before the Hon'ble Supreme Court by filing Special Leave to Appeal (C) No(s).4574 of 2024 which was dismissed on 26.02.2024 with the following observations:-

"Para-3:-The Special Leave petition is accordingly, dismissed.

"Para-4:- It goes without saying that the petitioner shall be at liberty to raise all contentions before the High Court at an appropriate stage, which shall be considered by the High Court on its own merits and in accordance with law without being influenced by the decision made herein."

50. Thus, thereafter the respondent has examined twelve (12) witnesses in support of his case.

51. The following documents were marked as the Exhibits (on Admission of both the sides) on 28.10.2024 on behalf of the Respondent, which are as follows:-

- (i) Exhibit-A (on admission of both sides) is the Final Result Sheet in Form 20 of the General Election 2019,
- (ii) Exhibit-B to Exhibit- B/9 (on admission of both sides) respectively are the Voter Facilitation Posters and its details as displayed by the District Election Officer-cum-Deputy Commissioner, Jamtara, especially in the Polling Stations,
- (iii) Exhibit-C (on admission of both sides) is the list of complaints received through the 'c-VIGIL' Application,
- (iv) Exhibit-D to Exhibit-D/14 (on admission of both sides) respectively are the Letter dated 06.12.2019 to 20.12.2019 sent by the District Election Officer-cum- Deputy Commissioner, Jamtara to the Chief Election Officer-cum-Secretary, Jharkhand, Ranchi which is report of Model Code of Conduct and relating to Law and Order in Vidhan Sabha General Election, 2019,
- (v) Exhibit-DD series (on admission of both sides) respectively are the Letters No.02 & 03 dated 03.07.2024 and Letter No.07 dated 04.07.2024 submitted by Surendra Kumar, then Additional Collector-cum-Returning Officer to Nikhil Saha, Chandradeo Murmu and Anmol Amar Baba,
- (vi) Exhibit-DD-I and DD-II (on admission of both sides) respectively are the Flying Squad Report of Booth No.193 to 332 & Booth No.1 to 96 submitted to the then Returning Officer, in original by Nikhil Saha, Chandradeo Murmu and Anmol Amar Baba.
- (vii) Exhibit-DD-III, DD-IV and DD-V (on admission of both sides) respectively are the Letters of the Sector Magistrate,
i.e. Letter dated 04.07.2024 of Pawan Kumar Dubey, Sector Magistrate, Sector 10, Letter dated 04.07.2024 of Dayanand Jamuda, Sector Magistrate, Sector No.3, Letter dated 04.07.2024 of Dr. Anmol Amar Baba, Sector Magistrate.
- (viii) Exhibit-E, E/1, E/2 and E/3 (marked on admission of both sides) respectively are the Poll Day Report of Sector Magistrate, namely Bishwanath Toppo, Dr. Md. Rizwan, Dayanand Jamuda and Anmol Amar Baba in three (03) sheets each.
- (ix) Exhibit-F series (marked on admission of both sides) are the summary of

vulnerability and list of persons causing vulnerability by the Returning Officer in seven (07) sheets.

- (X) Exhibit-G and G/1(marked on admission of both sides) are the Diary of Presiding Officer of Booth No.91 and Booth No.92.
- (xi) Exhibit-H and H/1 are the Visit Sheets of Booth No.91 and 92 by the D.E.O.

52. It further transpires that vide order dated 08.12.2022 a Co- ordinate Bench (Hon'ble Justice Gautam Kumar Choudhary) had allowed I.A. No.10550 of 2022 filed on behalf of the petitioner to call for certain documents as detailed in the application from the office of 08, Nala Assembly Constituency for election of Jharkhand State Assembly Election in the year 2019 for which result was declared on 23.12.2019.

53. So far as the oral evidence of the petitioner is concerned, P.W-1 is Santosh Hembram, who has filed this Election Petition and has stated during his evidence that he has filed this Election Petition with regard to 2019 Assembly Election. Last date of filing nomination paper was 03.12.2019 and verification of nomination paper was 04.12.2019 and the date of voting was fixed on 20.12.2019 and the date of declaration of final result was on 23.12.2019. He further stated that twenty (20) candidates including the petitioner had filed their nomination paper from 08 Nala Assembly Region and he had filed his nomination paper on 04.12.2019 and four nomination papers were rejected by the Returning Officer and thus, only sixteen (16) candidates including the petitioner had contested election. The petitioner has contested election as an Independent Candidate, who was also allotted the Serial No.7 ballot symbol and he was placed at Serial No.16 in Form-7 and he was given 'Balla' (i.e. Bat) as election symbol. The Respondent-Rabindra Nath Mahto was at Serial No.7 and his election symbol was 'Tir-Kaman' (i.e. Bow and Arrow) from his party Jharkhand Mukti Morcha (hereinafter referred to as 'JMM' in short). He has proved photo of Form-7-K which was marked for identification as X.

He further stated that on the date of election on 20.12.2019, when he arrived at Booth No.91 and 92 during travelling at village Patanpur then he was surprised to see that several volunteers were sitting outside booth with Demo Machine of EVM and Posters and some JMM volunteers were sitting with Posters. When he saw then he found that 'NOTA' was mentioned at Serial No.16, upon which, he was surprised and took out photo from his mobile and on enquiry the volunteers told that there will be damage of vote and hence 'NOTA' is mentioned at Serial No.16. Thereafter he immediately rang from his mobile to the Election Observer but his phone was not received. After completion of Election on 22.12.2019 he filed his written application by way of complaint before the Deputy Commissioner, Jamtara and the petitioner had made

complaint that the respondent-Rabindr Nath Mahto and his volunteers are making wrong propaganda on Serial No.16 and 'NOTA' has been mentioned at Serial No.16. He has proved the copy of Purcha, having photograph of Rabindra Nath Mahto (i.e. the Respondent) in which 'NOTA' is mentioned at his Serial No.16, said 'Purcha' (i.e. Pamphlet) is marked as Exhibit-01 (with objection). He has further proved the original copy of photo which was taken by his mobile which has been marked as Exhibit-02 (with objection). He further proved the application dated 22.12.2019 marked as X/1 which was filed before the Deputy Commissioner, Jamtara. He further proved photo copy of Form-7- K, which was deposited before the Court of Returning Officer showing his name at Serial No.16 and election symbol 'Balla' and his photograph and which is marked for identification as 'X/2'.

He further stated that the copy of Form-7-K, which was given to him from election office of Returning Officer which is marked as X/2 for identification, is completely different. He asserted that Form-7-K which was issued by Returning Officer does not contain his photograph.

He has further proved the photo copy of Nomination Paper, in fourteen (14) sheets/pages which was issued by Returning Officer on 29.11.2019 as Exhibit-3 (with objection). He has further proved the photo copy of his Caste Certificate issued by S.D.O, Jamtara on 11.01.2019 as Exhibit-4 (with objection).

54. He further stated during his evidence that the candidate of Jharkhand Mukti Morcha had shown 'NOTA' against Serial No.16 and it has been printed and distributed by Jharkhand Mukti Morcha. He also belongs to Schedule Tribes category and he comes from Santhal Tribes and he was the only Independent Candidate from 08-Nala Assembly Constituency and due to their wrong propaganda and conspiracy committed by them his candidature has been damaged a lot. He asserted that during course of election propaganda, he was informed by villager Prem Kumar Rana of village Jhantipahari that wrong handbill was shown and even it was propagated by JMM to give vote to Rabindra Nath Mahto shown at Serial No.7 and the handbill showing Serial No.16 as 'NOTA' and it was told that vote will be wasted at Serial No.16. Similarly, the concerned villager Umesh Murmu of village Jaspur informed him that similar propaganda was made house to house in his village by showing demo that Rabindra Nath Mahto, candidate of JMM is shown at Serial No.7. Even Umesh Murmu informed that Jaydhan Hansda and Roopchand Hansda are propagating in favour of JMM to give vote at Serial No.7 and further not to give vote at Serial No.16 showing it as 'NOTA'.

Similarly, in the village Jabardaha he also learnt during his election campaign that JMM volunteers Ramdeo Soren and Much Marandi are propagating to vote in favour of Rabindra Nath Mahto at Serial No.7 and Serial No.16 was shown as 'NOTA' for not giving vote.

He belongs to Schedule Tribe and his village is highly tribal populated and due to this ill-conceived propaganda, his votes have been damaged a lot.

56. During cross-examination, he stated to have contested the election for the first time and he is an agriculturist by profession. However, he has not pointed out name of any villager for propagating his election but he has himself propagated at 332 booths of Vidhan Sabha Region and he has deposited entire cost of his election but he does not remember the details of cost.

He further stated that Umesh Murmu was his Polling Agent and he had given details of his Polling Agent on the form received from the office of Returning Officer. He had also got printed handbills in thousands but does not remember the exact number and he also does not remember as to whether the copy of the said handbill was given to the District Returning Officer or not. He had also appointed four counting agents after taking letter of right from Returning Officer. However, he is not aware of starting time of counting but he was present at the time of declaration of result.

He admitted to have received only 1769 votes during counting and he had received zero votes from three booths.

He has denied the suggestion for receiving zero votes from ten polling booths but admitted that he has received 1-1 vote each from ten Polling Stations.

He admitted to have not mentioned the fact of taking photograph from camera during his election campaign. However, he got printed the copy from the computer in the market but he has not mentioned the name of said shop and not produced the receipt of print.

He arrived at village Patanpur at 3.00 p.m and his bodyguard and polling agent Umesh Murmu had accompanied with him.

He admitted to have not made any complain before Presiding Officer of polling booth with regard to pamphlet showing NOTA and had not complained to any security persons.

He had not made any complain before local police station which was situated at a distance of 7-8 Kilometer from Patanpur village to the effect that JMM people were distributing pamphlets of NOTA. He had not enquired about the name of such person distributing pamphlet of NOTA. He had not raised any hue and cry to enquire from people present there as to why this is happening.

He had not gone before the Presiding Officer on the date of election of Polling Booth. No other Polling Agent except his Polling Agent was present there.

Although he stated to have tried to make complain to the Election Observer by telephone but his phone was not received by them.

He admitted to have mentioned at para-19 of Election Petition to have informed concerned Election Officer through phone and also made written complaint in the office of the Deputy Commissioner on 22.12.2019.

He admitted that the Additional Collector was the Returning Officer and he had made written complaint on 22.12.2019 and copy of written complaint is enclosed with the Election Petition.

57. On being pointed out by the respondent's counsel that copy of acknowledgement is not enclosed with Election Petition, the petitioner fails to remember it. However, on being shown Election Petition, the witness states that acknowledgement of information of written complaint is enclosed with this Election Petition.

The witness on his own says that the copy of written complaint was placed before employees (office of D.C) present there. He admitted to have not mentioned printing of NOTA by volunteers of JMM at his Serial No.16 in Annexure-7 of this Election Petition.

He stated that he had also complained before Election Commission, New Delhi against mis-propaganda of JMM Party by E-mail but failed to show the date of E-mail.

On being pointed out by the respondent's counsel in his Election Petition, he admitted that E-mail was sent on 04.02.2020 and name of any candidate has not been mentioned in the E-mail and copy of complain is not enclosed with this Election Petition.

During further cross-examination, he stated to have left his house at 7.00 a.m. in the morning on 20.12.2019 on the date of election. Firstly, he arrived at Booth No.313 where he had to cast his vote situated at Primary School, Maheshmunda at his Voter Serial No.606 where he stayed for around half an hour and then he went to look into booth agents. He also admitted that there was no NOTA pamphlet on his booth. Thereafter he travelled at about 20-

22 Polling Booths but apart from Patanpur Polling Booth, no NOTA pamphlet was seen at any other booth.

He could not remember the date on which the villagers Prem Kumar Hembram of Village Jhantipahari informed him that wrong handbill was shown where election campaign was done. Prem Kumar Rana is actually Prem Kumar Hembram and about two days ago prior to election he had informed about the above election campaign but he had not made any complain before any Election Officer.

He also admitted that although Umesh Murmu had informed him in the night of 16.12.2019 regarding NOTA election campaign but said Umesh Murmu had not made any complain anywhere. He had also not asked to his Election Agent Umesh Murmu to make any complain from village Jashpur.

He stated that the villager Priya Ranjan Baski of village Jabardaha had complained of pamphlet of NOTA during election campaign by JMM candidate but despite having knowledge

of this fact on 17.12.2019 from villager Priya Ranjan Baski, he had not made any complain in writing anywhere.

He stated that the voting was disturbed at village Jashpur Polling Booth as there was no line and even people of other parties had complained before Election Officer regarding light and voting. He had no seen any NOTA pamphlet at Jaspur at around 3.40 p.m. on the date of election.

He admitted that Prem Kumar Hembram, Priya Ranjan Baski and Umesh Murmu were neither his election campaigner nor his volunteers. However, he had not complained regarding NOTA against JMM candidate except Election Observer. He admitted to have only 15-20 volunteer but he had not paid any amount to his volunteer to meeting his expenses.

On being shown Annexure-6 (photo), the witness admits that there is no flag and banner of any party. He admitted to have taken only one photograph. He admitted that no background is seen at the time of taking photograph and even the place of photograph is not visible. He has not given any certificate with regard to said photo Enclosure-6 to the effect that said photo was taken by him. He admitted that apart from him, two persons Mahadeo Kisku and Pushpa Soren were also Scheduled Tribes candidates and even one Kanhai Chandra Malpaharia was Scheduled Tribe candidate.

He stood at 7th place in order to merit in the election result after the voting. He had received only 49 votes at his Booth No.313 but he does not remember the total number of voters of said booth. He admitted to have not complained of any pamphlet of NOTA at Booth No.313.

He is also not aware as to how many votes JMM candidate Rabindra Nath Mahto had obtained. However, he has received maximum vote from Booth No.313. He admitted his signature on Annexure-5 and Annexure-6 but having not mentioned anywhere “attested to be true”. He admits that original Signature and Muhar of Oath Commissioner are not seen in those Annexure-5 and Annexure-6 or at any other annexures. He denied the suggestion that Annexure-5 and Annexure-6 are manufactured documents. He denied the suggestion for not having seen any pamphlet of NOTA during his election campaign.

58. Thus, from scrutinizing the evidence of P.W-1, it would appear that he has tried to support his case and he has stated regarding distribution of pamphlet and handbill showing NOTA at Serial No.16 which was being distributed by the volunteers of JMM. He has even named three villagers Prem Kumar Hembram, Umesh Murmu and Priya Ranjan Baski for informing him for distribution of handbill and pamphlet of NOTA at village Jhantipahari, Jaspur and Jabardaha respectively but he failed to examine said Prem Kumar Hansda and Priya Ranjan Baski. However, his evidence will be again considered later on after the evidence of other witnesses.

59. P.W-2 is Umesh Murmu, who has stated during his evidence that the election was held in the year 2019, Rabindra Nath Mahto (i.e. the Respondent) had got printed wrong pamphlets and it was propagated during his campaign. He is the Election Agent of Election Petitioner in the year 2019 and he had done the work during the election as per direction of the petitioner. However, just prior to election on 16.12.2019 while election campaigning was done in his village then he saw that JMM volunteers namely Jaydhan Hansda, Rupchand Hansda and some other unknown volunteers were distributing pamphlets and apprising the people to give their vote and they were also informing that NOTA is written at Serial No.16 and casting vote on the same will be futile. He claimed to identify the person who was distributing the pamphlet.

On being shown the pamphlet marked as Exhibit-2/5 (it was corrected as Exhibit-1 vide order sheet dated 16.10.2024), he stated that it was written that vote has to be casted in wining of Rabindra Nath Mahto and it was also mentioned that NOTA at Serial No.16 of pamphlet i.e. Exhibit-2/5.

60. During cross-examination, he admitted that he was the Election Agent of the petitioner and he had also furnished his Voter Card and Aadhar Card to the petitioner and who had issued him certificate but does not remember as to who had granted said certificate. He admitted to have received Identity Card. He could not say the date of becoming Election Agent but stated that he became the Election Agent probably from the date of scrutiny. Election Agent is appointed for doing a work of candidate and he used to furnish expenditure of the candidate. However, he shows unawareness that the work done by the election agent is considered to be work of the contesting candidate. He could not remember the date of election campaign. However, he is acquainted with permission of vehicle to the candidate for their election campaign. His candidate had also taken permission of vehicle for the election campaign and one Bolero Vehicle was taken by his candidate during election campaign but he cannot tell the number. He denied the suggestion that the candidate Santosh Hembram had not taken Bolero Vehicle for his election campaign. However, Santosh Hembram had also taken one Motorcycle for his election campaign. They used to live separately during election campaign but for 1-2 days they had jointly made election campaign.

He had casted his vote at village Jaspur in the Polling Booth and he remained for the whole day in Jaspur. Although he had heard the distribution of wrong pamphlet by JMM volunteers on 16.12.2019 on hearsay basis but later on, the witness himself stated that he had himself seen that the wrong pamphlets were being used. Even people of the village had informed him for distributing wrong pamphlets but he does not remember the name of those persons. He was shown pamphlet i.e. Exhibit-2/5 (it was corrected as Exhibit-1) by a young

child but he neither disclosed the name of that child nor the parents of that child but the age of the child was about 14-15 years. However, he had kept the said pamphlet with himself and later on he had handed over the same to the petitioner Santosh Hembram but cannot say the date of finding over pamphlet. He was on telephonic discussion also with his candidate but he had not informed him about the pamphlet by telephone. He had also not made complain before any officer that wrong pamphlet was being used by JMM candidate.

He admitted to have seen such type of pamphlet only at village Jaspur on 16.12.2019 during his entire election campaign.

He further stated in para 33 of his evidence that one pamphlet was given by one child to him but he had not seen said pamphlet in whole, outside the house of any person of village Jaspur. He could not remember on which booth he had moved on the date of election on 20.12.2019.

However, he admitted to have not made any complain regarding said pamphlet even after the election was over. He had not ascertained as to said pamphlet was got printed by whom. He is not aware of process of printing the pamphlet. He is also not aware regarding complain made by any Voter before any officer regarding said pamphlet.

He is not aware as to whether any case was instituted against the Returned candidate- Rabindra Nath Mahto by any person, Volunteer or Voter against the candidature of such person.

He further stated that in the pamphlet of NOTA, it has been referred to vote only for Rabindra Nath Mahto.

However, he is not aware as to whether any pamphlet with regard to election was got printed by his candidate (i.e. the petitioner). He used to maintain the expenditure of his candidate. However, he used to maintain the details of election expenses made by his candidate and he used to maintain the details of election expenses in the Register and which was verified in Jamtara Treasury. However, he is not aware as to how much expense was made by his candidate during the election but his Candidate had called for Register after the election was over. He could not remember regarding the number of votes obtained by his candidate Santosh Hembram and he is also not aware about the total votes received by the petitioner-Santosh Hembram. He is not aware as to how many votes had been received by his candidate Santosh Hembram in his booth. He has passed M.A (History) and has little knowledge of computer also but he is not aware as to whether photo shop was done by computer or not.

He denied the suggestion that pamphlet marked as Exhibit- 2/5 (it was corrected as the Exhibit-1 on 16.10.2024 vide order sheet) of NOTA is a manufactured document.

61. Thus, from scrutinizing the evidence of P.W-2, it would appear that he had supported the case of the petitioner and stated that he had received the Pamphlet (i.e.

Exhibit-01) from one child aged about 14-15 years but he neither disclosed the name of said child nor the name of the parents of said child. However, during cross-examination, he asserted at para-26 and 33 to have received the Pamphlet of NOTA from one child. The witness could not say about the number of votes secured/obtained by the petitioner Santosh Hembram although he was his election agent but he has supported the case of the petitioner.

62. P.W-3 is Surendra Kumar, the Returning Officer on the date of election of 08, Nala Assembly Constituency and he was posted as Additional Collector, Jamtara on the date of his evidence before this Court. P.W-3 stated during his evidence that he was posted as the Returning Officer at 08-Nala Assembly Region and date of filing nomination was fixed till 03.12.2019 at 3.00 noon and twenty (20) persons had filed their nomination paper. However, nomination paper of four (04) persons were rejected. The date of election was fixed on 20.12.2019 and the date of counting was fixed on 23.12.2019 and the counting started in the morning of 23.12.2019 and the result was declared in the night around 2.30-300 a.m. during night hours and Rabindra Nath Mahato (i.e. the Respondent) was the winning candidate. He admitted that the petitioner Santosh Hembram was also a candidate of said election. However, he could not state as to the date of submission of concerned papers with regard to the election before the office of the High Court but he had submitted again certain papers on 09.09.2023 with regard to election and he requested for showing the date of submitting paper for refreshing his memory and which was accepted by this Court and he was allowed to peruse the papers.

