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मध्यप्रदेश राजपत्र

(असाधारण)

प्राधिकार से प्रकाशित

क्रमांक 77]

भोपाल, गुरुवार, दिनांक 9 मार्च 2023—फाल्गुन 18, शक 1944

विधि एवं विधायी (निर्वाचन) कार्य विभाग

भोपाल, दिनांक 9 मार्च 2023

फा. क्र. EP.13-2014 and 17-2014-चार-22.- माननीय उच्च न्यायालय द्वारा निर्वाचन याचिका संख्या 13/2014 एवं 17/2014 के संबंध में पारित निर्णय बाबत भारत निर्वाचन आयोग की अधिसूचना क्र. 82-म.प्र.-(13/2014)-2023, दिनांक 21 फरवरी 2023 एवं अधिसूचना क्र. 82-म.प्र.-(17/2014)-2023, दिनांक 21 फरवरी 2023 सर्वसाधारण की जानकारी हेतु प्रकाशित की जाती है.

राजेश कुमार कौल, सचिव.

भारत निर्वाचन आयोग

निर्वाचन सदन, अशोक रोड, नई दिल्ली-110 001

नई दिल्ली, तारीख 21 फरवरी 2023-2 फाल्गुन, 1944 (शक)

अधिसूचना

सं.-82-म.प्र.-(13/2014)-2023.- लोक प्रतिनिधित्व अधिनियम, 1951 (1951 का 43) की धारा 106 के अनुसरण में, भारत निर्वाचन आयोग, 2014 की निर्वाचन याचिका सं. 13 में मध्यप्रदेश उच्च न्यायालय के दिनांक 5 जनवरी 2023 के निर्णय/आदेश को एतद्वारा, प्रकाशित करता है (श्री विश्वामित्र पाठक विरुद्ध श्री कमलेश्वर पटेल).

आदेश से,
हस्ता./-

(अमित कुमार)

सचिव,

भारत निर्वाचन आयोग.

ELECTION COMMISSION OF INDIA

Nirvachan Sadan, Ashoka Road, New Delhi-110 001

New Delhi, Dated 21st February, 2023 - 2 Phalguna, 1944 (Saka)**NOTIFICATION**

No. 82/MP/(13/2014)/2023 - In pursuance of Section 106 of the representation of the People Act, 1951 (43 of 1951), the Election Commission hereby publishes the Judgment order dated 05.01.2023 of the High Court of Madhya Pradesh in the Election Petition No. 13 of 2014 (Sh. Vishwamitra Pathak Vs. Sh. Kamleshwar Patel).

**IN THE HIGH COURT OF MADHYA PRADESH
AT JABALPUR****BEFORE****HON'BLE SHRI JUSTICE ATUL SREEDHARAN****ON THE 5th OF JANUARY, 2023****ELECTION PETITION No. 13 of 2014****BETWEEN:-**

**VISHWAMITRA PATHAK S/O LATE SHRI
RAM PYARE PATHAK, AGED ABOUT 58
YEARS, VILLAGE JIYAWAN P.O. JIYAWAN
(MADHYA PRADESH)**

.....PETITIONER**(BY SHRI GIRISH SHRIVASTAVA AND SHRI A.K. TIWARI- ADVOCATES)****AND**

**KAMLESHWAR PATEL S/O SHRI
INDRAJEET PATEL VILLAGE SUPELA
(MADHYA PRADESH)**

.....RESPONDENTS**(BY SHRI AJAY MISHRA- SENIOR ADVOCATE WITH SHRI GAURAV
TIWARI-ADVOCATE)**

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

following:

ORDER

The Election Petition under judgement has been filed by the Petitioner challenging the election of the Respondent Kamleshwar Patel, the returned candidate from 78 Sihawal Assembly Constituency, in the election to the State Assembly held on 25/11/13 of which the results were declared on 08/12/13. The Petitioner was the candidate from the BJP who did not succeed in the election. The election has been challenged u/s. 80 and 81 of the Representation of People Act, 1951 (herein after referred to as the "RP Act"). Another election petition has also been filed against the same Respondent by one Swaroop Narayan Dwivedi which is Election Petition No. 17/2014. Both these petitions have been heard together as the issues raised are identical and both the petitions have challenged the election of Mr. Kamleshwar Patel, the returned candidate. The Counsels for the parties are also the same in both the petitions. Though the petitions have been heard together, separate judgements are being delivered. This judgement is being delivered in E.P No. 13/2014. During the pendency of this petition, election was conducted to the State Assembly on 28/11/2018 and the term of the Assembly elected in November 2013 came to an end in January 2019. The arguments in the petitions were concluded on 19/02/2019. Thus, except for the ground of corrupt practices, the petitions have been rendered infructuous on the other grounds/issues.

AVERMENTS IN THE PETITION

2. As per the averments made in the Election Petition, the Petitioner was the candidate of the BJKP from 78 Sihawal Constituency. The Respondent is the returned candidate from the Indian National Congress party (hereinafter referred to as the "INC") and was declared elected after securing 72, 928 votes. These are the only undisputed facts.
3. The Petitioner has challenged the election of the Respondent on the following grounds; **(a)** that the Petitioner suffers disqualification u/s. 100(1)(a) of the RP Act (Challenge to the election of the returned candidate on lack of qualifications – ground rendered infructuous), **(b)** that the Petitioner was guilty of corrupt practices as enumerated u/s. 100(1)(b) of the RP Act – ground survives), **(c)** that the outcome of the election has been materially affect as provided u/s. 100(1)(d)(i) of the RP Act (improper acceptance of any nomination – ground rendered infructuous) and **(d)** that the outcome of the election has been materially affect as provided u/s. 100(1)(d)(ii) of the RP Act (corrupt practice by an agent, other than the election agent of the candidate – ground survives). It was also alleged in the Election Petition that the

Respondent was on the voter list of two constituencies namely, Sidhi and Sihawal and that the Respondent, after coming to know about the objection raised by the head of the BJP at Sidhi with regard to the name of the Respondent in the electoral rolls of two constituencies as aforesaid mentioned, filed an application for the deletion of his name from the voter list Sihawal constituency (ground does not survive).

4. This Court framed the following issues: (1) Whether the Respondent has suppressed or misrepresented the facts in his affidavit filed along with the nomination form? Effect? (2) Whether the result of the election has been materially affected by improper acceptance of defective nomination form? (3) Whether the Respondent has committed corrupt practice by exceeding the prescribed limit of expenditure? (4) Whether the Respondent namely Preeti Patel? (5) Whether the name of the respondent found in two constituencies debar or render him ineligible to contest the election? (6) Whether the wife of the Respondent namely Preeti Patel was holding immovable property as the office bearer of an educational society

registered under the M.P. Societies Registrikaran Adhiniyam

1973? Effect? (7) Relief and Costs.

5. As the only issue that survives for consideration are the allegations against the Respondent relating to Corrupt Practices and issues formulated by the Court pertaining to corrupt practices being issue No. 3, 4, and 6 only remain relevant.
6. As the same issues are identical in E.P No. 17/2019 and which have been elaborately been dealt with in that petition as, and the evidence in the present E.P for proving corrupt practices being no different from that of the aforementioned E.P and the issues relating to corrupt practices being the same, the findings in E.P. 17/2019 would also apply in this case also. Thus, this petition is dismissed. Parties to bear their own cost.