The witness further stated that firstly he had submitted Letter No.03/22.02.2023 in which he had submitted Nomination Paper, Checklist of all documents of all sets of Sri Ravindra Nath Mahto, Form-8 related with appointment of Election Agent related with the Return Candidate Mr. Ravindra Nath Mahto which was obtained by Nodal Officer-cum-Treasury Officer (i.e. Annexure- 52), Registers for maintenance of accounts of election expenditure by contesting candidate as submitted by Returned Candidate Mr. Ravindra Nath Mahto along with Result sheet of election of 08- Nala, Assembly Constituency, Format 7K, list of candidates contesting election 08-Nala, Assembly Constituency.

63. Thereafter he further submitted certain papers vide Letter No.01 dated 09.09.2023 and the said letter was forwarded to Deputy Election Officer, Jamtara vide Letter No.05 dated 02.09.2023. He also submitted that Letter No.248 G.NI/G.DI dated 04.09.2023 received from Deputy Election Officer, Letter No.03/NIPKO, Returning Officer Cell dated 22.02.2023, Letter of Cell of Nodal Officer-cum-Treasury Officer, Jamtara Accounts Expenditure Cell, Letter No.410/Vyay Ko dated 26.12.2023, Letter No.43/Election dated 26.12.2022, Section 127A restrictions on the printing on pamphlets, posters etc., Letter No.03 dated 22.02.2023.

He also admitted to have committed mistake for not depositing/furnishing the three (03) documents by him on the first occasion before the Court and for which he tendered his apology. He further stated that Document No.05 Printing Materials of Returning Candidate was not in his custody because it was not deposited before him.

He also admitted to have received Document No.04, which is accounting of expenses of election and it was received by him on 26.12.2022 by Letter No.410 Vyay Kosang of Nodal Officer-cum- Expenditure Accounts Cell (Vyay Lekha Kosang).

He also stated that he had no knowledge that the election result has been challenged before this Court.

He also admitted to have seen the complaint petition of Election Petitioner in the office of the learned Deputy Commissioner, Jamtara which was enclosed with the Election Petition.

64. During cross-examination, he stated that he had seen the election petition in the office of Deputy Commissioner through his learned counsel 2-3 months ago and he had seen the enclosed papers of this election petition. He further stated that no complain regarding pamphlet, which has been enclosed with this election petition, was submitted in his office. He also stated during his cross-examination that it is beyond his jurisdiction to entertain the complain of any complainant. There is provision of submitting complain with regard to wrong committed during election by way of portal. He further stated that after initiation of election process and till the declaration of election result any complaint can be made/furnished before Model Code of Conduct. The evidence of the witness was deferred on 06.12.2023 on account of the ailment and request was made on behalf of the learned counsel for the Respondent till 14.12.2023. He was again cross-examined on 14.12.2023 and then he stated at para 19 of his cross-examination that no complaint was made before him by the Election Petitioner with regard to wrong committed in the Pamphlet and neither his election agent had made any complaint before him.

65. Thus, from scrutinizing the evidence of P.W-3, it is evident that no complaint was made before him neither by the Election Petitioner nor by his election agent during the time of election. However, he admitted that he had committed mistake for not submitting several papers before this Court on 22.02.2023 and thereafter he had submitted paper before the office of this Court again on 09.09.2023 after being issued show cause notice for not submitting the papers. It is also evident that the result of the election was declared in the night of 23.12.2023 at around 2.30-3.00 hours.

66. R.W-1 is Janardhan Bhandari who stated during his evidence that he is a volunteer of JMM and he is also Joint Secretary of Nala Prakhand of JMM party. He had made election campaign in favour of Sri Rabindra Nath Mahto, who was a candidate of JMM during

election of 2019 and had gone to several places. Various candidates had got printed their pamphlets.

On being shown Exhibit-01 to the witness by the learned counsel for the respondent, he stated that no such Pamphlet (Election Purcha) was seen by him and Rabindra Nath Mahto (i.e. the respondent) had not got printed this Purcha (i.e. Pamphlet). He also stated that the Respondent-Rabindra Nath Mahto had obtained 61,165 votes whereas the Election Petitioner had obtained only around 1700 votes. He had not heard the name of Santosh Hembram (i.e. the petitioner) before election campaign or after the election campaign.

67. During cross-examination, he admitted to be a volunteer of JMM and resident of village Manihari, Booth No.209.

On being shown Exhibit-1 (i.e. the pamphlet with photograph of respondent and Serial No.16 NOTA) he stated that he had not seen any such Purcha during election campaign and admitted that it contains photograph of respondent and Serial No.7 is mentioned. On being further shown Exhibit-01 by the learned counsel for the petitioner, he stated that he is not aware of Hindi and English and he is not aware that NOTA is mentioned at Serial No.16 of said Exhibit-01. Although he had admitted that at Serial No.7 the name of respondent-Rabindra Nath Mahto is mentioned on the same Exhibit-01.

He remained at Booth No.209 on the date of voting from 9.00 a.m. till 4.00 p.m. but he was not the election agent of JMM. He had casted vote between 8.30 a.m. to 9.00 a.m in the election of 2019. There was no arrangement for sitting at the booth on the Voting Centre by his party (i.e. the JMM). He is not aware of name of Santosh Hembram (i.e. the petitioner) even after institution of this election petition.

68. Thus, from scrutinizing the evidence of R.W-1, it is evident that he is a volunteer of JMM party and has denied the printing and distribution of Exhibit-01 (i.e. the pamphlet by the Respondent) during the election and he has supported the case of the Respondent. However, during cross-examination, although he admitted that the name of the respondent-Rabindra Nath Mahto with photo is mentioned at Serial No.7 of said Exhibit-01 at para 12 of his cross-examination, but in para-13 of his cross- examination, he again stated that he is not aware of Hindi and English and also not aware that NOTA is mentioned at Serial No.16 of the same Exhibit-01 when it was shown to him by the learned counsel for the petitioner. He also admitted to have arrived for evidence under the instruction of the respondent-Rabindra Nath Mahto.

Thus, R.W-1 is a formal witness although he has supported the case of the Respondent.

69. R.W-2 is Jaydhan Hansda who is the resident of Nala Assembly Region and also Block Secretary of Nala Block of Nala Assembly Region of JMM and stated that the Respondent Rabindra Nath Mahto was authorized candidate of JMM for the Assembly

Election of the year 2019 and he used to remain with him during the election campaign and there were several candidates in the said election.

On being shown earlier Exhibit-01 by the learned counsel for the respondent to the witness, he stated that such Purcha i.e. Exhibit-01 was never distributed by them and he is seeing this Exhibit-01 for the first time. He denied the claim of the election petitioner that such pamphlet (Exhibit-01) was being distributed in his village on 16.12.2019 neither by the him nor by any volunteer. The claim of the petitioner is wrong that such pamphlet (Exhibit-01) had been distributed by the respondent-Rabindra Nath Mahto during his election campaign.

70. During cross-examination, he stated that he used to campaign in the election by Mike and had held meeting at different places with the people. However, he is not aware as to whether they had campaign during election by poster, banner and handbill or not. He was in his house on 16.12.2019 and had not gone anywhere for campaign. He is permanent resident of the village and identifies all people of his village and also identifies one Umesh Murmu (i.e. P.W-2) belongs to his village.

He asserted that he was not doing election campaign on 16.12.2019 as his wife was restless and she was suffering from Kidney disease and hence he had not gone for election campaign.

On being shown again Exhibit-1 by the learned counsel for the petitioner, the witness admitted that name of Sri Rabindra Nath Mahto (i.e. the respondent) is mentioned at Serial No.7 and NOTA is mentioned at Serial No.16 of said Exhibit-1.

He was informed by Rabindra Nath Mahto (i.e. the respondent) about six (06) months ago for giving evidence in this case. He shows unawareness about printing of number of posters by the respondent Rabindra Nath Mahto for election campaign through JMM.

He is unaware with this Exhibit-01 was got printed by JMM party.

71. Thus, from scrutinizing the evidence of R.W-2, it would appear that he is the Block Secretary of Nala Block during election campaign during 2019 Assembly election by the Respondent. He admitted that Serial No.16 reveals NOTA whereas Serial No.7 contains the name of the Respondent-Rabindra Nath Mahto. He admitted to be aware of his villager Umesh Murmu (i.e. P.W-2) who had made specific complaint against this witness-Jaydhan Hansda that he was distributing pamphlet (i.e. Exhibit-01) during election campaign of the Respondent. Although he had denied flatly that on 16.12.2019 he had not gone outside house for election campaign.

Thus, from the evidence of R.W-2 it is evident that he has refuted the assertion of the petitioner i.e. P.W-1 and P.W-2-Umesh Murmu.

72. R.W-3 is Binod Raut, who stated during evidence that he lives in Nala region and is a volunteer of JMM party and he had worked for 5-6 days with Rabindra Nath Mahto

during the election campaign and the election was held on 20.12.2019. He was agent on the date of voting and his role was to make the people aware of voting and he was outside the booth situated at Primary School, Patanpur and had remained there from 7.00 a.m to 6.00 p.m.

On being shown Exhibit-01 by the learned counsel for the respondent, he stated to have not seen such document earlier. He denied that Exhibit-01 (i.e. the Pamphlet) was being distributed by the respondent on the date of voting. No candidate was present before him on the date of voting and there were about 450 voters at his booth.

On being shown earlier Exhibit-02 by learned counsel for the respondent, the witness stated that neither such person was there nor any person of JMM was in his booth. His candidate had received more than sixteen thousand votes.

73. During cross-examination, he stated that apart from him, 2-3 other agents were present at his Booth No.91 at Patanpur. He admitted that village Baghmara is adjacent to his village and JMM volunteer Mani Shankar Mahto is volunteer of JMM at Bghmara village but he is not aware that volunteer namely Binod Jha is associated with JMM party or not. He was at a distance of 150 Meters from the booth on the date of voting during the election. He was made booth agent by respondent-Rabindra Nath Mahto but he does not remember whether he had filled up any form or not for the said work.

On being shown formats of Form-8 (application for correction to particulars entered in electoral roll), Form-10 (appointment of polling agent) and Form-18 (under rule 31 Election Commission of India, claim of inclusion of name in the electoral for Graduate's constituency) he shows unawareness and said forms have been marked for identification as Y, Y/1 and Y/2 respectively. He further admitted to be present at a distance of approx. 150 Meters from the booth on the date of voting during the election and because there was one another polling agent near his polling booth and on the date of election several people were going to the second booth also apart from his booth and therefore, in order to make them aware he was at a distance of 150 Meters from the booth. However, he had not asked to any voter as to whom they have to give vote to which party. He admitted that respondent-Rabindra Nath Mahto had asked him to become his booth agent but he is not aware as to by whom he had been made the booth agent.

He was sitting on Dari (i.e. Mattress) on the date of voting and he was keeping the flag of the party and he was having the Voter List. However, he had not kept the handbill. He is acquainted with the respondent candidate Rabindra Nath Mahto for the last 20 years. He asserted to have not done any work from the MLA fund of respondent-Rabindra Nath Mahto.

74. Thus, from scrutinizing the evidence of R.W-3-Binod Raut, it would appear that he has supported the case of the Respondent and he claimed to be simple volunteer of JMM party. However, he remained present throughout on the date of voting from 7.00 a.m. to 6.00 p.m. on 20.12.2019 with the Voter list of his booth and was sitting at a distance of approx

150 Meters to make the people aware of not only his booth but also regarding other booth which was adjacent to his booth and he was making the people aware.

75. R.W-4 is Sadhu Charan Mahto who admitted to be a volunteer of JMM and has got connection with JMM party. He had worked for his party candidate Rabindra Nath Mahto (i.e. the respondent) in Assembly Election 2019 which was held in December 2019. He has also done the election campaign by Mike through the Bicycle but he had not distributed any paper etc. He stated and asserted that his party had neither distributed pamphlet or handbill.

On being shown Exhibit-1 by the learned counsel for the respondent, the witness stated that he had not seen this Exhibit-1 or any paper like it since before. He had denied that this Exhibit-1 (pamphlet) was distributed by his candidate Rabindra Nath Mahto or by any volunteer of JMM. The respondent-Rabindra Nath Mahto had been declared elected from Nala Assembly Election in the year 2019 and had secured more than Sixty Thousand votes. He was outside Manjhladih booth on the date of election and on that day none of the candidate had arrived at his booth.

76. During cross-examination, he stated that he is not in any post of JMM but he was asked by the candidate for making his election campaign. He used to go regions of Manjhaladih Middle School Booth, Patnapur Booth and Fatehpur Booth for election campaign but he was not paid any expenditure by the candidate for such campaign. He had not gone to campaign by taking any handbill and he used to campaign by Mike and people were aware that he was campaigning for JMM party.

He also stated that neither his candidate nor any volunteer of JMM had distributed any handbill.

On the date of polling, he was at a distance of 100-150 Meter outside the booth and he remained there till 2.30 p.m. In para 16 and 17, he stated that he used to inform people for giving vote to his candidate Rabindra Nath Mahto (i.e. the respondent) for JMM and he knows only two candidates namely Rabindra Nath Mahto and Satya Nath Jha. No candidate of any party had arrived at his booth on the date of election. He is not aware about number of candidates who had contested said election.

On being confronted by the learned counsel for the petitioner as to how he claimed that no candidates had arrived at his booth, when he identifies only two candidates, the witness gave evasive reply by stating that no candidate had arrived at the booth.

He also stated to have come to give evidence on the instruction of his candidate Rabindra Nath Mahto and he is doing agricultural work.

77. Thus, from scrutinizing the evidence of R.W-4, it would appear that he has flatly denied the distribution of Exhibit-1 (i.e. the pamphlet) by any JMM volunteer or by

any person. However, during cross-examination, he admitted that he was present outside the booth at the distance of 100-150 Meters on the date of polling from the booth till 2.30 p.m and he used to influence the people i.e. the villagers for giving vote in favour of the respondent-Rabindra Nath Mahto for JMM.

78. R.W-5 is Manoranjan Hansda, who stated during evidence that he had worked as volunteer of JMM during Assembly Election of the year 2019 and he used to make election campaign by taking flag through his Bicycle. He had not distributed any pamphlet or flag. His party had also not distributed any pamphlet or handbill. Assembly Election was held on 20.12.2019 and he had also cast his vote at Primary School, Jaspur in the booth at around 12.00 noon but he had returned at around 2.00 p.m.

On being shown Exhibit-01 by the learned counsel for the respondent, the witness stated that he had not seen any such paper earlier.

He further stated that no papers like Exhibit-1 or pamphlet or handbill were distributed by any person of JMM. It will be wrong to say that such pamphlet was distributed in his village.

79. During cross-examination, he stated that he is volunteer of JMM for last 20 years but he is not on any post and he is acquainted with JMM candidate for last 20 years. He has come to give evidence on the instruction of Respondent-Rabindra Nath Mahto in this case, who had arrived in his village. Sometimes, he used to attend meeting of JMM. Shyam Lal Hembram is a District President of his party. He used to make campaign by Bicycle in his village and had made campaign for 8-10 days prior to election and no Mike was fixed at his Bicycle. He had not seen any handbill of his party during election campaign.

80. Thus, from scrutinizing the evidence of R.W-5, it would appear that he is a formal witness and he has given evidence under the instruction of respondent Rabindra Nath Mahto who had arrived at his village for instructing him to give evidence in this case.

81. R.W-6 is Musuhy Marandi who stated during his evidence that last election was held on 20.12.2019 and in that election he asserted he along with JMM cadre people used to campaign at his village Jabardaha. He along with his friends used to make/propagate election campaign by taking flag and he is aware of all persons of his village. However, he identifies only those volunteers who had worked with him.

He is not aware of the volunteers namely Ramdeo Soren and Much Marandi. He used to campaign by taking flag and sitting with the respondent and the Respondent-Rabindra Nath Mahto is a good person.

On being shown Exhibit-01 by the learned counsel for the respondent, the witness stated that he had not seen this pamphlet (i.e. Exhibit-01) like document earlier. It will be wrong to say that pamphlet like this Exhibit-01 was distributed in his village on any date. He had casted his vote on 20.12.2019 at his village and he had not seen any document or pamphlet like

Exhibit-01 (i.e. the pamphlet). His candidate was declared elected in the election on 20.12.2019 and he had secured more than sixty one thousand (61,000) votes.

82. During cross-examination, he stated that that he used to do election campaign by Bicycle with his friends and they used to say that respondent-Rabindra Nath Mahto is a good person. He is volunteers of his party (i.e. JMM) and used to campaign by Bicycle and his party has not distributed Handbill, Poster and Mike.

83. Thus, from scrutinizing the evidence of R-W-6, it is evident that he is a formal witness and he is a volunteer of JMM party and who had participated in the election campaign of the respondent.

84. R.W-7 is Kali Pada Murmu, who stated during evidence that he is simple volunteer of JMM party. The respondent-Rabindra Nath Mahto was his party candidate and he had made election campaign in his village Jabardaha for him and not at any other place. Neither he had distributed any pamphlet or poster nor any volunteer had distributed any paper and pamphlet.

On being shown Exhibit-01 by the learned counsel for the respondent, the witness stated that he had not seen any such pamphlet. He asserted to be in village from 15.12.2019 to 19.12.2019 and during said period he had not seen document like this Exhibit-01 in the village. The voting was held on 20.12.2019.

He denied that any pamphlet like Exhibit-01 was distributed by his party candidate or by any volunteer during election campaign.

85. During cross-examination, he stated to be acquainted with the respondent Rabindra Nath Mahto since last twenty (20) years. His party used to make election campaign through Bicycle and flag. However, he is not aware that his party used any other medium during election campaign. He used to see campaign with the respondent Rabindra Nath Mahto, who is a good person. He has come for evidence on the instruction of the respondent.

86. Thus, from scrutinizing the evidence of R.W-7, it would appear that he is a formal witness and he has appeared before this Court on the instruction of the respondent and he has mainly denied distribution of pamphlet (i.e. Exhibit-01) by the respondent or any volunteers of JMM party.

87. R.W-8 is Sona Yadav who is a businessman. However, he stated during his evidence that he is a simple volunteer of JMM party and lives in Nala Assembly Region. He had done election campaign for his party candidate Rabindra Nath Mahto. He had made election campaign for the party at the village Jhantipahari, Jaspur, Nala and Sundarpur by putting flag of his party on the Motorcycle but he had not distributed any pamphlet or poster. His party has not distributed any pamphlet or poster. He had gone to

village Jhantipahari for election campaign on 14.12.2019 and 15.12.2019 respectively.

On being shown Exhibit-01 by the learned counsel for the respondent, the witness stated that he had not seen the document like Exhibit-01 earlier and he had also not seen this Exhibit-01 or any such paper earlier also. He has passed B.A and B. Ed.

He stated that any person can complain regarding wrong poster or pamphlet for violating Model Code of Conduct through C-Vigil and such person can upload his photo, video, audio at the time of making complain and its solution was to be done within hundred (100) minutes. He was at his booth on the date of election and his candidate had secured more than sixty one thousand (61,000) votes.

88. During cross-examination, he stated to be associated with JMM for last 10-12 years but he is not on any post. He used to make campaign by putting flag on his Motorcycle but he had not taken any permission from Election Commission.

On being confronted by the learned counsel for the petitioner for pointing out the name of candidate at a particular serial number, the witness stated that he does not remember as to whether he used to say during campaign that the name of the candidate of his party is mentioned on which serial number of the EVM Machine.

His party has not got printed any dummy handbill during election period.

He had not uploaded any complain through the medium of C-Vigil.

He had obtained information regarding C-Vigil through the medium of paper or also through the website of Election Commission.

He was also present on the date of voting at his booth and he was sitting at a distance of 150 Meters from the booth.

89. Thus, from scrutinizing the evidence of R.W-8, it would appear that he is a volunteer of JMM although he is a businessman and he had also participated in the election campaign for Jhantipahari, Jaspur, Nala and Sundarpur. However, he was present at a distance of 150 Meter from the booth on the date of voting.

90. R.W-9 is Rabindra Nath Mahto i.e. the Respondent himself, who is the Returned candidate of Nala Assembly Election, 2019 and presently Speaker of Jharkhand Vidhan Sabha.

R.W-9 during his evidence stated that he had contested election from Nala Assembly Constituency as a candidate of Jharkhand Mukti Morcha and he was declared elected in the said election of 2019. He was a candidate of Jharkhand Mukti Morcha (i.e. J.M.M). He was working on different post of the party prior to becoming Speaker of Jharkhand Vidhan Sabha, and after being declared Speaker he had relinquished those posts. He had secured more than sixty one thousand (61,000) votes in the election of 2019 and voting was held on 20.12.2019.

He is contesting election as party candidate of Jharkhand Mukti Morcha from the year 2000. He had won three elections but had lost in two elections. He had won the election in the year 2005 to 2009 however, he lost in the year 2009 to 2014. He had won the election in the year 2014 and in the year 2019. His election region is Nala, which is a general seat. There is general concept that candidate of all sections/castes and caste can contest on the General Category seat for the general candidate. There were fifteen (15) candidates also apart from him in the election of the year 2019 and four (04) candidates of Scheduled Tribes had also contested the election of 2019. Kanhai Chanddra Malpaharia, Pushpa Soren, Mahadeo Kisku and Santosh Hembram (i.e. the election petitioner) were candidates of Schedule Tribe.

91. On being shown Exhibit-01 by the learned counsel for the respondent, the witness stated that he is not aware of this paper. He asserted that paper like this Exhibit-01 or other pamphlet were not prepared by him. He asserted that election petitioner is wrong to contend that Handbill or any other paper like Exhibit-1 were distributed by him (i.e. R.W-9) or volunteers of his party. (Exhibit- 01 is the poster showing photograph of respondent-Rabindra Nath Mahto and his name appears at Serial No.7 whereas Serial No.16 refers the name of election petitioner-Santosh Hembram but the word NOTA is printed against Serial No.16).

On being shown Exhibit-02 by the learned counsel for the respondent (which was exhibited on behalf of the petitioner), the witness stated that he is not aware of the picture of the person on this Exhibit-02 and he neither knows them nor he identifies them. (Exhibit-02 is the photograph downloaded from the mobile of the petitioner revealing the picture of persons. He further stated that petitioner is wrong to contend that people shown him Exhibit-02 were the volunteers of JMM party.

He was at his residence on the date of voting and had gone to the booth to cast his vote and he returned to his home after casting his vote in the booth which was situated at Primary School, Patanpur, Patnapur Village. He denied that pamphlet like Exhibit-01 or papers were being distributed by him or by the volunteers of his party at Patanpur booth.

He denied the contention of the petitioner that paper like Exhibit-01 or pamphlet were being distributed by himself or by the volunteer of his party at village Jaspur on 16.12.2019.

92. He further stated that the petitioner has incorrectly contended that his party volunteers Ramdeo Soren and Much Marandi were distributing certain pamphlet like Exhibit-01 at village Jabardaha.

He has knowledge that several precautionary measures are being carried out by the Election Commission for doing any wrong in the election so that people may not commit wrong or people may institute complaint at concerned place in case of wrong being done and the same are being dealt with.

He further stated that Election Commission of India had launched one App namely C-Vigil for the election of 2019 and in which a team arrives at every short period of time in case of filing of any complaint and veracity of complaint is being investigated and there is provision for taking action. Thereafter there is a Flying Squad Team and even photography is being done by the Video Surveillance Team and also by M.C.M.C body which monitors the Election. Apart from this, there is a team of local police and team of Central Government and there is a team for investigating the financial issue.

He is not aware as to whether election petitioner had got the matter investigated by any team for the wrongful acts/malpractice with regard to Exhibit-01 (i.e. pamphlet).

He had got his banner, poster and flag printed on 06th December for his election campaign.

There is a column 'NOTA' below the names of all the candidates in EVM as per his knowledge. Approx 600 votes were casted in NOTA in the said election. He has done his election campaign by holding meeting, public relation, through the Motorcycle, Cycle and permitted Vehicle by the Mike.

93. During cross-examination, he could not say the exact date of filing the nomination paper after announcement of election. However, he was allotted symbol on 6th December and the election was held on 20.12.2019. He was authorized candidate of Jharkhand Mukti Morcha party and his party is a regional party and election symbol of his party is 'Bow' and 'Arrow'. He was declared authorised candidate of party on 06.12.2019 after scrutiny of all candidates at district level.

On being shown Document-X by the learned counsel for the petitioner, the witness states and admits that such paper is received by them.

On being shown Document-X/2 by the learned counsel for the petitioner, the witness stated that his name is mentioned at Serial No.7 and his address and election symbol of his party are written and this paper was probably received by him on 06.12.2019.

On being shown Document-X/2, the witness states that Serial No.16 refers the name of Santosh Hembram, an independent candidate and his election symbol is 'Balla' (i.e. Bat).

He admits that he had got prepared poster, banner and flag during the election.

His Nomination Paper was taken away by the election agent through his learned counsel but he does not remember as to whether his election agent had handed over which papers. He also states that several papers are received including the book and he also received a thick Handbook along with the papers.

Neither he nor his party nor by Election Agent, got printed any dummy ballot paper.

Voter Felicitation Paper are being affixed on every booth by Election Commission and Voters are being made aware of all the Candidates and the voters cast vote on seeing the above papers of the respective candidates.

On being confronted on the photograph of person in Exhibit- 02, who are said to be volunteers of his party, the witness stated that he is not aware of persons whose names are shown in the photograph of Exhibit-02.

He had not gone to village Jabardaha during the entire election campaign.

He got his poster, banner from the place of Ranchi through 'Bharat Traders' press.

He learnt in the month of July 2022 through the newspaper that the Election Petitioner has filed a case against him and thereafter he had received the notice of the Court.

He had not made any complaint against the election petitioner before the Election Commission.

Thus, from scrutinizing the evidence of R.W-9, it is evident that he was Returned Candidate of 08-Nala Assembly Constituency and he has denied the printing and distribution of paper like pamphlet (Exhibit-01).

94. R.W-10 is Shravan Kumar Yadav, who stated during his evidence that he is resident of Nala Assembly Election Region and he has connection with Jharkhand Mukti Morcha party as a general volunteer and the respondent-Rabindra Nath Mahto was his party candidate in the said election. He had also made election campaign with Rabindra Nath Mahto in his favour. He is also voter of Upgraded Middle School, Murabaha village for voting. He had accompanied with the Respondent in the election campaign.

He also made election campaign at his Panchyat Khamarabad by putting flag in his Bicycle.

On being shown Exhibit-01 by the learned counsel for the respondent, the witness stated that he had not seen such paper during election campaign. His village is situated at a distance of 5-6 Kilometer from the village, Patanpur. He identifies all volunteers of his party as he is a volunteer of Jharkhand Mukti Morcha party.

On being shown Exhibit-02 by the learned counsel for the respondent, the witness stated that the persons as shown in the photograph mentioned in said Exhibit-02, are not the volunteers of his party and it would be wrong to say that the persons shown in Exhibit-02 were the volunteers of Jharkhand Mukti Morcha party.

He is aware of lodging complaints through C-Vigil App, if any irregularity/misconduct is found during the election. He stated that C-Vigil is an App and any person can download on its mobile and even people can complain Election Commission, Jharkhand through C-Vigil medium, if any irregularity/malpractice are found and Election Commission acts promptly upon

it. Rabindra Nath Mahto (i.e. the respondent) had won the election of 2019. He is aware of petitioner Santosh Hembram for the last 3-4 months and he was also a candidate in the said election and had got around 1700 votes during the said election.

95. During cross-examination, R.W-10 stated that he is associated with Jharkhand Mukti Morcha party since last 18-19 years and normally District In-charge is responsible for election campaign. Being member of the party, he also used to make election campaign. However, he had not taken any expenses from his party during the election campaign. He is not aware of number of votes to any candidates who had contested the 2019 Assembly Election from his region but he is aware of vote of his party. He has come to give evidence in this case on the instruction of respondent-Rabindra Nath Mahto.

96. From scrutinizing the evidence of R.W-10, it is evident that he is a formal witness and he has been brought by the respondent to deny the photographs of people found and shown on Exhibit-02 and also to deny the publication of pamphlet (i.e. Exhibit-01) by the Jharkhand Mukti Morcha party or by the Respondent.

Thus, the evidence of R.W-10 is simply a formality.

97. R.W-11 is Ashok Kumar Mahto, who claims to be an agriculturist. However, during evidence, he stated that he is President of Fatehpur Block of Jharkhand Mukti Morcha for the last two years and he is a volunteer of JMM for the last several years. He had worked for the respondent during 2019 Assembly Election from Nala Assembly Constituency and who was candidate of his party.

He further admitted to have worked as an Election Agent for the Respondent in the year 2019 and he used to do all the works of the respondent as being his Election Agent. 08 Nala Assembly Constituency is a seat of general candidate and it is not a reserved seat. However, any person of any community/caste and even the persons of Scheduled Castes and Scheduled Tribes can appear to contest election on general seat of Assembly Constituency. He has also named four persons namely Kanhai Chandra Malpaharia, Pushpa Soren, Mahadeo Kisku and Santosh Hembram. Apart from his candidate, fifteen (15) other candidates had also contested the 2019 election.

He further stated that he had got printed the poster, banner and flag for his party candidate Rabindra Nath Mahto.

98. On being shown Exhibit-01 by the learned counsel for the respondent, the witness (i.e. R.W-11) stated that he had not seen this paper earlier and it will be wrong that this Exhibit-01 were got printed by him or by party or by any candidate. He used to move some time for election campaign. His Booth No.79 is situated at Upgraded Middle School, Village-Murabahr.

He had casted his vote on the date of voting. He claimed to identify most of the volunteers of JMM.

On being shown Exhibit-02 by the learned counsel for the respondent, the witness stated that he does not identify the person shown in Exhibit-02. He stated that there is provision for making complaint, if any irregularity/malpractice is found during the election and this matter was informed to all the candidates during the meeting. Even the general voters were made aware to make complaint in case of finding of any malpractice/irregularity. Even complaint can be made through mobile for which one App was launched but he does not remember its name but there was a provision that in case of finding any irregularity, a person can snap photo from his mobile or through his photography and can institute the complaint. Upon institution of complaint, there was provision of solving the same in hundred (100) minutes.

99. He further stated that Sector Magistrate was deputed for watching the irregularity on the date of election and they were assigned to watch the booth in around half an hour to one hour. If any party was doing wrong then they could have seen that. Respondent-Rabindra Nath Mahto was declared elected and he had secured more than Sixty One Thousand (61,000) votes. He is aware of NOTA and approx 601 votes were casted for NOTA.

He got the banner, poster printed of his party candidate from

'Bharat Traders', Ranchi Press. He used to maintain concerned cost relating to candidate during election.

He got written the details of cost and expenditure during election by which printing were done from 'Bharat Traders' Ranchi, and its detail were mentioned in Expenditure Register. This said Expenditure Register was handed over to him by the Returning Officer and he has mentioned all details as election expenditure.

He is a volunteer of JMM party for the last 20-22 years and prior to becoming Block President of the party, he was an active volunteer of party and he became Block President two years ago. He reiterated that he was Election Agent of the respondent in the year 2019 Nala Assembly Constituency Region. He was given Form-8 by the party candidate Rabindra Nath Mahto for becoming the election agent. The candidate had spent approx 12 Lakhs in the year 2019 election.

However, he has not got printed pamphlet of his candidate but he got printed flag and banner but not a single hoarding was prepared. He had made expenditure of approx one lakh in printing and the said Rs.One lakh was paid to the Jharkhand Rajya Gramin Bank, Mohnabad through the RTGS. Bharat Traders is situated in Ranchi.

He had informed the Election Commission regarding the complaint but he could not say the date of such information that they had not printed any dummy ballot paper from the side of the candidate.

On being shown Exhibit-01 by the learned counsel for the petitioner, the witness stated that he had not seen said Exhibit-01 (i.e. handbill). On being further shown Exhibit-01, the witness stated that he is not aware of printing press mentioned in it.

His candidate Rabindra Nath Mahto had won by approx four thousand and above votes.

100. Thus, from scrutinizing the evidence of R.W-11, it is evident that he was the Election Agent of the Respondent during Nala Assembly Election 2019 and he had got printed the banner, poster and flag from 'Bharat Traders' Press, Ranchi. However, he flatly denied about Exhibit-01 and Exhibit-02.

101. R.W-12 is Dayamay Ghosh, who stated during evidence that election was held in Nala Assembly Constituency in December, 2019 on 20.12.2019. He is a general volunteer of Jharkhand Mukti Morcha party and he had done election campaign by putting flat on his Bicycle. The respondent-Rabindra Nath Mahto was his party candidate, who was elected and won the Nala Assembly election and had got more than sixty thousand (61,000) votes.

On being shown Exhibit-01, the witness stated that he had not seen this Exhibit-01 or any paper like this during his entire election campaign. Neither he nor any volunteers of his party had distributed any paper or parcha like Exhibit-01. He had done election campaign for around 8-10 days. He is not aware of election petitioner of this case and not aware of the votes secured by him.

102. During cross-examination, he stated that he is associated with the party for the last 8-10 years and he was made Volunteer by the Committee of the Party. He is not aware of the expenditure incurred in preparing flag of the party. He used to campaign through his Bicycle. He is also not aware as to how many materials were got printed by his party during the election. He has come to give evidence on the instruction of Rabindra Nath Mahto (i.e. the Respondent).

103. Thus, from scrutinizing the evidence of R.W-12, it is evident that he is a formal witness and he has come merely to give evidence on the instruction of the respondent and he appears to be a volunteer of the party of the respondent. He has been brought only to deny the existence of the Exhibit-01.

104. It would appear that thereafter the Respondent had filed another I.A. No.5526 of 2024 on 10.06.2024 for calling the incomplete or remaining documents from the office of the District Election Officer-cum-District Commissioner, Jamtara and the learned AAG-III had filed reply to the said I.A. No.5526 of 2024 and had informed that three envelopes i.e. Envelop-

A, B and C have been produced in a sealed cover.

105. The respondent had also earlier filed I.A. No.1831 of 2024 on 19.02.2024 to call for documents mentioned in Annexure-A series on record and Annexure-B series from the office of District Election Officer-cum-District Commissioner, Jamtara.

However, this Court vide order dated 23.04.2024 allowed the I.A. No.1831 of 2024 in part and had allowed to call for final result sheet in Form-20 of general election, which is mentioned at Serial No.(ii) of Annexure-A only. Further this Court in order to give opportunity to the respondent to lead evidence in his defence allowed certain documents to be called for in this case, which are as follows:-

"Document at Serial No. 4 is the Voter facilitation posters and their details as displayed by the District Election Officer-cum-4 Deputy Commissioner, Jamtara, especially in the Polling Stations mentioned in the instant Election Petition.

Document at Serial No. 5 is the Complaints received through the "cVIGIL" Application from the Office of the District Election Officer-cum-Deputy Commissioner, Jamtara. Document at Serial No. 6 is the Complaint received by Flying Squad constituted by District Election Officer-cum-Deputy Commissioner, Jamtara for monitoring of the Model code of conduct, Electoral Offence, campaign by contesting candidate/political parties in Nala (08) Assembly Constituency especially in light of the averment made in the instant Election Petition.

Document at Serial No. 7 is the Complaint received by Sector Magistrate appointed by District Election Officer for monitoring of poll and during vulnerability mapping in Nala (08) Assembly Constituency especially in light of the averments made in the instant EP.

Document at Serial No.10 is the Report of Sector Magistrate inspection done before poll especially in booths of Jhatipahari, Jabardaha and Jaspur as mentioned in the instant EP.

Document at Serial No.12 is the The Presiding Diary of polling Stations of 91 and 92 along with Visit Sheet of the said Polling Stations."

106. It further transpires that the date of this case was fixed on 08.05.2024. However, I.A. No.4652 of 2024 was filed on behalf of the District Election Officer-cum-Deputy

Commissioner, Jamtara for 30 days' time for complying with the order dated 23.04.2024.

107. This Court vide order dated 08.05.2024 had called explanation from concerned Assistant Registrar, Section Officer and Dealing Assistant of High Court for sending the order by FAX on 30.04.2024 though the order was passed on 23.04.2024.

108. This Court had also called for explanation from the Deputy Commissioner, Jamtara for not producing the document in the light of the order dated 23.04.2024 passed by this Court.

109. Pursuant to this order, the Deputy Commissioner, Jamtara appeared in person on 16.05.2024 and filed the show cause and tendered unqualified and unconditional apology and thereafter the learned AAG-III had filed seven (07) sealed envelopes in the light of the order dated 23.04.2024 except the document mentioned at Serial No.5 i.e. C-Vigil application. Thereafter the parties were directed to inspect the documents in the chamber of the learned Joint Registrar (Judicial) of the High Court and the case was fixed on 12.06.2024 after Summer Vacation. Thereafter the matter was fixed on 12.06.2024.

110. However, the Respondent again filed I.A. No.5526 of 2024 for calling the incomplete or remaining documents from the office of the District Election Officer-cum-District Commissioner, Jamtara and the learned AAG-III took time to verify the prayer made in I.A. No.5526 of 2024 and on 20.06.2024 the learned AAG-III produced three (03) envelopes i.e. Envelop-A, B and C respectively in the sealed cover and this Court had further directed the Deputy Commissioner, Jamtara for producing the further necessary documents.

111. It was also pointed out by the learned AAG-III before this Court on 20.06.2024 that the documents mentioned at Serial No.4, 5 and 6 of the tabular chart of the reply dated 19.06.2024 have not been submitted by Sri Surendra Kumar then Returning Officer, 08 Nala Assembly Constituency.

112. It further transpires from the order dated 13.08.2024 that then Returning Officer, Surendra Kumar could not produce several documents and an affidavit was filed on behalf of the Deputy Commissioner, Jamtara on 19.06.2024 and 05.07.2024 and it was pointed out that several documents could not be found in the Strong Room in the office of the Deputy Commissioner, Jamtara and for which direction was issued to Sri Surendra Kumar, then Returning Officer to locate the same. However, the Returning Officer Surendra Kumar by an affidavit dated 12.07.2024, which was filed on 20.07.2024, had enclosed copies of remaining available documents instead of original documents. Sri Surendra Kumar, i.e. P.W-3 by affidavit dated 12.07.2024 and 20.07.2024 had pointed out that those certain documents could not be located earlier and hence he has produced the photo copies of those documents.

113. Thereafter the documents were inspected by both the sides in the Chamber of Joint Registrar (Judicial) on 22.08.2024.

Not satisfied with the above and the State filed another I.A. No.9043 of 2024 under Section 151 CPC on 27.08.2024 for submitting two documents i.e. Annexure-C and Annexure-D and vide order dated 27.08.2024 this Court had allowed I.A. No.9043 of 2024 again learned counsel for both the sides were permitted to inspect the documents in the Chamber of Joint Registrar (Judicial) on 28.08.2024.

114. The respondent filed I.A. No.9465 of 2024 for marking the documents (on admission) of both the sides and which was allowed on 03.09.2024 with the consent of both the sides, by this Court and the documents i.e. Exhibit-A, Exhibit-B to B/9 respectively, Exhibit-C, Exhibit-D to D/14 respectively, Exhibit-DD-I, Exhibit-DD-II and also Exhibit-DD-III, Exhibit-DD-IV and Exhibit-DD/V, Exhibit-E, Exhibit-E/I, Exhibit-E/II, Exhibit-E/III respectively, Exhibit-F series, Exhibit-G and Exhibit-G/I series and Exhibit-H and Exhibit-H/I respectively were marked (on admission) by both the sides and the evidence of the respondent was closed and the case was fixed for argument.

115. At this stage, it is relevant to refer Sections 86, 87, 100 123, 127A, 129, 130, 134 and 134A of the Representation of the People Act, 1951, which are as follows:-

"86. Trial of election petitions.—(1) *The High Court shall dismiss an election petition which does not comply with the provisions of section 81 or section 82 or section 117.*

Explanation.—An order of the High Court dismissing an election petition under this sub-section shall be deemed to be an order made under clause (a) of section 98.

(8) *As soon as may be after an election petition has been presented to the High Court, it shall be referred to the Judge or one of the Judges who has or have been assigned by the Chief Justice for the trial of election petitions under sub-section (2) of section 80-A.*

(9) *Where more election petitions than one are presented to the High Court in respect of the same election, all of them shall be referred for trial to the same Judge who may, in his discretion, try them separately or in one or more groups.*

(10) *Any candidate not already a respondent shall, upon application made by him to the High Court within fourteen days from the date of commencement of the trial and subject to any order as to security for costs which may be made by the High Court, be entitled to be joined as a respondent.*

Explanation.—For the purposes of this sub-section and of section 97, the trial of a petition shall be deemed to commence on the date fixed for the respondents to appear before the High Court and answer the claim or claims made in the petition.

(11) *The High Court may, upon such terms as to costs and otherwise as it may deem fit, allow the particulars of any corrupt practice alleged in the petition to be amended or amplified in such manner as may in its opinion be necessary for ensuring a fair and effective trial of the petition, but shall not allow any amendment of the petition*

which will have the effect of introducing particulars of a corrupt practice not previously alleged in the petition.

(12) The trial of an election petition shall, so far as is practicable consistently with the interests of justice in respect of the trial, be continued from day to day until its conclusion, unless the High Court finds the adjournment of the trial beyond the following day to be necessary for reasons to be recorded.

(13) Every election petition shall be tried as expeditiously as possible and endeavour shall be made to conclude the trial within six months from the date on which the election petition is presented to the High Court for trial.

87. Procedure before the High Court.—(1) Subject to the provisions of this Act and of any rules made thereunder, every election petition shall be tried by the High Court, as nearly as may be, in accordance with the procedure applicable under the Code of Civil Procedure, 1908 (5 of 1908) to the trial of suits:

Provided that the High Court shall have the discretion to refuse, for reasons to be recorded in writing, to examine any witness or witnesses if it is of the opinion that the evidence of such witness or witnesses is not material for the decision of the petition or that the party tendering such witness or witnesses is doing so on frivolous grounds or with a view to delay the proceedings.

(2) The provisions of the Indian Evidence Act, 1872 (1 of 1872), shall, subject to the provisions of this Act, be deemed to apply in all respects to the trial of an election petition.

101. Grounds for declaring election to be void.— [(1) Subject to the provisions of subsection (2) if [the High court] is of opinion—

(a) that on the date of his election a returned candidate was not qualified, or was disqualified, to be chosen to fill the seat under the Constitution or this Act 5 [or the Government of Union Territories Act, 1963 (20 of 1963)]; or

(b) that any corrupt practice has been committed by a returned candidate or his election agent or by any other person with the consent of a returned candidate or his election agent; or

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

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

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

(ii) by any corrupt practice committed in the interests of the returned candidate 6 [by an agent other than his election agent], or

(iii) by the improper reception, refusal or rejection of any vote or the reception of any vote which is void, or

(iv) by any non-compliance with the provisions of the Constitution or of this Act or of any rules or orders made under this Act, [the High Court] shall declare the election of the returned candidate to be void.]

[(2)] If in the opinion of [the High Court], a returned candidate has been guilty by an agent, other than his election agent, of any corrupt practice [***] but [the High Court] is satisfied—

(a) that no such corrupt practice was committed at the election by the candidate or his election agent, and every such corrupt practice was committed contrary to the orders, and [without the consent], of the candidate or his election agent;

* * * * *

(e) that the candidate and his election agent took all reasonable means for preventing the commission of corrupt practices at the election; and

(f) that in all other respects the election was free from any corrupt practice on the part of the candidate or any of his agents,
then [the High Court] may decide that the election of the returned candidate is not void.

124. 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 [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—

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

(iv) 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—

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

(d) 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.]

(3) 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 [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—

(iii) 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

(iv) 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)

(4)

(5)

(6)

(7)

(8)

127A. Restrictions on the printing of pamphlets, posters, etc.—

(5) No person shall print or publish, or cause to be printed or published, any election pamphlet or poster which does not bear on its face the names and addresses of the printer and the publisher thereof.

(6) No person shall print or cause to be printed any election pamphlet or poster—

(a) unless a declaration as to the identity of the publisher thereof, signed by him and attested by two persons to whom he is personally known, is delivered by him to the printer in duplicate; and

(b) unless, within a reasonable time after the printing of the document, one copy of the declaration is sent by the printer, together with one copy of the document,—

(iii) where it is printed in the capital of the State, to the Chief Electoral Officer, and

(iv) in any other case, to the district magistrate of the district in which it is printed.

(7) For the purposes of this section,—

(a) any process for multiplying copies of a document, other than copying it by hand, shall be deemed to be printing and the expression "printer" shall be construed accordingly; and

(b) "election pamphlet or poster" means any printed pamphlet, hand-bill or other document distributed for the purpose of promoting or prejudicing the election of a candidate or group of candidates or any placard or poster having reference to an election, but does not include any hand-bill, placard or poster merely announcing the date, time, place and other particulars of an election meeting or routine instructions to election agents or workers.

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

131. Officers, etc., at elections not to act for candidates or to influence voting.—(1)

No person who is 1 [a district election officer or a returning officer], or an assistant returning officer, or a presiding or polling officer at an election, or an officer or clerk appointed by the returning officer for the presiding officer to perform any duty in connection with an election shall in the conduct or the management of the election do

any act (other than the giving of vote) for the furtherance of the prospects of the election of a candidate.

(4) No such person as aforesaid, and no member of a police force, shall endeavour—

(c) to persuade any person to give his vote at an election, or

(d) to dissuade any person from giving his vote at an election, or (c) to influence the voting of any person at an election in any manner.

(5) Any person who contravenes the provisions of sub-section

(1) or sub-section (2) shall be punishable with imprisonment which may extend to six months or with fine or with both.

[(4) An offence punishable under sub-section (3) shall be cognizable.]

132. Prohibition of canvassing in or near polling stations.—

(4) No person shall, on the date or dates on which a poll is taken at any polling station, commit any of the following acts within the polling station or in any public or private place within a distance of [one hundred metres] of the polling station, namely:—

(a)) canvassing for votes; or

(b) soliciting the vote of any elector, or

(c) persuading any elector not to vote for any particular candidate; or

(d) persuading any elector not to vote at the election; or

(e) exhibiting any notice or sign (other than an official notice) relating to the election.

(5) Any person who contravenes the provisions of sub-section (1) shall be punishable with fine which may extend to two hundred and fifty rupees.

(6) An offence punishable under this section shall be cognizable.

135. Breaches of official duty in connection with elections.—

(1) If any person to whom this section applies is without reasonable cause guilty of any act or omission in breach of his official duty, he shall be punishable with fine which may extend to five hundred rupees.

[(1A) An offence punishable under sub-section (1) shall be cognizable.]

(2) No suit or other legal proceedings shall lie against any such person for damages in respect of any such act or omission as aforesaid.

(3) The persons to whom this section applies are the 4*** 5 [district election officers, returning officers], assistant returning officers, presiding officers, polling officers and any other person appointed to perform any duty in connection with 6*** the receipt of nominations or withdrawal of candidatures, or the recording or counting of votes at an election; and the expression "official duty" shall for the purposes of this section be construed accordingly, but shall not include duties imposed otherwise than by or under this Act 4***.

[134A. **Penalty for Government servants for acting as election agent, polling agent or counting agent.**—If any person in the service of the Government acts as an election agent or a polling agent or a counting agent of a candidate at an election, he shall be punishable with imprisonment for a term which may extend to three months, or with fine, or with both.]”

116. It is relevant to refer Rule 61 and Rule 323 of the High Court of Jharkhand Rules, which are as follows:-

"61. In administering oaths and affirmations to declarants the Commissioner shall be guided by the provisions of the Indian Oaths Act, 1873 (x of 1873) and the following forms shall be used:

Oaths

I swear in the name of God that this my declaration is true, that it conceals nothing and that no part of it is false.

Affirmation

I solemnly declare that this my declaration is true, that it conceals nothing and that no part of it is false.

323. Every election petition shall, immediately below the title, have endorsed on it "Election Petition" and shall, in addition to the grounds and date or dates specified in Section 81 and the contents required by Section 83 or any other section of the Act dealing with the presentation of such petitions, state-

- (a) the name and complete address of the petitioner;
- (b) the name and complete address with postal address of each person impleaded as respondents; and
- (c) the relief claimed."

117. It is further relevant to refer Rule 4, Rule 10, 12 and 13 and Rule 27-B, 27-C, 49(O) and Rule 92 of the **Conduct of Elections Rules, 1961**, which are as follows:-

"4. Nomination paper.- Every nomination paper presented under sub-section (1) of section 33 shall be completed in such one of the Forms 2-A to 2-E as may be appropriate:

Provided that a failure to complete or defect in completing, the declaration as to symbols in a nomination paper in Form 2-A or Form 2-B shall not be deemed to be a defect of a substantial character within the meaning of sub-section (4) of section 36.

[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.]

11. Preparation of list of contesting candidates.—(1) The list of contesting candidates referred to in subsection (1) of section 38 shall be in Form 7A or Form 7B as may be appropriate and shall contain the particulars set out therein and shall be prepared in such language or languages as the Election Commission may direct.

(7) If the list is prepared in more languages than one, the names of candidates therein shall be arranged alphabetically according to the script of such one of those languages as the Election Commission may direct.

(8) At an election in a parliamentary or assembly constituency, where a poll becomes necessary, the returning officer shall consider the choice of symbols expressed by the contesting candidates in their nomination papers and shall, subject to any general or special direction issued in this behalf by the Election Commission,—

(a) allot a different symbol to each contesting candidate in conformity, as far as practicable, with his choice; and

(b) if more contesting candidates than one have indicated their preference for the same symbol decide by lot to which of such candidates the symbol will be allotted.

(9) The allotment by the returning officer of any symbol to a candidate shall be final except where it is inconsistent with any directions issued by the Election Commission in this behalf in which case the Election Commission may revise the allotment in such manner as it thinks fit.

(10) Every candidate or his election agent shall forthwith be informed of the symbol allotted to the candidate and be supplied with a specimen thereof by the returning officer.

12. Appointment of election agent.— [(1) Any appointment of an election agent under section 40 shall be made in Form 8 and the notice of such appointment shall be given by forwarding the same in duplicate to the returning officer who shall return one copy thereof to the election agent after affixing thereon his seal and signature in token of his approval of the appointment.]

(2) The revocation of the appointment of an election agent under sub-section (1) of section 42 shall be made in Form 9.

13. Appointment of polling agents.—(1) The number of polling agents that may be appointed under section 46 shall be one agent and two relief agents.

(4) Every such appointment shall be made in Form 10 and shall be made over to the polling agent for production at the polling station or the place fixed for the poll, as the case may be.

(5) No polling agent shall be admitted into the polling station or the place fixed for the poll unless he has delivered to the presiding officer the instrument of his appointment under sub- rule (2) after duly completing and signing before the presiding officer the declaration contained therein.

27B. Special provisions for voting by the notified class of electors.—Notwithstanding anything contained in Part III, the provisions of this Part shall apply to a notified elector who wishes to vote by post at an election.

27C. Intimation by a notified elector.—A notified elector, who wishes to vote by post at an election shall send an application in Form 12-C to the Assistant Returning Officer for the notified class of electors so as to reach him at least ten days before the date of the poll and on receipt of the intimation such Assistant Returning Officer shall issue a postal ballot paper to him:

Provided that an application which does not furnish complete particulars as required in Form 12-C may be rejected if such Assistant Returning Officer, despite making reasonable efforts, is not in a position to ascertain the requisite information:

Provided further that an application in Form 12-C without a certificate from the authorised officer as required under Part II of Form 12-C shall be rejected.

49-O. Elector deciding not to vote.—If an elector, after his electoral roll number has been duly entered in the register of voters in Form 17-A and has put his signature or thumb impression thereon as required under sub-rule (1) of rule 49-L, decided not to record his vote, a remark to this effect shall be made against the said entry in Form 17-A by the presiding officer and the signature or thumb impression of the elector shall be obtained against such remark.

92. Custody of ballot boxes and papers relating to election. —

(2) All ballot boxes used at an election shall be kept in such custody as the chief electoral officer may direct.

[(1A) All voting machines used at an election shall be kept in the custody of the concerned district election officer.]

[(2) The district election officer shall keep in safe custody—

(a) the packets of unused ballot papers with counterfoils attached thereto;

(b) the packets of used ballot papers whether valid, tendered or rejected;

(c) the packets of the counterfoils of used ballot papers;

[(cc) the printed paper slips sealed under the provisions of rule 57-C;]

(d) the packets of the marked copy of the electoral roll or, as the case may be, the list maintained under sub-section (1) or sub-section (2) of section 152;

[(dd) the packets containing registers of voters in Form- 17A;]

(e) the packets of the declarations by electors and the attestation of their signatures; and

(f) all other papers relating to the election:

Provided that in the case of an election in an assembly constituency or a parliamentary constituency or a council constituency which extends over more districts than one, the said papers shall be kept in the custody of such one of the district election officers having jurisdiction over the constituency as the Election Commission may direct:

Provided further that in the case of an election by assembly members the said papers shall be kept in the custody of the returning officer.]"

Issue No.2 and 3

118. Both the issues are the crux of the matter and hence they are being taken together and tried simultaneously.

119. It has been pleaded in the plaint that the election of the sole Respondent/Returned Candidate is void under Section 100(1)(b) of the R.P. Act in view of the fact that the Returned Candidate and his election agent have committed corrupt practice by publication of materials to prejudice the prospects of the petitioner. It has also been stated that the petitioner could not obtain the certified copy of his nomination paper as well as nomination paper of all the candidates including the Returned Candidate. However, he obtained the downloaded all the nomination paper from the official website of the Election Commission of India. However, during the time of election, the sole respondent got printed handbills/pamphlets of specimen of EVM showing the name of all

the contesting candidates and their position as given in Format-7- K. The sole respondent depicted his name, photograph and symbol of Serial No.7 and he also got deliberately printed the name of the petitioner at Serial No.16 with his name as Santosh Hembram.

The petitioner stated that he is a member of Schedule Tribe Community and 08-Nala Assembly Constituency consists of 32% of population belonging to Tribal Community. However, the Returned Candidate got printed/published handbills/pamphlets and it shows that NOTA is printed at Serial No.16 of said handbills/pamphlets. Even the Respondent and his agents got pasted these handbills on the places of the villages wherein Schedule Tribes Community reside in large number so that the Schedule Tribes people may not cast their vote in favour of the petitioner. It is also pleaded that the respondent has committed corrupt practices at village Jhantipahari, village Jaspur and village Jabardaha and got elected in 08-Nala Assembly Election. However, neither the Returning Officer nor other Election Official had taken cognizance of the conduct of the respondent.

120. Learned counsel for the petitioner has submitted that P.W-1 and P.W-2 namely Santosh Hembram and Umesh Murmu have fully supported the case of the election petitioner and they have stated that the respondent has committed corrupt practices and serious misconduct during election campaign of 08-Nala Assembly Election. It is submitted that Exhibit-01 is the pamphlet which shows that the name of the respondent is shown at Serial No.7 and the name of the petitioner is shown at Serial No.16 and the photographs of the sole respondent-Rabindra Nath Mahto got printed over it. Exhibit-02 is the downloaded photographs of the persons had taken the handbill/Purcha showing the photographs of some people who are the volunteers of sole respondent and set up the Jharkhand Mukti Morcha party. It is submitted that the evidence of R.W-1 to R.W-12 is not reliable. It is submitted that even the petitioner has filed Written Statement after delay of two years in the year 2022 whereas the election petition was filed in the year 2020. The evidence of R.W-1 to R.W-12 respectively is not reliable as they are not truthful witnesses. It is submitted that the election of the Respondents is liable to be set aside even if the same is not affected by number of votes rather casting of single votes by deceitful means would render the election illegal. Even the complaint of the petitioner was not entertained by the Deputy Commissioner, Jamtara as well as the Returning Officer and even the officials of District Administrative are helping the sole respondent. It is submitted that in view of the above, the petitioner has valid cause of action for filing this election petition on the ground of corrupt practices committed by the election agent of the respondent as well as the volunteers of the respondent-Rabindra Nath Mahto of the Jharkhand Mukti Morcha party.

121. On the other hand, the learned counsel for the Respondent has submitted that petitioner has got no cause of action in filing this election petition and no corrupt practices

has been committed either by the respondent-Rabindra Nath Mahto or by his volunteers or even the volunteers of the Jharkhand Mukti Morcha party. It is submitted that the petitioner had campaigned himself in all the Assembly Constituencies areas during the election period but he did not notice any NOTA handbill printed and distributed by the sole Respondent. Neither the petitioner's supporters nor any voter nor any well-wishers noticed or saw NOTA handbill like pamphlet being distributed by the Respondent Even the petitioner did not receive any information that the Respondent or his election agent (i.e. the respondent's Election Agent) and his supporters are canvassing with the Pamphlet i.e. Exhibit-01. Although it is alleged that the Prem Kumar Hembram of village Jhantipahari had informed the petitioner that Sri Sabut Murmu along with JMM workers in door to door campaign have persuaded the people not to cast any vote at Serial No.16 but the election petitioner failed to examine him and said Prem Kumar Hembram has not been examined by the petitioner.

It is submitted that P.W-2-Umesh Murmu had pointed out that a boy aged between 14-15 years was distributing wrong pamphlet but apart from that village he had not seen the said handbill anywhere. It is submitted that the petitioner had not made complaint before the Returning Officer or the Deputy Commissioner, Jamtara.

It is submitted that even the voter list would reveal that the petitioner has secured lesser vote whereas the respondent is a winning candidate and after the election was over the petitioner has formally made complaint before the Election Commission of India on 04.02.2020 i.e. after three months of election of the year 2019. It is submitted that the alleged photographs (marked as Exhibit-02 also does not have any legal proof in view of provision of Section 65-B of Indian Evidence Act because Exhibit-02 as alleged by the election petitioner, is a photograph taken by him from his mobile phone camera on Polling Day at the village Patanpur. It is submitted that the Hon'ble Supreme Court in the case of **Arjun Panditrao Khotkar vs. Kailash Kushanrao Gorantyal and Ors.** reported in (2020) 7 SCC 1 has held that non-compliance of the provisions of Section 65-B of Indian Evidence Act would render the Exhibit as tempered and manufactured. The petitioner had not filed any written complaint on the date of voting. Thus, the respondent has not committed any error.

122. From perusal of the deposition of witnesses of the petitioner, it would appear that the petitioner was examined as P.W-1 in this case and he has stated that on 20.12.2019 while he arrived at Patanpur Booth Nos.91 and 92 then he was surprised to see that several JMM volunteers were sitting with Demo Machine of EVM and posters and it was seen by him that Serial No.16 is written as NOTA and saw that Serial No.16 on the poster depicts his name. Thereafter he immediately got the said photograph from his mobile and even later on volunteers informed that NOTA is printed against Serial No.16 and it

would be useless to cast vote on it. Thereafter the petitioner tried to contact Election Observer through his mobile but he could not receive the phone. He had also submitted written application to the Deputy Commissioner, Jamtara on 22.12.2019 after the election was over regarding the above aspect that NOTA is printed at Serial No.16 against his name. He has proved the Purcha i.e. Exhibit01 (with objection). He further proved the original photograph of the persons which was snapped from his mobile marked as Exhibit-02 (with objection). He further proved the photo copy of application submitted to D.C., Jamtara on 22.12.2019 and which is marked as X/1 for identification. He further proved the document X/2 which is photo copy of Prapatra-7 K (Format-7 K). He further proved the photo copy of the nomination paper marked as Exhibit-3 (with objection) and which is in 14th pages issued by the Returning Officer on 29.11.2019. He further proved his Caste Certificate marked as Exhibit-4 (with objection). Even during his election campaign he was informed by villager Prem Kumar Rana i.e. Prem Kumar Hembram that wherever election campaign is being done wrong pamphlet was being shown and it is circulated/campaigned by Jharkhand Mukti Morcha volunteers to cast vote at Serial no.7 to the Respondent-Rabindra Nath Mahto whereas his name is shown at Serial No.16 of the said handbill and it was ensured that the vote will be useless at Serial NO.16. He also admitted that he does not remember that the petitioner has filed written complaint before the Deputy Commissioner, Jamtara and the other available employee are not entitled to grant relief to such an employee. He further could not say that he is being shown wrong handbill.

123. P.W-2 is Umesh Murmu who is the election agent of the petitioner and stated during his evidence that while there was election campaign on 16.12.2019 at his village Jaspur then JMM volunteers namely Jaydhan Hansda, Rupchand Hansda and other volunteers were submitting and distributing pamphlet and influencing the voters to not give vote at Serial No.16 upon which NOTA is mentioned.

During cross-examination, he admitted for having certificate of Election Agent from the petitioner-Santosh Hembram. He became Election Agent on the date of scrutiny. However, he was not aware that works done by the election agent on behalf of the informant will be treated as work of the candidate. However, he could not take the name of the children who had handed over that pamphlet i.e. marked as Exhibit-1 (with objection). Even after voting he had not made any complaint before any officer. Thus, P.W-2 has not able to support the case of the petitioner.

124. P.W-3 is Surender Kumar then Returning Officer, who has been examined on behalf of the petitioner. He has merely stated that counting was started in the morning on 23.12.2017 and the result was declared in the night between 2.30 to 3.00 a.m and the Returning Candidate was the respondent-Rabindra Nath Mahto. He admitted for submitting the documents for the first time vide letter dated 22.02.2023. He further

submitted the required documents vide letter dated 09.09.2023. He admitted his mistake for not submitting three documents due to mistake.

During Cross-examination, he stated that hearing of complaint by any complainant was beyond his jurisdiction and any malpractice in election was to be complained through Portal (in Para-16 and 17 of his evidence) and that can be lodged in Model Code of Conduct Cell after initiation of election proceeding till the declaration of the result and he also stated that no complaint was made by the election petitioner with regard to dispute of pamphlet before him nor his election agent had made any complaint before him.

125. On the other hand, the respondent has examined twelve (12) witnesses in support of his case including himself and has denied for distributing any pamphlet like Exhibit-01.

R.W-1 to R.W-8 namely, Janardhan Bhandari, Jaydhan Hansda, Binod Raut, Sadhucharan Mahto, Manoranjan Hansda, Musuhy Marandi, Kali Pada Murmu and Sona Yadav respectively and R.W-10 to R.W-12 namely Shrawan Kumar Yadav, Ashok Kumar Mahto and Dayamay Ghosh respectively have stated that they had made election campaign on behalf of the Returned candidate-Rabindra Nath Mahto and they had not seen any pamphlet (i.e. Exhibit-1) during the election campaign and the respondent-Rabindra Nath Mahto had not got printed any pamphlet like Exhibit-01. They have stated that the respondent-Rabindra Nath Mahto had secured more than 61,000 (Sixty one thousand) votes whereas the election petitioner has got only 1700 votes.

126. R.W-1 namely Janardhan Bhandari is a volunteer of JMM and also Joint Secretary of Nala Block of JMM and stated during evidence that he had made election campaign on behalf of the respondent-Rabindra Nath Mahto and different candidates have contested. On being shown Exhibit-01 (i.e. pamphlet) to the witness, he flatly denied to have seen the Exhibit-01 and stated that the respondent-Rabindra Nath Mahto had not got printed such pamphlet.

During cross-examination, he denied about publication of pamphlet by the respondent. On being shown pamphlet (i.e. Exhibit-01) by the learned counsel for the petitioner, he admitted that Exhibit-01 contains the photograph of the respondent- Rabindra Nath Mahto and his name is mentioned at Serial No.7.

127. Thus, from scrutinizing the evidence of R.W-1, it is evident that he had denied regarding distribution of pamphlet (i.e. Exhibit- 01) by the respondent namely Rabindra Nath Mahto. Thus, the evidence of R.W-1 has supported the case of the petitioner.

128. R.W-2 is Jaydhan Hansda who is a Block Secretary of Nala Block of JMM and he stated that he had remained with the respondent-Rabindra Nath Mahto during the election campaign sometimes together and sometimes separately they used to make election campaign. On being shown Exhibit-01, he stated that they had not distributed any pamphlet

like Exhibit-01 and he is seeing this Exhibit-01 for the first time. He denied the assertion of the election petitioner that such pamphlet (Exhibit-01) was being distributed in his village on 16.12.2019 by any election agents or volunteers. He asserted that election petitioner has wrongly contended that respondent-Rabindra Nath Mahto or his election agents were distributing pamphlet like Exhibit-01.

During cross-examination, he stated that he used to make election campaign at different places but he is not aware as to whether they had campaigned by poster, banner and handbill or not.

He further stated that he was at his house on 16.12.2019 and had not gone for election campaign. He claims to have identify all the persons of his village. He admitted in para 14 that he identifies Umesh Murmu-P.W-2 who belongs to his village.

He asserted that he was not making election campaign on 16.12.2019 as his wife was not well and she was suffering from Kidney disease.

On being shown Exhibit-01 by the learned counsel for the petitioner, he admits that name of respondent-Rabindra Nath Mahto is mentioned at Serial No.7 of Exhibit-01 and NOTA is mentioned at Serial No.16 of said Exhibit-01. He is not aware as to how many posters were got printed by the respondent-Rabindra Nath Mahto.

129. Thus, from scrutinizing the evidence of R.W-2, it is evident that he is Block Secretary of Nala Block which is election constituency of petitioner as well as the respondent. He claims to be in his house on 16.12.2019. He had denied the fact that he was seen by P.W-2-Umesh Murmu on 16.12.2019 when he along with other volunteers were campaigning for the Respondent-Rabindra Nath Mahto. Thus, R.W-2-Jaydhan Hansda has refuted the case of the petitioner.

130. R.W-3 is Binod Raut who stated to be volunteer of JMM party. He stated that he had also made election campaign with the respondent-Rabindra Nath Mahto during the Assembly Election held in the year 2019 and claimed to work with him for 5-6 days and voting took place on 20.12.2019. He admitted himself to be the agent and his work was to make the people understand at the outside the polling booth at Primary School, Patanpur. He has also denied the existence of Exhibit-01 wherein it was shown to him by the learned counsel for the respondent and stated that the respondent was not distributing Exhibit-01 on the date of polling. He asserted that no candidate of any party was present before him on the date of voting. There were around 450 voters at his voting booth. On being shown Exhibit-02 (i.e. downloaded photograph from the phone) the witness stated that neither any such person was present there nor any person of JMM were present at the booth.

During cross-examination, he admitted to be present at Booth No.91 at Patanpur and apart from him 2-3 agents were also present on that day. He stated that village Baghmara is

adjacent to his village and one Mani Shankar Mahto is worker of JMM but he is not aware as to whether one Binod Jha is also worker of JMM party or not.

He admitted to be booth agent and was available at a distance of approx 150 Meters from the booth on the date of voting during the election. He was made booth agent by his candidate Rabindra Nath Mahto but he does not remember whether he filled any form or not for the said work.

He further admitted that there was another polling booth adjacent to his polling booth and several persons were arrived at his booth and also on another booth and hence in order to make the people aware and understand he was present at a distance of 150 Meters from the booth, but he was not telling any voter to whom they have to give vote to which party. He was sitting on the mat on the date of voting and he was having the flag of his party and had kept voter list of the voters, however, there was no handbill on that day with him. He is acquainted with the respondent-Rabindra Nath Mahto for about 20 years however he has not done any work from the MLA fund of the respondent-Rabindra Nath Mahto.

131. Thus, from scrutinizing the evidence of R.W-3, it is evident that he was the Booth Agent of Respondent No.3 who was contesting on behalf of JMM party and was sitting at a distance of 150 Meters from the booth to make people aware about voting. He has denied the distribution of Exhibit-01 by the respondent- Rabindra Nath Mahto and he has also denied the existence of Exhibit-01 and Exhibit-02 respectively. He has denied the identification of the persons shown on the Exhibit-02. The conduct of R.W-3 shows that he was all through present on the date of voting from 7.00 a.m. to 6.00 p.m. to influence the voters.

132. R.W-4 is Sadhucharan Mahto. He also claims to be worker of JMM party form 08-Nala Assembly Constituency. He had also worked for the respondent-Rabindra Nath Mahto who was candidate of his party and had persuaded in the election campaign and he used to make campaign by his Cycle but he has not distributed any pamphlet etc. and his party has also not distributed any pamphlet or handbill.

On being shown Exhibit-01 by the learned counsel for the respondent, the witness denied to have seen any document like this Exhibit-01. He asserted that the workers of respondent-Rabindra Nath Mahto had not distributed any pamphlet like Exhibit-01. His candidate has secured more than 61,000 votes. He was also present outside the booth at Manjhuladih on the date of voting and on that day none of the candidate had arrived at his booth.

During cross-examination, he stated that he had visited Manjhuladih Middle School Booth, Patnapur Booth and Fatehpur Booth for campaign by his Cycle but he was not paid any expenses by the candidate for the said campaign. He had never carried any handbill during

campaign and he used to campaign by Mike for JMM party. Neither his candidate nor any volunteer of JMM party had distributed any handbill. He was also present outside booth on the date of voting at a distance of 100-150 Meters and he remained there around 2.30 p.m.

He is aware of only two candidates namely his candidate Rabindra Nath Mahto and one Satyanand Jha but he is not aware of others. He claimed that none of the candidate of any party had arrived on the date of voting and he is not aware of candidate contesting the said election.

133. Thus, from scrutinizing the evidence of R.W-4, it is evident that he is the Booth agent of the respondent who had contested from JMM party and he was present at a distance of approx 100- 150 Meters from the Polling Booth Center. He has also denied the existence of Exhibit-01 and Exhibit-02.

Thus, R.W-4 is a formal witness and has supported the case of the Respondent.

134. R.W-5 is Manoranjan Hansda, who stated that he worked as a worker of JMM party during Assembly Election of the year 2019 and he used to campaign by Bicycle by taking the flat. However, he had not distributed any pamphlet or flag and his party had also not distributed any pamphlet or handbill. He has also casted his vote at Primary School, Jaspur on the date of Assembly Election on 20.12.2019. He casted his vote around 12.00 noon and had returned by 2.00 p.m.

On being shown Exhibit-01 by the learned counsel for the respondent the witness denied to have seen any such paper and no such paper like Exhibit-01 was not distributed by any person of JMM party. He denied that such pamphlet was distributed at his village Jaspur.

During cross-examination, he stated to be a worker of JMM party for last 20 years. He used to attend the meeting of JMM sometimes and Shyamlal is District President of his party. He used to make campaign in election by Bicycle and had campaigned for around 8-10 days but he was not having any Mike on his Bicycle. He had casted his vote on Primary School, Jaspur.

135. Thus, from scrutinizing the evidence of R.W-5, it would appear that he is a formal witness and has supported the case of the Respondent he has denied regarding non-distribution of any pamphlet like Exhibit-01 and handbill by his party and by any volunteer of his party. He has been examined only on the point of not distributing pamphlet (i.e. Exhibit-01) by the respondent- Rabindra Nath Mahto.

136. R.W-6 is Musuhy Marandi who stated during evidence that last election was held on 20.12.2019 and he was associated with JMM in said election and he used to make election campaign with his friends by taking the flag and he is aware of all workers namely Ramdeo Soren and Much Marandi. They used to make election campaign for the respondent-Rabindra Nath Mahto who is a good person. He has also denied the existence of pamphlet (i.e. Exhibit-01) when it was shown to him by the learned counsel for the petitioner. He denied the distribution of such pamphlet like Exhibit-01 in his village. He also casted his

vote in his village on 20.12.2019 and had not seen any pamphlet like Exhibit-01. His candidate had got more than 61,000 (Sixty one Thousand) votes.

During cross-examination, he stated to have made election campaign by Bicycle for the Respondent-Rabindra Nath Mahto but his party had not distributed handbill, poster. He returned to his village after casting his vote.

137. Thus, from scrutinizing the evidence of R.W-6, it is evident that he had been examined only on the denial of Exhibit-01 and he has stated that he made election campaign for the respondent- Rabindra Nath Mahto. Thus, R.W-6 is a formal witness. However, he has supported the case of the Respondent.

138. R.W-7 is Kalipada Murmu, who is also a volunteer of JMM party and stated to have made election campaign orally at village Jabardaha for the Respondent-Rabindra Nath Mahto. However, neither he nor any volunteer of his party had distributed any pamphlet or any poster.

On being shown Exhibit-01 by the learned counsel for the respondent, the witness denied to have seen any such pamphlet. He also casted his vote on 20.12.2019 and he remained in the village from 15.12.2019 to 19.12.2019 and during the said period he had not seen any pamphlet like Exhibit-01. He denied that any pamphlet like this Exhibit-01 was distributed by his party candidate or by any volunteer.

During cross-examination, he stated to be acquainted with respondent-Rabindra Nath Mahto since last 20 years. He claimed that his party used to make election campaign by Cycle and Jhanda but not aware that his party also used to campaign by other medium.

139. Thus, from scrutinizing the evidence of R.W-7, it would appear that he is also a formal witness and he has been examined on behalf of the respondent for denying the existence and distribution of any document like pamphlet (i.e.Exhibit-01).

140. R.W-8 is Sona Yadav who is also a worker of JMM party. He had also participated in the election campaign for his candidate-Rabindra Nath Mahto and made campaign at village Jhantipahari, Jaspur, Nala and Sunderpur by putting flag on his Motorcycle. However, neither he nor anyone from his party had distributed any pamphlet or poster.

On being shown pamphlet (i.e.Exhibit-01), R.W-8 stated to see this paper for the first time and he had not seen any document like Exhibit-01 earlier. However, he further stated that any person can make complain for poster or pamphlet through C-Vigil and the said person can upload his photo, video and audio and on receiving such complaint, its solution was to be done within hundred (100) minutes. He was also present in his booth on the date of voting and his candidate has secured more than 61000 (Sixty one Thousand) votes.

During cross-examination, he stated to be associated with JMM party for the last 10-12 years but not on any post. He used to make election campaign by his Motorcycle. His party had not distributed any dummy handbill during election. He had not uploaded any complaint by C-Vigil app medium. He obtained information about C-vigil through paper and also from the website of Election Commission. He admitted to be standing outside booth at a distance of 150 Meters on the date of voting but his party had not distributed any poster or pamphlet.

141. Thus, from scrutinizing the evidence of R.W-8, it would appear that he is a businessman but claims to be simple volunteer of JMM party and he is an educated person as he is aware of C- vigil App through which any complaint can be lodged by uploading his photo or of any person. He also claimed to be present outside the booth at a distance of 150 Meter on the date of polling. Thus R.W-8 has supported the case of the Respondent.

142. R.W-10-Shrawan Kumar Yadav, who is an Agriculturist and stated to be a simple worker of JMM party. He had also campaigned for his candidate by Cycle by putting flag upon it at his Panchayat Khamarbad. He also denied to have seen Exhibit-01 when it was shown to him by the learned counsel for the respondent. His village is situated at a distance of 5-6 Kilometer from village Patanpur and he claimed to identify all the volunteers of JMM.

On being shown Exhibit-02, the witness stated that the photo of the persons shown in the Exhibit-02 are not the volunteers of his party and none of the volunteers of the JMM are seen in said Exhibit-02. He is also aware that any complainant can lodge his complaint through C-Vigil App, if any wrong is found in election. C-Vigil App can be downloaded from any person from his mobile phone and any person can make complain to Election Commission, Jharkhand by C-Vigil. His candidate has secured for more than 61,000 (Sixty one Thousand) votes whereas the petitioner-Santosh Hembram has secured approx. 1700 votes in the said election.

During cross-examination, he stated that he is associated with the respondent for the last 18-19 years and they used to campaign for his party but he had not taken any expenses of campaigning from his party.

On being confronted on the question of securing vote by other contestants, the witness stated that he is aware of the votes of his party candidate only.

143. Thus, R.W-10 is also a formal witness and he is a party worker and he has denied the existence of Exhibit-01 (i.e. Pamphlet), Exhibit-02 (i.e. downloaded photo of the persons on the poster). However, he has supported the case of the Respondent.

144. R.W-11 is Ashok Kumar Mahto and he is also an agriculturist and President of Fatehpur Block of JMM for the last two years and worker of JMM party for several years

and he had worked for the respondent-Rabindra Nath Mahto as an Election Agent. He also stated that 08-Nala Assembly Constituency is a general seat and not a reserved seat and any person of any category can contest as a general candidate and even SC/ST candidate can contest from said region. He had got printed poster, banner and flags for his party candidate Rabindra Nath Mahto.

On being shown Exhibit-01 (i.e. Pamphlet), the witness claimed to have not seen it and denied that such Exhibit-01 was got printed by his party or contesting candidate. His Booth No.79 was situated at Upgraded Middle School, Village Murabahal and on the date of voting he was at his residence and had gone to cast vote.

On being shown Exhibit-02 by the learned counsel for the respondent, the witness stated that he does not identify the persons who are shown in Exhibit-02.

He also stated that there is provision for making complaint, if anything wrong is found during election campaign and such complaint can be made by mobile and for which an App has been lodged although he could not say the name of App in which there was provision to make complaint by taking a photo from his mobile or by photograph or by doing photography if any wrong was found during election and when complaint was to be disposed of within hundred (100) minutes. Even complaint can be made to Election Commission of India and even Observer/Returning Officer and some other persons used to hear the complaints and they used to dispose of the same. Even Sector Magistrate were deputed to see the wrong/error on the date of election and their work was to visit the booth within half an hour to one hour and they could have seen any party doing wrong. The respondent- Rabindra Nath Mahto had secured more than 61,000 (Sixty one Thousand) votes and he was the Returned Candidate. He is aware of NOTA and approx 601 votes were casted for NOTA. He got the banner, poster of the party candidate from M/s Bharat Traders, Ranchi press. He used to maintain the expenditure and accounting of his candidate relating to expenses of election during the period of election. He had written full details of election expenses which were printed from Bharat Traders, Press, Ranchi and which were mentioned in Expenditure Register and that Expenditure Register was handed over to him by the Returning Officer and he has given all details of election expenses in the said Register.

145. During cross-examination, R-W-11 stated that he is a volunteer of JMM party for the last 20-22 years prior to becoming Block President. He was handed over Form-8 of his party candidate-Rabindra Nath Mahto for becoming his Election Agent and there was expenditure of approx Rs.Twelve Lakhs in the said election of his party candidate.

He asserted that he had not got printed pamphlet of his candidate but he had got printed flag and banner but not a single hoarding was affixed. He has incurred expenditure of Rs.One lakh in the said printing and said Rs.One Lakh was paid through RTGS from Jharkhand Rajya

Gramin Bank, Mohnabad. Bharat Traders, Ranchi press is situated in Ranchi. His party had not printed any handbill or poster.

He denied for got printed dummy Ballot Paper from the side of his candidate.

On being shown Exhibit-01 by the learned counsel for the petitioner, he has stated that he had not seen such handbill or any such paper like Exhibit-01 during election period.

On being confronted on the name of printing press of Exhibit-01, R.W-11 stated that he is not aware of printing press mentioned in it. His party candidate has secured victory for more than Four Thousand (4,000) votes. However, he could not say the percentage of Scheduled Tribe votes in 2019 Assembly Election. He had not made any complaint before Election Commission prior to the date of polling till the date of polling.

146. Thus, from scrutinizing the evidence of R.W-11, it is evident that he is Election Agent of the Respondent and he had maintained the records of expenditure during the election period of respondent-Rabindra Nath Mahto. He had denied for getting the Exhibit-01 published from Lucky Press, Ranchi during his cross- examination.

He stated and admitted about the making expenditure of Rs.Twelve Lakh in printing materials of the respondent-Rabindra Nath Mahto. He had flatly denied the printing of handbill and poster.

Thus, R.W-11 has supported the case of the Respondent.

147. R.W-12-Dayamay Ghosh, who is also an agriculturist and said to be simple volunteer of JMM party and stated that he used to move village to village from his Cycle during 2019 Assembly Election. His candidate has secured more than 61,000 (Sixty one Thousand) votes from 08-Nala Constituency.

On being shown Exhibit-01 by the learned counsel for the respondent, he denied to have seen Exhibit-01 or any paper like Exhibit-01 during election. He further denied to have distributed such paper or Purcha. He had made election campaign for around 8-10 days. However, he is not aware of election petitioner and also not aware of votes secured by him.

During cross-examination, he again stated to be volunteer of JMM party for the last 8-10 years and he has been made volunteer by the Committee. However, he is not aware of the expenditure of flag by his party. He is also not aware of materials which were printed by his party during the period of election.

148. Thus, from scrutinizing the evidence of P.W-12, it is evident that he is a formal witness and he has come only to deny Exhibit-01 but he has supported the case of the Respondent.

149. R.W-9 is Rabindra Nath Mahto and who is the Returned Candidate and presently nominated as the Speaker in Jharkhand Vidhan Sabha.

R.W-9 has stated during his evidence that he was Jharkhand Mukti Morcha (JMM) candidate from 08-Nala Assembly Constituency and he was declared winner in the election of 2019. His election region is Nala Constituency which is a general seat and people of any caste may contest from general seat. There were fifteen (15) other candidates apart from him in the said election.

On being shown Exhibit-01 by the learned counsel for the respondent, the witness stated that he is not aware of the paper. He asserted that it is wrong on the part of the election petitioner to content that he had got prepared the pamphlet or any document like Exhibit-01 and he had also not got distributed any pamphlet like Exhibit-01 or by his party volunteers.

On being shown Exhibit-02, the witness stated that he is not aware of the photo of the persons shown in Exhibit-02 and the people shown in Exhibit-02 were not the volunteers of JMM party.

He was at his house on the date of election and he had gone to cast vote in his booth and returned back to his house and remained in his house for the whole day. His booth is situated at Primary School in Patanpur village. Neither he nor the volunteers of his party had distributed any pamphlet like Exhibit-01 at Patanpur booth. He also denied that either he or the volunteer of his party had distributed any paper or pamphlet like Exhibit-01 on 16.12.2019 at village Jaspur.

He asserted that his party volunteers were not working with Ramdeo Soren and Much Marandi. He is aware of the fact that various precautionary measures have been taken by the Election Commission for dealing with any wrong committed in the election so that people may not commit mistake or they may be able to lodge complain at concerned places in case of wrong committed and so that it can be resolved.

150. He also stated that Election Commission of India has issued an App C-Vigil for election to be held in the year 2019 and in which a team arrives at a very short time on finding complain and veracity of the complaint is tested and there is provision for taking action. Apart from this, there is a Flying Squad team and photography is being done by Video Surveillance team and there is MCMC Body which monitors the election. Apart from this, there is a team of local police and team of Central Government and there is a team for investigating financial issue. Thus, a team is constituted by Election Commission of India for finding the wrong in the election.

He has no information that this election petitioner had filed any application regarding Exhibit-01 (i.e. Pamphlet) before any team within his Assembly Region.

He had also got printed his banner, poster and flag on 06.12.2019. There is a provision of NOTA in the EVM below the names of the list of candidates. So far as NOTA is concerned,

approx 600 votes were casted in NOTA. He had adopted the mode of election campaign by holding meeting, public relation, Motorcycle and permitted Vehicle through the Mike.

151. During cross-examination, he stated that symbol was allotted to him on 06.12.2019 and election was held on 20.12.2019. He was authorized representative of JMM which is a Regional Party. His party is having sign of 'Bow' and 'Arrow'.

On being shown Document-X (photo copy of Format-7 K) the witness stated that such papers are given to them.

On being shown Document-X/2 (photo copy of Format-7 K in which the name of Election Petitioner is mentioned at Serial No.16 and election symbol is 'Balla' and his photo is affixed), he stated and admitted that the name of the petitioner is shown at Serial No.16 as an Independent Candidate with having his election symbol 'Balla'.

He admitted to have got printed poster and banner during the election period.

His nomination paper was taken by his election agent, lawyer, however, he does not remember as to what papers has been handed over to his election agent. The witness himself stated that several papers were received by him in which a thick Handbook was also given to him.

Neither he nor his party with his election agents had got printed dummy Ballot Paper. Election Commission fixes Voter Felicitation Paper on every booth and all the candidates are being aware to the voters and on seeing those paper, the voters cast their vote to their respective candidate.

On being ask in question and answer form at para-47 as to how he is aware of the fact that the photograph of the persons shown in Exhibit-02 belongs to the volunteers of his party or not and how he is aware and upon which, the witness R.W-9 has stated that he does not know the person who has been shown in the photographs of Exhibit-02.

He had not visited village Jabardaha during his entire election. He got his poster, banner from the press of Ranchi where his poster and banner were printed by 'Bharat Traders' press.

He learnt about notice of filing of this case against him by the Election Commissioner in the month of July, 2022 through the newspaper and thereafter he had received the notice of the Court. However, he had not made any complaint before the Election Commission.

152. Thus, from scrutinizing the evidence of R.W-9, it is evident that he is respondent in this case and also the Returned Candidate, who has declared elected from the 08-Nala Assembly Constituency. He denied the photographs of Ramdeo Soren and Much Marandi on the document marked as Exhibit-02 (with objection) and has stated that he and his party had not taken any assistance from Ramdeo Soren and Much Marandi during Assembly Election in 08-Nala Constituency. He has denied the existence of Exhibit-01 and he has refuted the Pamphlet i.e. Exhibit-02.

153. Learned counsel for the petitioner has confronted the witness-R.W-9 on the point of variation in the Nomination Paper Format-7 K and to which witness stated that such paper was seen by him and handed over to him by the Returning Officer. However, this aspect is disputed question.

Learned counsel for the petitioner has asserted during his argument that the certified copy of the Nomination Paper in Format-7 K was not handed over to him till date rather he had downloaded his Nomination Paper in format of Form-7 K from the website of Election Commission of India and despite his best efforts, the certified copy of the Nomination paper was not handed over to him.

The submission of the learned counsel further reveals that the Nomination Paper filed by him in format Form-7 K and Nomination Paper handed over to him in Form-7 K by the Returning Officer are different as he has filed the Nomination Paper with Photo. However, the Nomination Paper which was served to him by the Returning Officer do not contain his photograph. Thereafter, there is a variation in Nomination Paper. However, this has not caused any prejudice to the petitioner and even the petitioner has failed to show as to what prejudice has been caused to him. Thus, the contention raised on behalf of the petitioner is rejected.

154. It has been held by Hon'ble Supreme Court in the case of **Jamuna Prasad Mukhariya and Ors. vs. Lachhi Ram and Ors.** reported in **1955 (1) SCR 608:(1954) 2 SCC 306** at para-3, 6, 7, 8 and 13 as follows:-

“Para-3:- The Tribunal finds, among other things, that Appellant 1 (1st respondent) published certain pamphlets which contain statements listed as (a), (b), (c), (e), (f) and (g) by the Tribunal. The Tribunal holds that these statements are false and that the 1st appellant (1st respondent) did not believe them to be true. It also holds that these statements reflect on the personal character and conduct of the 6th respondent and are reasonably calculated to prejudice his prospects in the election. These findings were contested and the learned counsel for the appellants contended that the attack was on the public and political character of the 6th respondent and was a legitimate attack. We do not intend to examine this as a court of appeal because this is a special appeal and all we are concerned to see is whether a Tribunal of reasonable and unbiased men could judicially reach such a conclusion. We have had some of these pamphlets read out to us and we are of the opinion that the conclusion of the Tribunal is one which judicial minds could reasonably reach. We decline to examine the matter further in special appeal. Under the law the decision of the Tribunal is meant to be final. That does not take away our jurisdiction but we will only interfere when there is some glaring error which has resulted in a substantial miscarriage of justice. On those findings a major corrupt practice on the part of the 1st respondent (1st appellant here) under Section 123(5) of the Representation of the People Act, 1951 is established.

Para-6:- In addition to these findings, the Tribunal found that both the appellants committed an illegal practice within the meaning of Section 125(3) in that they issued

a leaflet and a poster which did not have the name of the printer on them. This is a pure question of fact.

Para-7:- *The result of committing any corrupt practice is that the election of the candidate is void under Section 100(2)(b). It is not necessary to prove that the result of the election was materially affected thereby because clause (b) is an alternative that stands by itself. All that need be proved is that a corrupt practice has been committed, and that the Tribunal finds to be the fact. The Tribunal was accordingly justified in declaring the election of the first appellant to be void.*

Para-8:- *In addition to this the Tribunal found that the corrupt practice committed by the second appellant (Respondent 2) also materially affected the result of the election. This was challenged but we need not go into that because the finding that the second appellant committed a minor corrupt practice and also an illegal practice is clear and so his case falls under clause (a) of sub-section (2) of Section 100.*

Para-13:- *We set aside this part of the order. The result is that the appeal fails insofar as it attacks the Tribunal's declaration voiding the election of the two appellants but succeeds against that part of the order which declares the 6th and 7th respondents to have been elected. In the circumstances there will be no order about costs in either Court."*

155. However, the above judgment is not applicable in the case of the petitioner as in the above case corrupt practice by the Returned Candidate was proved but in the present case the petitioner has failed to prove corrupt practice against the Respondent.

156. It has been held by Hon'ble Supreme Court in the case of **Biraji Alias Brijraji and Anr. vs. Surya Pratap and Ors.** reported in **(2020) 10 SCC 729** at para-8 and 11 as follows:-

"Para-8:- *Having heard the learned counsel on both sides, we have perused the impugned orders [Biraji v. Surya Pratap, 2013 SCC OnLine All 14640] ' [Biraji v. Surya Pratap, 2013 SCC OnLine All 14641] and other material placed on record. The suit in Original Suit No. 107 of 2010 is filed for cancellation of registered adoption deed and for consequential injunction orders. In the adoption deed itself, the ceremony which had taken place on 14-11-2001 was mentioned, hence it was within the knowledge of the appellant-plaintiffs even on the date of filing of the suit. In the absence of any pleading in the suit filed by the appellants, at belated stage, after evidence is closed, the appellants have filed the application to summon the record relating to leave/service of Ramesh Chander Singh on 14-11-2001 from the Rajput Regiment Centre, Fatehgarh. It is fairly well settled that in absence of pleading, any amount of evidence will not help the party. When the adoption ceremony, which had taken place on 14-11-2001, is mentioned in the registered adoption deed, which was questioned in the suit, there is absolutely no reason for not raising specific plea in the suit and to file application at belated stage to summon the record to prove that the second respondent Ramesh Chander Singh was on duty as on 14-11-2001. There was an order from the High Court for expeditious disposal of the suit and the application which was filed belatedly is rightly dismissed by the trial court and confirmed by the Revisional Court and the High Court.*

Para-11:- *In our view the reasons recorded in the orders*

passed by the trial court, as confirmed by the Revisional Court and High Court are valid and are in accordance with the settled principles of law. It is clear from the conduct of the appellants, that in spite of directions from the High Court, for expeditious disposal of the suit, appellant-plaintiffs were trying to protract the litigation."

157. It has been held by Hon'ble Supreme Court in the case of **Lalit Kishore Chaturvedi vs. Jagdish Prasad Thada and Ors.** reported in **AIR 1990 SC 1731: 1990 (Supp) SCC 248** at para-9 and 10 as follows:-

"Para-9:- Similarly even though it was pleaded that the leaflets were false but there is no whisper if the appellant believed it to be false or did not believe it to be true. The petition is silent on the vital aspects if any meeting took place on March 1, 1985 and whether the Congress M.P. participated in it. Merely pleading false, more statement of law than fact, without necessary factual foundation could not be said to give rise to any triable issue. Attempt was made to argue that even if the first part of speech was taken to be correct the second part using the words "inke" and "inhone" clearly referred to personal character of the candidate and that being false a triable issue arose. Assistance was sought from observations, shorn of their context, in Avtar Singh Brar v. Tej Singh [(1984) 1 SCC 752

: (1984) 2 SCR 415] and Manubhai Nandlal Amersey v. Popat Lal Manilal Joshi [(1969) 1 SCC 372 : (1969) 3 SCR 217] in support of the submission that even without mention of name of candidate it may be established that it related to him. True, but that is at later stage, stage when evidence is led in support of the petition. What is germane in this petition is if the averments made in this petition prima facie raised any cause of action. Extract in first part of the leaflet is either correct or false. For either necessary averments are missing. If the first part is omitted then second does not make any sense. And to make it intelligible if the top of the leaflet is read with last part then it refers to Congress party and not to candidate. If the first part, namely, the speech was correct then the second part becomes an opinion and not a statement of fact as was held in Kumar Nand v. Brijmohan Lal Sharma [(1967) 2 SCR 127

: AIR 1967 SC 808 : 1967 Cri LJ 823] . In either case the pleadings were wholly vague and insufficient to raise any adjudicatory issue. Averments in paragraph 3(j) relating to distribution and circulation did not remove the defect in pleadings under Section 123(4). In the absence of denial of meeting on March 1, 1985, and necessary averments about the knowledge of appellant that the leaflet was false, which he believed to be false, or did not believe it to be true, the respondent could not have succeeded even if the appellant would not have put in appearance, therefore it is squarely covered by the principle laid down in Azhar Hussain case [1986 Supp SCC 315] . Mere allegations that the appellant got a leaflet published which was false or it was false to the knowledge of the appellant did not meet the requirements of Section 83(1)(b). It was neither precise statement of fact nor furnishing of material facts or particulars as far as possible. Even this much was not said that no meeting took place on March 1, 1985. No facts or circumstances were mentioned to give even the haziest picture for the basis of averment that the leaflet was false to the knowledge of the appellant or that he did not believe it to be true.

Para-10:- Effort was made to distinguish Hardwari Lal case [(1972) 1 SCC 214 : (1972) 2 SCR 742] and Azhar

Hussain case [1986 Supp SCC 315] by urging that the leaflet or pamphlets were not produced in these cases whereas it was made annexure to the petition therefore it became a part of pleading under Section 83(2). May be, but it did not do away with mandatory requirements of Section 83(1)(b). Even assuming it to be so could the leaflet on its own without necessary averment in the petition raise any triable issue? As observed earlier it did not. If there was no pleading that the speech delivered by Shri Dhariwal was not made on March 1 then no evidence could be led on it. And if that is omitted, then the second part irrespective of evidence could not be said to refer to personal character of the Congress candidate. In Azhar Hussain case [1986 Supp SCC 315] a poster published painting rival candidate as supporter of Khalistan and in conspiracy with terrorists was found to be vague not because poster was not produced but because the petitioner failed to disclose names of relevant persons who were associated with its distribution etc."

158. It has been held by Hon'ble Supreme Court in the case of **Laxmi Narayan Nayak vs. Ramratan Chaturvedi and Ors.** reported in (1990) 2 SCC 173 at para-5, 23 and 24 as follows:-

"Para-5:- This Court in a catena of decisions has laid down the principles as to the nature of pleadings in election cases, the sum and substance of which being:

(7) The pleadings of the election petitioner in his petition should be absolutely precise and clear containing all necessary details and particulars as required by law vide Dhartipakar Madan Lal Agarwal v. Rajiv Gandhi [1987 Supp SCC 93] and Kona Prabhakara Rao v. M. Seshagiri Rao [(1982) 1 SCC 442] .

(8) The allegations in the election petition should not be vague, general in nature or lacking of materials or frivolous or vexatious because the court is empowered at any stage of the proceedings to strike down or delete pleadings which are suffering from such vices as not raising any triable issue vide Manphul Singh v. Surinder Singh [(1973) 2 SCC 599: (1974) 1 SCR 52] , Kona Prabhakara Rao v. M. Seshagiri Rao [(1982) 1 SCC 442] and Dhartipakar Madan Lal Agarwal v. Rajiv Gandhi [1987 Supp SCC 93] .

(9) The evidence adduced in support of the pleadings should be of such nature leading to an irresistible conclusion or unimpeachable result that the allegations made, have been committed rendering the election void under Section 100 vide Jumuna Prasad Mukhariya v. Lachhi Ram [(1955) 1 SCR 608: AIR 1954 SC 686] and Rahim Khan v. Khurshid Ahmed [(1974) 2 SCC 660] .

(10) The evidence produced before the court in support of the pleadings must be clear, cogent, satisfactory, credible and positive and also should stand the test of strict and scrupulous scrutiny vide Ram Sharan Yadav v. Thakur Muneshwar Nath Singh [(1984) 4 SCC 649] .

(11) It is unsafe in an election case to accept oral evidence at its face value without looking for assurances for some surer circumstances or unimpeachable documents vide Rahim Khan v. Khurshid Ahmed [(1974) 2 SCC 660] , M. Narayana Rao v. G. Venkata Reddy [(1977) 1 SCC 771: (1977) 1 SCR 490] , Lakshmi Raman Acharya v. Chandan Singh [(1977) 1 SCC

423: (1977) 2 SCR 412] and *Ramji Prasad Singh v. Ram Bilas Jha* [(1977) 1 SCC 260] .

(12) *The onus of proof of the allegations made in the election petition is undoubtedly on the person who assails an election which has been concluded vide Rahim Khan v. Khurshid Ahmed [(1974) 2 SCC 660] , Mohan Singh v. Bhanwarlal [(1964) 5 SCR 12: AIR 1964 SC 1366] and Ramji Prasad Singh v. Ram Bilas Jha [(1977) 1 SCC 260] .*

Para-23:- According to Section 123 (1)(A)(b)(ii) of the Act, 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 an elector to vote or refrain from voting at an election is a corrupt practice. See *Harjit Singh Mann v. S. Umrao Singh* [(1980) 1 SCC 713] .

Para-24:- It is an accepted principle that an election petition where corrupt practices are imputed must be regarded as proceedings of a quasi-criminal nature wherein strict proof is necessary. Since, a charge of corrupt practices, the consequence of which is not only to render the election of the returned candidate void, but in some cases to impose upon him a disqualification must be proved on appraisal of the evidence adduced by both the parties particularly by the election petitioner who assails the election of a returned candidate. This principle has been reiterated and approved in a series of decision. See *Manphul Singh v. Surinder Singh* [(1973) 2 SCC 599: (1974) 1 SCR 52] , *Rahim*

Khan v. Khurshid Ahmed [(1974) 2 SCC 660] , *M. Narayana Rao v. G. Venkata Reddy* [(1977) 1 SCC 771: (1977) 1 SCR

490] , *Ram Sharan Yadav v. Thakur Muneshwar Nath Singh* [(1984) 4 SCC 649] , *Ramji Prasad Singh v. Ram Bilas Jha* [(1977) 1 SCC 260] and *Lalroukung v. Haokholal Thangjom* [41 ELR 35 (SC)] ."

159. It has been held by Hon'ble Supreme Court in the case of **H.D. Revanna vs. G. Puttaswamy Gowda and Ors.** reported in (1999) 2 SCC 217 at para-14 to 17, 22 and 26 as follows:-

"Para-14. The argument is no doubt attractive. But the relevant provisions in the Act are very specific. Section 86 provides for dismissal of an election petition in limine for non-compliance with Sections 81, 82 and 117. Section 81 relates to the presentation of an election petition. It is not the case of the appellant before us that the requirements of Section 81 were not complied with though in the High Court, a contention was urged that a true copy of the election petition was not served on the appellant and thus the provisions of Section 81 were not complied with. Sections 82 and 117 are not relevant in this case. Significantly, Section 86 does not refer to Section 83 and non-compliance with Section 83 does not lead to dismissal under Section 86. This Court has laid down that non-compliance with Section 83 may lead to dismissal of the petition if the matter falls within the scope of Order 6 Rule 16 or Order 7 Rule 11 CPC. Defect in verification of the election petition or the affidavit accompanying the election petition has been held to be curable and not fatal.

Para-15:- In *Murarka Radhey Shyam Ram Kumar v. Roop Singh Rathore* [AIR 1964 SC 1545 : (1964) 3 SCR 573] a

Constitution Bench has held in unmistakable terms that a defect in the verification of an election petition as required by Section 83(1)(c) of the Act was not fatal to the maintainability of the petition and that a defect in the affidavit was not a sufficient ground for dismissal of the petition. Another Constitution Bench held in Ch Subbarao v. Member, Election Tribunal, Hyderabad [AIR 1964 SC 1027 : (1964) 6 SCR 213] that even with regard to Section 81(3), substantial compliance with the requirement thereof was sufficient and only in cases of total or complete non-compliance with the provisions of Section 81(3), it could be said that the election petition was not one presented in accordance with the provisions of that part of the Act.

Para-16:- *It is the said principle of substantial compliance which was adopted in K.M. Mani v. P.J. Antony [(1979) 2 SCC 221] . Reliance has rightly been placed thereon by learned counsel for the respondent.*

Para-17:- *In F.A. Sapa v. Singora [(1991) 3 SCC 375] this Court held that a defect in the verification of the petition as well as a defect in the affidavit can be cured and it is not fatal to the maintainability of the petition. Neither in Virendra Kumar Saklecha v. Jagjiwan [(1972) 1 SCC 826] nor in L.R. Shivaramagowda v. T.M. Chandrashekar [(1999) 1 SCC 666 : (1998) 6 Scale 361] this Court went to the extent of holding that the election petition should be dismissed in limine for a deficiency in the affidavit or verification. In fact, the question was expressly left open in the former case and it did not arise in the latter.*

Para-22:- *The third contention of learned counsel for the appellant relates to the allegations of corrupt practices. We are unable to accept his contention that they are vague and do not contain material facts. The High Court has extracted the relevant portions of the election petition which deal with corrupt practices. After perusing the entire petition, the High Court has observed as follows:*

"Therefore, from a perusal of these and other paragraphs of the election petition, it appears that the petitioner has stated about the corrupt practices alleged to have been committed or practised by the first respondent. After a perusal of the grounds taken in the election petition, I find force in the contention of the learned counsel for the petitioner that necessary facts constituting the cause of action for invalidating the election and the corrupt practices committed by Respondent 1 have been substantially pleaded. The allegations made in the election petition may be true or false, but it is not possible to hold that the election petition does not disclose any material fact or give the material particulars of any of the corrupt practices. It is required to be stated that even if the court is satisfied that in respect of one of the corrupt practices alleged, material facts and full particulars thereof have not been stated, still the election petition cannot be thrown out at the threshold, if in respect of other corrupt practices, the material facts and full particulars have been given in accordance with the requirement of Section 83(1) of the Act. As rightly argued by the learned counsel for the petitioner, the contents of the election petition are to be read as a whole and not to disjoint them from the context. They cannot be read in a truncated manner. If this test is applied to the averments made in paras 2 and 3 of the election petition, it will be quite clear that these paragraphs, taken as a whole, relate to the allegations regarding the commission of the corrupt practice under Section 123 of the Act and also with regard to the other irregularities which invalidates the election of Respondent 1."

We are entirely in agreement with the aforesaid view expressed by the High Court.

Para-26:- Learned counsel for the appellant has drawn our attention to *Dharamvir v. Amar Singh* [(1996) 3 SCC 158] . A Bench of two Judges held that sub-sections (2) and (7) of Section 123 of the Act are applicable only to cases of corrupt practices indulged at the stage prior to the casting of the votes and not at the post-voting stage. The facts in the case were entirely different. It was also pointed out in the judgment that the election and counting were over in that case prior to insertion of Sections 128(8) and 135-A(d) of the Act and those provisions were not retrospective in operation and therefore not applicable to the facts of the case. In the present case, the election was itself held only in 1994 long after the insertion of the said provisions and the ruling has therefore no applicability in this case."

160. It has been held by Hon'ble Supreme Court in the case of ***Hari Shanker Jain vs. Sonia Gandhi*** reported in (2001) 8 SCC 233 at para-4, 5, 10, 23, 24 and 25 as follows:-

"Para-4:- At the hearing of these appeals, the two election petitioners, appellants in this Court, appeared in person and each of them addressed this Court at length. Shri Milon Banerjee, the learned Senior Counsel ably assisted by Shri Gaurab Banerjee appearing for the respondent, supported the impugned order of the High Court assigning same additional reasons in support thereof. The following questions arise for decision in this appeal:

(5) Whether a designated Election Judge of the High Court can entertain and decide a plea relating to validity of any law?

(6) Whether the plea that a returned candidate is not a citizen of India can be raised in an election petition before the High Court?

(7) Whether a plea questioning the citizenship of the returned candidate is entertainable by the High Court hearing an election petition in spite of the returned candidate holding a certificate of citizenship granted under Section 5(1)(c) of the Citizenship Act?

(8) Whether on the pleadings of the two election petitioners, a cause of action and a triable issue was raised which should have been put to trial calling upon the respondent to file her written statement?

We proceed to deal with these issues.

Para-5:- Article 329 of the Constitution provides as under:

"329. Bar to interference by courts in electoral matters.— Notwithstanding anything in this Constitution—

(c) the validity of any law relating to the delimitation of constituencies or the allotment of seats to such constituencies, made or purporting to be made under Article 327 or Article 328, shall not be called in question in any court;

(d) no election to either House of Parliament or to the House or either House of the Legislature of a State shall be called in question except by an election petition presented to such authority and in such manner as may be provided for by or under any law made by the appropriate legislature."

Para-10:- The learned designated Election Judge was not, therefore, right in laying down as a wide and general proposition of law, that in an election petition question of validity of a statute cannot be gone into at all.

Para-23:- Section 83(1)(a) of RPA, 1951 mandates that an election petition shall contain a concise statement of the material facts on which the petitioner relies. By a series of decisions of this Court, it is well settled that the material facts required to be stated are those facts which can be considered as materials supporting the allegations made. In other words, they must be such facts as would afford a basis for the allegations made in the petition and would constitute the cause of action as understood in the Code of Civil Procedure, 1908. The expression "cause of action" has been compendiously defined to mean every fact which it would be necessary for the plaintiff to prove, if traversed, in order to support his right to the judgment of court. Omission of a single material fact leads to an incomplete cause of action and the statement of claim becomes bad. The function of the party is to present as full a picture of the cause of action with such further information in detail as to make the opposite party understand the case he will have to meet. (See *Samant N. Balkrishna v. George Fernandez* [(1969) 3 SCC 238 : (1969) 3 SCR 603] , *Jitendra Bahadur Singh v. Krishna Behari* [(1969) 2 SCC 433] .) Merely quoting the words of the section like chanting of a mantra does not amount to stating material facts. Material facts would include positive statement of facts as also positive averment of a negative fact, if necessary. In *V.S. Achuthanandan v. P.J. Francis* [(1999) 3 SCC 737] this Court has held, on a conspectus of a series of decisions of this Court, that material facts are such preliminary facts which must be proved at the trial by a party to establish existence of a cause of action. Failure to plead "material facts" is fatal to the election petition and no amendment of the pleadings is permissible to introduce such material facts after the time-limit prescribed for filing the election petition.

Para-25:- There are two features common to both the election petitions. Firstly, both the petitions are verified as

"true to personal knowledge" of the two petitioners respectively which is apparently incorrect as the very tenor of pleadings discloses that any of the petitioners could not have had personal knowledge of various facts relating to the respondent personally and during the course of hearing we had put this across to the two petitioners and they responded by submitting only this much that the verification if incorrect was capable of being cured. The second common feature in the two petitions is that there are bald assertions made about the Italian law without stating what is the source of such law as has been pleaded by the election petitioners or what is the basis for raising such pleadings. These averments also have been verified as "true to my knowledge" by each of the election petitioners, a position wholly unacceptable."

161. It has been held by Hon'ble Supreme Court in the case of **Kailash vs. Nanhku and Ors. reported in 2005 (4) JLR 1 (SC)** at para-2, 16, 43, 44 and 45 as follows:-

“Para-2:-The appellant was served with the summons, accompanied by a copy of the election petition, requiring his appearance before the Court on 6.4.2004. On the appointed day, the appellant appeared through his counsel and sought for one month's time for filing the written statement. The Court allowed time till 13.5.2004 for filing the written statement. On 13.5.2004, the appellant again filed an application seeking further time for filing the written statement on the ground that copies of several documents were required to be obtained. The Court adjourned the hearing to 3.7.2004 as, in between, from 13.5.2004

to 2.7.2004, the High Court was closed for summer vacation. On 22.6.2004, appellant's advocate's nephew expired. However, the written statement was drafted and kept ready for filing. The registered clerk of the advocate was deputed for filing the same in the Court on the appointed day. The clerk reached Allahabad, the seat of the High Court, from Gazipur where the appellant and his advocate resided. On 1.7.2004, that is, two days prior to the day of hearing, the affidavit of the appellant annexed with the written statement, was sworn in at Allahabad. However, (as is later on stated), on account of lack of understanding on the part of the registered clerk, the written statement could not be filed on 3.7.2004 but the same was filed on 8.7.2004 accompanied by an application for condonation of delay in filing the written statement briefly stating the reasons set out hereinbefore. On 23.8.2004, the High Court rejected the application filed by the appellant and refused to take the written statement on record for the reason that the same was filed beyond a period of 90 days from the date of service of summons, the period of limitation as provided by the Proviso to Rule 1 of [Order VIII of the Code of Civil Procedure, 1908](#) (hereinafter '[the CPC](#)', for short), as introduced by Act 22 of 2002 with effect from 1.7.2002. Feeling aggrieved by the said order, the winning candidate i.e. the defendant-respondent before the High Court, has filed this appeal by special leave.

Para-16:- Once we are clear about the meaning of the word 'trial' in the context of election petition, certain consequences follow. Sub-section (6) of [Section 86](#) of the Act would empower the High Court trying an election petition to adjourn the trial beyond the following day if necessary and for reasons to be recorded. The filing of a written statement being a stage in the trial of an election petition, this provision would empower the High Court to grant a reasonable time for filing of a written statement though for reasons to be recorded. The availability of this power finds support from Rules 5 and 12 of the High Court Rules. Under Rule 5, the High Court has power to fix a date for filing the written statement which power would include the power to fix such date not merely once but again and again depending on the discretion of the High Court. Power to extend time for filing the written statement being a matter of practice and procedure the High Court would be within its power to give such directions in that regard as it shall consider just and expedient within the meaning of Rule 12. This discretion vested in the Court by Rules made under [Article 225](#) for purposes of any special act would not be controlled by the proviso to sub-rule (1) of [Order VIII of the CPC](#).

Para-43:- The extension of time shall be only by way of exception and for reasons to be recorded in writing, howsoever brief they may be, by the court. In no case, the defendant shall be permitted to seek extension of time when the court is satisfied that it is a case of laxity or gross negligence on the part of the defendant or his counsel. The court may impose costs for dual purpose: (i) to deter the defendant from seeking any extension of time just for asking and (ii) to compensate the plaintiff for the delay and inconvenience caused to him.

Para-44:- However, no straitjacket formula can be laid down except that the observance of time schedule contemplated by Order VIII Rule 1 shall be the rule and departure therefrom an exception, made for satisfactory reasons only. We hold that Order VIII Rule 1, though couched in mandatory form, is directory being a provision in the domain of processual law.

Para-45:- We sum up and briefly state our conclusions as under:-

(vi) The trial of an election petition commences from the date of the receipt of the election petition by the Court and continues till the date of its decision. The filing of pleadings is one stage in the trial of an election petition. The power vesting in the High Court to adjourn the trial from time to time (as far as practicable and without sacrificing the expediency and interests of justice) includes power to adjourn the hearing in an election petition affording opportunity to the defendant to file written statement. The availability of such power in the High Court is spelled out by the provisions of the [Representation of the People Act, 1951](#) itself and Rules made for purposes of that Act and a resort to the provisions [of the CPC](#) is not called for.

(vii) On the language of [Section 87\(1\)](#) of the Act, it is clear that the applicability of the procedure provided for the trial of suits to the trial of election petitions is not attracted with all its rigidity and technicality. The rules of procedure contained in [the CPC](#) apply to the trial of election petitions under the Act with flexibility and only as guidelines.

(viii) In case of conflict between the provisions of the [Representation of the People Act, 1951](#) and the Rules framed thereunder or the Rules framed by the High Court in exercise of the power conferred by [Article 225](#) of the Constitution on the one hand, and the Rules of Procedure contained in [the CPC](#) on the other hand, the former shall prevail over the latter.

(ix) The purpose of providing the time schedule for filing the written statement under [Order VIII, Rule 1 of CPC](#) is to expedite and not to scuttle the hearing. The provision spells out a disability on the defendant. It does not impose an embargo on the power of the Court to extend the time. Though, the language of the proviso to Rule 1 of [Order VIII of the CPC](#) is couched in negative form, it does not specify any penal consequences flowing from the non-compliance. The provision being in the domain of the Procedural Law, it has to be held directory and not mandatory. The power of the Court to extend time for filing the written statement beyond the time schedule provided by [Order VIII, Rule 1 of the CPC](#) is not completely taken away.

(x) Though [Order VIII, Rule 1 of the CPC](#) is a part of Procedural Law and hence directory, keeping in view the need for expeditious trial of civil causes which persuaded the Parliament to enact the provision in its present form, it is held that ordinarily the time schedule contained in the provision is to be followed as a rule and departure therefrom would be by way of exception. A prayer for extension of time made by the defendant shall not be granted just as a matter of routine and merely for asking, more so when the period of 90 days has expired. Extension of time may be allowed by way of an exception, for reasons to be assigned by the defendant and also be placed on record in writing, howsoever briefly, by the Court on its being satisfied. Extension of time may be allowed if it was needed to be given for the circumstances which are exceptional, occasioned by reasons beyond the control of the defendant and grave injustice would be occasioned if the time was not extended. Costs may be imposed and affidavit or documents in support of the grounds pleaded by the defendant for extension of time may be demanded, depending on the facts and circumstances of a given case."

162. It has been held by Hon'ble Supreme Court in the case of ***Mercykutty Amma vs. Kadavoor Sivadasan***, reported in (2004) 2 SCC 217 at para-20, 21, 24, 27, 28, 29, 31, 32 and 33 as follows:-

"Para-20:- In terms of sub-section (4) of Section 123, corrupt practices may be committed by: (a) the candidate; (b) his agent, that is to say – (i) an election agent, (ii) a polling agent, (iii) any person who is held to have acted as an agent in connection with the election with the consent of the candidate; (c) by any other person with the consent of the candidate or his election agent.

Para-21:- The categories of agents enumerated in sub- clauses (i) and (ii) of clause (b) are to be notified by the candidate, before the statutory authorities. Such agents, thus, are not only to the appropriate authorities but also to his opponents and other persons concerned. However, so far as category (iii) is concerned, the name of such agent is not required to be notified. He must have an express or implied authority to act on behalf of the candidate. For the purpose of proving corrupt practices on the part of such agent, there would not be any material difference between the third category of "agent" or "any other person" inasmuch as in both the cases consent of the candidate being the material factor, would be required to be pleaded and proved. Thus, the appellant was required to prove that the alleged corrupt practices were committed by the aforementioned Marydasan and Vellimon Vijayanandan with the consent and knowledge of the elected candidate. The first respondent herein, as noticed hereinbefore, in his written statement denied or disputed that a pamphlet has been published defaming the appellant herein at his instance or with his knowledge or consent. The appellant sought to prove such consent on the part of the first respondent vis-à-vis Marydasan on the ground that not only the same was printed in Karthika Press but the expenditure incurred by Respondent 1 on the printing and publishing thereof was intimated to the Election Commission in his election expenditure account. **Para-24:-** It is, therefore, clear that the evidence of the said witness is not conclusive on the question that offending material was printed and published by Karthika Press or the expenditure therefor was borne by Respondent 1.

Para-27:- Allegations of corrupt practices are quasi- criminal charges and the proof that would be required in the support thereof would be as in a criminal charge. The charges of corrupt practices are to be equated with criminal charges and proof thereof would be not preponderance of probabilities as in civil action but proof beyond reasonable doubt as in a criminal trial. (See *Surinder Singh v. Hardial Singh* (1985) 1 SCC 91 : (1985) 1 SCR 1059).

Para-28:- From the materials on record, therefore, in our opinion, it has not been proved that the offending article was printed and published with the consent and knowledge of the first respondent herein.

Para-29:- Admittedly, Shri Marydasan was not issued any notice. He was not given any opportunity to cross- examine the witnesses examined on behalf of the appellant or adduce evidence on his own behalf.

Para-31:- *The requirement to apply the provisions of Section 99 is in respect of a person who is not a party to the proceeding. The statute mandates that before a person is named as having indulged in corrupt practices he must be given the same opportunity which is given to a party to the petition. By reason of such a notice and giving an opportunity to the noticee to cross-examine the witnesses examined on behalf of the parties to the said petition and examining witnesses on behalf of his defence, he is placed in the same position as that of a party in the petition. (See: Ramesh Yeshwant Prabhoo (Dr.) v. Prabhakar Kashinath Kunte ((1996) 1SCC 130)).*

Para-32:- *Naming of a person as having indulge in corrupt practices has serious consequences. A person indulged in corrupt practices whether party to the petition in terms of Section 82 or subsequently receives a notice in terms of Section 99 would stand on the same footing having regard to the provision contained in Section 8-A of the Act. Such a person may not be a necessary party within the meaning of Section 82 of the Act but it is beyond any cavil that no finding could be recorded by naming such a person unless the mandatory provisions of Section 99 are complied with. (See: Patangrao Kadam v. Prithviraj Sayajirao Yadav Deshmukh ((2001) 3SCC 594.)).*

Para-33:- *Even if Marydasan was agent of the first respondent within the meaning of Section 123 of the Act, the High court was required to comply with the aforementioned statutory mandate. It has not been disputed that the provisions of Section 99 are mandatory. Marydasan, thus, could not have been named as having indulge himself in corrupt practices without complying with the mandatory provisions of Section 99 of the Act."*

163. It transpires from the election petition that the petitioner has specifically pleaded in Para 14 that the Respondent got printed Handbill/Pamphlet of Specimen of EVM Machines wherein the seriatim of the name of the Candidates is/are photographed and election symbols from Lucky Printing Press. However, during evidence he has not supported this fact and has not stated anything during the Examination-in Chief that the Respondent has printed Handbill or Pamphlet from the Lucky Printing Press and thus, this allegation is not proved that the Pamphlet was published from Lucky Printing Press and therefore, the assertion of printing the name of the petitioner at Serial No.16 and showing NOTA is not correct.

Even P.W-2-Umesh Murmu has not stated during his evidence that the Respondent got printed Handbill from the Lucky Printing Press.

Thus, this assertion is not proved.

The petitioner has further pleaded in para 17 (a) of his election petition that he learnt from Prem Kumar Hembram of village Jhantipahari that cadre of JMM along with Sh. Sabut Murmu came to village Jhantipahari on 15.12.2019 and distributed the said Handbill/Pamphlet and Specimen of EVM among the villagers in door to door campaign and organized meeting at Chaupal and influenced the villagers by persuading them to cast phot in Serial No.16 that any vote cast in Serial No.16 would go in vain. However, the

petitioner has not examined said Prem Kumar Hembram during his evidence although he has given the name of Prem Kumar Hembram in the list of witnesses which was allowed by this Court on 02.05.2023

Similarly the petitioner further pleaded at para 17 (c) that Priya Ranjan Baski informed him that on 17.12.2019 Ramdeo Soren and Much Marandi came to village Jabardaha along with other party workers of JMM with Specimen of EVM demonstrating and influencing to cast their vote to his party at Serial No.7 and influenced the villager not to cast any vote at Serial No.16 as it will go in vain.

However, the petitioner has also not examined Priya Ranjan Baski in support of his case during his evidence. Thus, this allegation is also not proved.

164. It further transpires that even the petitioner has not stated as to when he learnt from Prem Kumar Hembram regarding the distribution of Pamphlet/Handbill on 15.12.2019 etc. and distribution of Pamphlet/Handbill with Specimen of EVM on 17.12.2019 as to when they had informed the petitioner about the above incident. Thus, the pleading is vague and cannot be relied upon. Even the petitioner has not given this information to the Deputy Commissioner, Jamtara as well as the Returning Officer, Jamtara while filing his representation.

165. The petitioner has merely given the name of Umesh Murmu-P.W-2 who informed him that Jaydhan Hansda and Rupchand Hansda came to his village Jaspur on 16.12.2019 and were distributing the Pamphlet. However, during evidence in this Court, P.W-2-Umesh Murmu merely stated that JMM Volunteers Jaydhan Hansda, Rupchand Hansda and others were distributing Pamphlets. During cross-examination, he admitted that he is the Election Agent of Santosh Hembram and he himself asserted in para 24 and 25 to his cross-examination that he had heard distribution of wrong Pamphlets i.e. Exhibit-01 by the Volunteers of JMM on 16.12.2019 through the villagers but does not remember their name. Even in para 26 he admitted and stated that a small boy has given a Pamphlet to him but he neither knows the name of the boy nor the name of his parents. He had handed over the said Pamphlet to Santosh Hembram but he does not remember the date of handing over the Pamphlet.

Thus, it is evident that even the P.W-2 had not seen the distribution of Pamphlet by Jaydhan Hansda and Rupchand Hansda rather he disclosed this fact before the petitioner like hearsay witness/person for hearing this fact. Though he claims to hand over the Pamphlet to the petitioner which was given to him by a boy but he does not know the boy and the name of said boy and thus, in this view of the matter the evidence of P.W-2-Umesh Murmu has not supported the case of the petitioner.

166. It further reveals that neither the petitioner nor his Election Agent P.W-2 made any

complaint before the District Election Officer-cum-Deputy Commissioner, Jamtara and Returning Officer, Jamtara-08 Nala Assembly Constituency regarding the distribution of Pamphlet i.e. Exhibit-01 (marked with objection) on 15.12.2019, 16.12.2019 and 17.12.2019 before any authorities i.e. Deputy Commissioner, Jamtara or any other authority.

167. It further transpires that even in the written complaint dated 22.12.2019 given by the petitioner before the Deputy Commissioner, Jamtara marked as 'X' for identification, he has not disclosed the names of Prem Kumar Hembram, Umesh Murmu and Priya Ranjan Baski that who had informed him that the JMM Party workers were distributing Pamphlet. Even this written complaint was filed on 22.12.2019 i.e. after two days of completion of election and even if, it is taken on its face value, does not appear to be correct.

168. On the other hand Respondent-R.W-9 and his Election Agent and R.W-11 namely Ashok Kumr Mahto have stated during their evidence that the Respondent got printed election material from Bharat Traders Press, Ranchi and which is evident from the record called for by the petitioner in I.A No.10550 of 2022 passed by the Co-ordinate Bench of this Court and which was submitted by the Returning Officer-Sri Surendra Kumar before the office of this High Court. Thus, the petitioner has failed to prove his case on the pleading as well as even during evidence.

It is evident that Exhibit-01 can be prepared and manufactured by any person. Even the petitioner has not examined the owner of Lucky Printing Press and the concerned person of Lucky Press although the mobile number of Lucky Press was printed on Exhibit-01 and no effort was made by the petitioner to examine the Proprietor/Owner/Manager of Lucky Press, if any.

169. The petitioner has placed much emphasis upon Exhibit-02 (marked as objection) in which some persons were shown in keeping certain Pamphlets and which the petitioner has claimed to have taken their photograph from his Mobile phone and got it developed and enlarged from the nearby shop or from any shop. However, the petitioner has not disclosed his Mobile number and even the Mobile showing marked as Exhibit during the evidence of the petitioner before this Court which should have been done easily. It was the Mobile of the petitioner from which the petitioner has claimed to have snapped the photograph of those people on 20.12.2019 at around 3.00 p.m. i.e. on the date of election, even the petitioner has not disclosed the name of Shopkeeper/Studio or any other Service Provider from which the photo (i.e. Exhibit-02) was enlarged which was taken by the petitioner from his Mobile phone. This is also serious lacunae.

170. It has been held by Hon'ble Supreme Court in the case of **Arjun Panditrao Khotkar v. Kailash Kushanrao Gorantyal** reported in (2020) 7 SCC 1 at para-81 to 85 as follows:-

"Para-81:- What is laid down in Section 65-B as a precondition for the admission of an electronic record, resembles what is provided in the second part of Section 136. For example, if a fact is sought to be proved through the contents of an electronic record (or information contained in an electronic record), the Judge is first required to see if it is relevant, if the first part of Section 136 is taken to be applicable.

Para-82:- But Section 65-B makes the admissibility of the information contained in the electronic record subject to certain conditions, including certification. The certification is for the purpose of proving that the information which constitutes the computer output was produced by a computer which was used regularly to store or process information and that the information so derived was regularly fed into the computer in the ordinary course of the said activities.

Para-83:- In other words, if we go by the requirements of Section 136, the computer output becomes admissible if the fact sought to be proved is relevant. But such a fact is admissible only upon proof of some other fact, namely, that it was extracted from a computer used regularly, etc. In simple terms, what is contained in the computer output can be equated to the first mentioned fact and the requirement of a certification can be equated to the last mentioned fact, referred to in the second part of Section 136 read with Illustration (b) thereunder.

Para-84:- But Section 65-B(1) starts with a non obstante clause excluding the application of the other provisions and it makes the certification, a precondition for admissibility. While doing so, it does not talk about relevancy. In a way, Sections 65-A and 65-B, if read together, mix up both proof and admissibility, but not talk about relevancy. Section 65-A refers to the procedure prescribed in Section 65-B, for the purpose of proving the contents of electronic records, but Section 65-B speaks entirely about the preconditions for admissibility. As a result, Section 65-B places admissibility as the first or the outermost checkpoint, capable of turning away even at the border, any electronic evidence, without any enquiry, if the conditions stipulated therein are not fulfilled.

Para-85:- The placement by Section 65-B, of admissibility as the first or the border checkpoint, coupled with the fact that a number of "computer systems" [as defined in Section 2(l) of the Information Technology Act, 2000] owned by different individuals, may get involved in the production of an electronic record, with the "originator" [as defined in Section 2(za) of the Information Technology Act, 2000] being different from the recipients or the sharers, has created lot of acrimony behind Section 65-B, which is evident from the judicial opinion swinging like a pendulum.

171. Thus, in the above case, the Hon'ble Supreme Court has put emphasis for taking Certificate. It was incumbent upon the petitioner to obtain the Certificate of Service Provider of the photographer which he had obtained from the shop. The petitioner was also required to prove the date of taking such Certificate from the shop owner from where he has taken the photograph of alleged JMM workers from his Mobile phone otherwise such a photograph can be prepared by means of Photo Shopping or by means of tampering with the photographs. The petitioner further required to prove the date of sending such photograph and Pamphlet before the District Election Officer-cum-Deputy Commissioner, Jamtara as well as Returning Officer, Jamtara but he failed to prove the same. There is

time gap between 20.12.2019 to 04.02.2020 i.e. the date on which the Election Petition was filed before this Court. The petitioner has also not named the Election Observer and the Election Officers with whom he had tried to make complaint through his Mobile and even he has not shown the specific time on the date of talking with him by specific mobile number. Even the petitioner admitted during cross-examination that he received the complaint of distributing such Pamphlet (i.e. Exhibit-1) on 16.12.2019, 17.12.2019 but he failed to make any complaint.

172. Thus, in absence specific date of getting the photograph i.e. Exhibit-01 and Exhibit-02 prepared coupled with the fact of not complaining before the appropriate authority i.e. the District Election Officer-cum Deputy Commissioner and Returning Officer, this Court finds that the petitioner has failed to make prima facie case against the respondent for distributing the Pamphlet (i.e. Exhibit-01) through the party cadre of the JMM or his Volunteers and also for influencing the Voter by the persons as shown in Exhibit-02. Even P.W-2-Umesh Murmu who claims to identify all the persons of his village Jaspur, has failed to identify those two persons in the photograph of Exhibit-02 (marked with objection).

173. It is well settled from the judgment of Hon'ble Supreme Court that corrupt practice has to be proved like a criminal trial, if committed by any Candidate and oral evidence, particularly coming from a tainted service cannot form the sole basis of proof of corrupt practices.

174. It has been held by Hon'ble Supreme Court in the case of **(Surinder Singh vs. Hardial Singh and Ors.)** reported in **AIR 1985 SC 89** at para 16, 23, 33, 34 and 45 as follows:-

“Para-16:- We shall now turn to the other submission of Mr Shanti Bhushan. By a catena of decisions of this Court it has by now been very well settled that allegations of corrupt practice are quasi-criminal charges and the proof that would be required in support of such allegations would be as in a criminal charge. Mr Shanti Bhushan has canvassed that the standard of proof required in such a case would be dependent upon the gravity of the charge and there is no justification to adopt the rule that in every case of allegation of corrupt practice the standard applicable to a criminal trial involving a grave charge like murder should be adopted. He has drawn support from the observations of this Court in M. Chenna Reddy v.V. Ramachandra Rao [40 ELR 390 (SC)] . It may be pointed out here that the ratio in Chenna Reddy case [40 ELR 390 (SC)] runs counter to the current of judicial thought on the point. In fact, quite close in point of time after Chenna Reddy case [40 ELR 390 (SC)] came the case of Magraj Patodia v.R.K. Birla [(1970) 2 SCC 888 : AIR 1971 SC 1295 : (1971) 2 SCR 118] Hegde, J. indicated :

(SCC p. 895, para 14)

"It is true that as observed in M. Chenna Reddy v.V. Ramachandra Rao [40 ELR 390 (SC)] that a charge of corrupt practice cannot be equated to a

criminal charge in all respects. While the accused in a criminal case can refuse to plead and decline to adduce evidence on his behalf and yet ask the prosecution to prove its case beyond reasonable doubt such is not the position in an election petition. But the fact remains that burden of proving the commission of corrupt practice pleaded is on the petitioner and he has to discharge that burden satisfactorily. In doing so he cannot depend on preponderance of probabilities. Courts do not set at naught the apparent verdict of the electorate except on good grounds."

Charges of corrupt practice have been dealt with by this Court for over 20 years now in election appeals under the Act. The first important case which came before this Court was disposed of by a five-Judge Bench in the case of Mohan Singh v. Bhanwarlal [AIR 1964 SC 1366 : (1964) 5 SCR 12] . Shah, J. (as he then was), spoke for the Court thus:

"The onus of establishing a 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 a civil suit : the corrupt practice must be established beyond reasonable doubt by evidence which is clear and unambiguous."

Para-23:- *It is thus clear beyond any doubt that for over 20 years the position has been uniformly accepted that charges of corrupt practice are to be equated with criminal charges and proof thereof would be not preponderance of probabilities as in civil action but proof beyond reasonable doubt as in criminal trials. We are bound by the decision of the larger Bench in Mohan Singh case [AIR 1964 SC 1366 : (1964) 5 SCR 12] as also by decisions of coordinate benches and do not feel inclined to take a different view. We also find no warrant for the contention of Mr Shanti Bhushan that a fresh look is necessary in the matter. On the other hand we feel advised to follow the dictum of Lord Devlin when he observed:*

"Precedents keep the law predictable and so more or less ascertainable."

Lord Chancellor Hailsham very appropriately summed up the English practice when he said in Cassell & Co. Ltd. v. Broome [(1972) 1 All ER 801] ":

"Their Lordships regard the use of precedents (1) as an indispensable foundation upon which to decide what is the law and its application to individual cases. It provides at least some degree of certainty upon which individuals can rely in the conduct of their affairs, as well as a basis for orderly development of legal rules. [See Note (1966) 3 All ER 77 : (1966) 1 WLR 1234] "

Para-33:- *The question that has next to be considered is whether disturbing such a meeting would also amount to undue influence under Section 123(2) of the Act. Direct or indirect interference or attempt to interfere with free exercise of the electoral right by a candidate, his agent or any person with his consent or the candidate's election agent has been made a corrupt practice. "Electoral Right" has been defined in Section 79(d) of the Act to mean "the right of a person to stand or not to stand as or to withdraw or not to withdraw from being a candidate or to vote or refrain from voting at any election". In para 5 of the election petition there is no allegation of any threat. It is proper at this stage to refer to the pleadings in para 6 of the election petition where it has been pleaded:*

"That later on the same day aforesaid assailants threatened that anybody who will support or vote for Respondent 2 shall meet the same fate as Daya Singh. Gurdial Singh son of Tara Singh along with others created such a terror in the village that subsequently it became very difficult and risky for anyone to canvass for Respondent 2 in this village."

Para-34:- Disturbing the meeting as alleged in para 5 of the election petition in our view is not covered under sub-section

(2) of Section 123 of the Act and is clearly an electoral offence dealt with by Section 127 of the Act. The allegations contained in para 6 of the election petition would perhaps come within Section 123(2)(a)(i) of the Act. In para 5 of the election petition the following fact had been pleaded:

"Then Respondent 1 told them not to allow the meeting to proceed at any cost and himself stayed behind."

If this statement of fact is accepted consent of the appellant for disturbing the meeting can be found but in the absence of any specific plea that it was appellant's instruction that the electors should be threatened, the facts alleged in para 6 of the election petition cannot be accepted to have been with the consent of the appellant. Mr Shanti Bhusan, learned counsel for Respondents 1 and 2 has not disputed, and in our opinion rightly, that allegations of corrupt practice have to be strictly pleaded with material particulars and evidence beyond the ambit of plea would not be permitted to be led. Though there is some oral evidence to implicate the appellant, even for what followed the disturbance to the meeting, we do not think in the absence of the requisite plea such evidence can be entertained for any effective purpose.

Para-45:- A candidate is entitled to canvass for votes. One who is in the field to be an electoral representative is also entitled to nourish his constituency. As pointed out by this Court in Bhanu Kumar Shastri case [(1971) 1 SCC 370 : AIR 1971 SC 2025 : (1971) 3 SCR 522] amelioration of grievances of the public is innocuous and cannot be construed against a candidate. We agree that while nourishing is a legitimate activity, it is of paramount importance that nourishing should not transgress the limit so as to corrupt the electoral process. The appellant was already in the field as a candidate for the Legislature and was entitled to help the people in his constituency in a legitimate way. Once the allegation that he had deposited the amount of Rs 944 is discarded, his taking up of the cause of Bagicha Singh for early shifting of the electric wires overhanging the first floor of his house would not amount to

"bribe". At any rate, the evidence on record is only of PW

12. We do not think that evidence even if accepted as a whole would be sufficient to establish the charge of corrupt practice on this score. This Court has rightly indicated that oral evidence, particularly, coming from a tainted source cannot form the sole basis of proof of corrupt practice. In Younus Kunju case [(1984) 3 SCC 346] it has been stated : (SCC p. 350, para 5)

"Admittedly all these witnesses were the workers of the appellant. There is overwhelming material on the record, and even counsel fairly admitted, that the election was fought on party basis and there was sharp division of the electorate on the basis of political parties. That being the position, workers at the election

with party alignment would necessarily be political supporters of the respective candidates and when called as witnesses they would support their stand. Instances are not uncommon where such witnesses support their respective candidates and their cases even though the same be far from truth. In such circumstances we do not think on the oral testimony of these four witnesses the charge of publication, of objectionable materials can be said to have been established."

175. It is further evident that the Written Statement of the Respondent was filed on 12.10.2022 within 90 days after his appearance after the permission of the Co-ordinate Bench vide order dated 08.07.2022. Thus, this Court finds no illegality in filing the Written Statement by the Respondent.

On the question of filing of Written Statement by the Respondent is concerned, it would appear that the respondent has appeared in this case on 18.07.2022 and the Co-ordinate Bench of this Court had recalled the earlier order of ex-parte proceeding dated 06.07.2022 and permitted the respondent to file the Written Statement by allowing I.A. No.6081 of 2022 filed on behalf of the respondent.

176. It has been held by Hon'ble Supreme Court in the case of ***Kailash vs. Nanhku and Ors.*** reported in **2005 (4) JLJR 1 SC** that High Court has power to fix a date for filing the Written Statement and even the High Court has discretionary power and to extend the time for filing the Written Statement being a matter of practice and procedure. The discretion vested in the Court by rules made in Article 225 for the purpose of any special Act would not be controlled by the proviso to Rule 1 of Order VIII of CPC.

177. It has been held by Hon'ble Supreme Court in the case of ***Smt. Rani Kusum vs. Smt. Kanchan Devi and Ors.*** reported in **2005 (4) JLJR 53 (SC)** at para-6, 10, 13 and 19 as follows:-

"Para-6:-The scope and ambit of [Order VIII Rule 1 of CPC](#) has been examined in detail by this Court in [Kailash v. Nanhku and Ors.](#) (2005 (4) SCC 480).

Para-10:- Order VIII, Rule 1 after the amendment casts an obligation on the defendant to file the written statement within 30 days from the date of service of summons on him and within the extended time falling within 90 days. The provision does not deal with the power of the court and also does not specifically take away the power of the court to take the written statement on record though filed beyond the time as provided for. Further, the nature of the provision contained in Order VIII, Rule 1 is procedural. It is not a part of the substantive law. Substituted Order VIII, Rule 1 intends to curb the mischief of unscrupulous defendants adopting dilatory tactics, delaying the disposal of cases causing inconvenience to the plaintiffs and petitioners approaching the court for quick relief and also to the serious inconvenience of the court faced with frequent prayers for adjournments. The object is to expedite the hearing and not to scuttle the same. While justice delayed may amount to justice denied, justice hurried may in some cases amount to justice buried.

Para-13:- *The processual law so dominates in certain systems as to overpower substantive rights and substantial justice. The humanist rule that procedure should be the handmaid, not the mistress, of legal justice compels consideration of vesting a residuary power in judges to act ex debito justitiae where the tragic sequel otherwise would be wholly inequitable. - Justice is the goal of jurisprudence - processual, as much as substantive. (See [Sushil Kumar Sen v. State of Bihar](#) (1975 (1) SCC 774).*

Para-19:- *After elaborating the purpose for introduction of Order VIII Rule 1, this Court in [Kailash's Case](#) (supra) at paragraph 45 observed that no straightjacket formula can be laid down except that observance of time schedule contemplated by Order VIII Rule 1 shall be the rule and departure therefrom an exception, made for satisfactory reasons only. The conclusions have been summed up in Para 46. The relevant portion reads as follows:*

"(iv) the purpose of providing the time schedule for filing the written statement under [Order VIII Rule 1 CPC](#) is to expedite and not to scuttle the hearing. The provision spells out a disability on the defendant. It does not impose an embargo on the power of the Court to extend the time. Though the language of the proviso to Rule 1 [Order VIII CPC](#) is couched in negative form, it does not specify any penal consequences flowing from the non-compliance. The provision being in the domain of the procedural law, it has to be held directory and not mandatory. The power of the Court to extend time for filing the written statement beyond the time schedule provided by [Order VIII Rule 1 CPC](#) is not completely taken away.

(v) Though [Order VIII Rule 1 CPC](#) is a part of procedural law and hence directory, keeping in view the need for expeditious trial of civil cases which persuaded Parliament to enact the provision in its present form, it is held that ordinarily the time schedule contained in the provision is to be followed as a rule and departure therefrom would be by way of exception. A prayer for extension of time made by the defendant shall not be granted just as a matter of routine and merely for the asking, more so when the period of 90 days has expired. Extension of time may be allowed by way of an exception, for reasons to be assigned by the defendant and also be placed on record in writing, howsoever briefly, by the court on its being satisfied. Extension of time may be allowed if it is needed to be given for circumstances which are exceptional, occasioned by reasons beyond the control of the defendant and grave injustice would be occasioned if the time was not extended. Costs may be imposed and affidavit or documents in support of the grounds pleaded by the defendant for extension of time may be demanded, depending on the facts and circumstances of a given case."

178. Thus, in view of the discussion made above, it is evident that the High Court can extend power in filing the Written Statement even if it is filed beyond the statutory period. However, in the present case, the respondent had appeared, although of course after publication of notice in Hindi Newspaper i.e. 'Dainik Jagran' but his appearance can be counted from the date of appearance before this Court and not from the date of tracking report of registered post, which cannot be a conclusive proof of service of notice upon any person. Therefore, the Co-ordinate Bench has rightly permitted the respondent to file his

Written Statement and the petitioner has thus filed his Written Statement within time. Therefore, this Court finds no merit in the submission of the learned counsel for the petitioner that Written Statement has been filed beyond statutory period.

179. Learned counsel for the petitioner has made much emphasis that evidence marked on admission by the Respondent, is against the provisions of Order VIII Rule 2 of CPC as there is no such pleading in the Written Statement of the respondent. However, this Court, finds no merit in the submission as the respondent can be permitted to adduce his evidence once he has filed his Written Statement and he has denied the alleged handbill/pamphlet distributed by his Volunteers or cadre of JMM party. He may not require to give specific evidence in his Written Statement as he has denied the fact of printing his election articles from Lucky Printing Press, Ranchi. Although he has not made any specific pleading in his Written Statement that his election materials/articles were published from Bharat Traders Press, Ranchi but R.W-9 i.e. the respondent and R.W-11 i.e. the Election Agent of the respondent have clearly stated in the evidence that the Election Materials were published from 'Bharat Traders Press', Ranchi and those fact is also evident from the documents received before this Court from District Administration in the light of I.A. No.10550 of 2022 filed by the learned counsel for the petitioner.

180. It further transpires that even the Hon'ble Supreme Court in Special Leave to Appeal (C) No(s).4574 of 2024 vide order dated 26.02.2024 has given liberty to the Respondent to raise all his contentions at an appropriate stage before this Court.

181. It is evident from the documents marked as Exhibit-DD-I and DD-II, DD-III, DD-IV, DD-V respectively that no complaint was received by the team of the Flying Squad and Sector Magistrate during the period of posting.

Exhibit-DD-I, DD-II (marked on admission) respectively are Flying Squad Reports of Booth No.193 to 332 & Booth No.1 to 96 which reveal that no complaint was received by the Flying Squad Team on 20.12.2019 including Booth No.91 and 92 as alleged by the petitioner.

Even Exhibit-DD-III, DD-IV and DD-V reveal that no complaint of any corrupt practice or distribution of any tainted Pamphlet was made by the petitioner or any other person.

182. It is further evident from Exhibit-E, E/1, E/2 and E/3 (on admission) that even on the polling day nothing was found on 19.12.2019 by the Sector Magistrate namely Bishwanath Toppo, Dr. Md. Rizwan, Dayanand Jamuda and Anmol Amar Baba of proof of any corrupt practices.

183. Exhibit-G and G/1(on admission) are the Diary of Presiding Officer of Booth No.91 and Booth No.92 on 20.12.2019 which also do not disclose any report of corrupt practices made by the respondent or regarding distribution of Pamphlets i.e. Exhibit- 01 by the persons shown in photograph marked as Exhibit-02 (with objection).

184. Exhibit-H and H/1 are the Visit Sheets of Booth No.91 and 92 by the prepared by the Presiding Officers of Booth No.91 and Booth No.92 which also do not disclose any corrupt practices made by the Respondent or his Volunteers or by any JMM cadre.

185. Thus, in view of the discussion made above, it is evident that the petitioner has failed to make out any alleged corrupt practices as per the Act under Section 100 (1) (b) and 123 of the R.P. Act, 1951.

186. Thus, in view of the law laid down by the Hon'ble Supreme Court and also discussion made above, this Court finds that petitioner has no valid cause of action for filing the election petition and the Respondent and his Polling Agent have not committed any corrupt practices as stated in the election petition.

187. Thus, Issue No.2 and 3 are decided against the Petitioner and in favour of the Respondent.

Issue No.4

188. It is evident that the Respondent had secured 61,356 votes whereas the petitioner has secured 1769 votes only. The petitioner has failed to prove the charges of corrupt practice against the respondent.

Hence, this Court is of the view that the result of the Respondent is not liable to be set aside.

Accordingly, this Issue No.4 is decided against the petitioner and in favour of the Respondent.

Issue No.1 and 5

189. In view of the discussion made above and law laid down by the Hon'ble Supreme Court this Election Petition is not maintainable and the petitioner is not entitled to the relief(s).

190. Thus, Issue No.1 and 5 are decided against the petitioner and in favour of the respondent.

191. Accordingly, this Election Petition No.06 of 2020 is hereby dismissed but without costs.

192. All the pending I.As., if any, stand disposed of.

193. Let a copy of this Judgment be communicated to the Election Commission of India, the State Election Commission and Office of Jharkhand Vidhan Sabha and to all concerned by the Office at once.

194. Office is directed to return the document to the parties after keeping the photo copy of the same.

(Sanjay Prasad, J.)

Saket/-

AFR

By order,

ARVIND ANAND

PRINCIPAL SECRETARY

ELECTION COMMISSION OF INDIA