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

भारत निर्वाचन आयोग

निर्वाचन सदन, अशोक रोड, नई दिल्ली-110 001

नई दिल्ली, तारीख 21 फरवरी 2023-2 फाल्गुन, 1944 (शक)

अधिसूचना

सं.- 82/म.प्र./(17/2014)/2023- लोक प्रतिनिधित्व अधिनियम, 1951 (1951 का 43) की धारा 106 के अनुसरण में, भारत निर्वाचन आयोग, 2014 की निर्वाचन याचिका सं. 17 में मध्य प्रदेश उच्च न्यायालय के दिनांक 05.01.2023 के निर्णय/आदेश को एतद्वारा प्रकाशित करता है (श्री स्वरूप नारायण द्विवेदी विरुद्ध श्री कमलेश्वर पटेल)।

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

ELECTION COMMISSION OF INDIA

Nirvachan Sadan, Ashoka Road, New Delhi-110 001

New Delhi, Dated 21st February, 2023 - 2 Phalguna, 1944 (Saka)

NOTIFICATION

No. 82/MP/(17/2014)/2023 - In pursuance of Section 106 of the representation of the People Act, 1951 (43 of 1951), the Election Commission hereby publishes the Judgment order dated 05.01.2023 of the High Court of Madhya Pradesh in the Election Petition No. 17 of 2014 (Sh. Swaroop Narayan Dwivedi Vs. Sh. Kamleshwar Patel).

**IN THE HIGH COURT OF MADHYA PRADESH
AT JABALPUR**

BEFORE

HON'BLE SHRI JUSTICE ATUL SREEDHARAN

ON THE 5th OF JANUARY 2023

ELECTION PETITION No. 17 of 2014

BETWEEN:-

**SWAROOP NARAYAN DWIVEDI S/O SHRI
RAM MILAN DWIVEDI, AGED ABOUT 51
YEARS, OCCUPATION: AGRICULTURIST
VILL. JHAKHARAWAL, TEH. DEOSAR,
(MADHYA PRADESH)**

.....PETITIONER

(BY SHRI R.S. TIWARI AND SHRI PANKAJ PATHAK- ADVOCATES)

AND

**KAMLESHWAR PATEL S/O SHRI
INDRAJEET KUMAR PATEL, AGED ABOUT
41 YEARS, VILL. AND POST SUPELA TAH.
SIHAWAL (MADHYA PRADESH)**

.....RESPONDENTS

**(BY SHRI AJAY MISHRA- SENIOR ADVOCATE WITH SHRI GAURAV
TIWARI- ADVOCATE)**

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

JUDGEMENT

The Election Petition under judgement has been filed by the Petitioner challenging the election of the Respondent Kamleshwar Patel, the returned candidate from 78 Sihawal Assembly Constituency, in the election to the State Assembly held on 25/11/13 of which the results were declared on 08/12/13. The election has been challenged u/s. 80 and 81 of the Representation of People Act, 1951 (herein after referred to as the "RP Act"). Another election petition has also

been filed against the same Respondent by one Vishwamitra Pathak which is Election Petition No. 13/2014. Both these petitions have been heard together, and as the issues raised are identical and both the petitions have challenged the election of Mr. Kamleshwar Pathak, the returned candidate. The Counsels for the parties are also the same in both the petitions. Though the petitions have been heard together, separate judgements are being delivered. This judgement is being delivered in E.P No. 17/2014 which is the lead petition that has been argued by the parties. During the pendency of this petition, election was conducted to the State Assembly on 28/11/2018 and the term of the Assembly elected in November 2013 came to an end in January 2019. The arguments in the petitions were concluded on 19/02/2019. Thus, except for the ground of corrupt practices, the petitions have been rendered infructuous on the other grounds.

AVERMENTS IN THE PETITION

2. As per the averments made in the Election Petition, the Petitioner is a voter of Sihawal constituency from which the Respondent has been elected as the returned candidate. The Respondent is the returned candidate from the Indian National Congress party (hereinafter referred to as the "INC") and was declared elected after securing 72,928 votes. These are the only undisputed facts.
3. The Petitioner has challenged the election of the Respondent on the following grounds; (a) that the Petitioner suffers disqualification u/s. 100(1)(a) of the RP Act (Challenge to the

election of the returned candidate on lack of qualifications – ground rendered infructuous), **(b)** that the Petitioner was guilty of corrupt practices as enumerated u/s. 100(1)(b) of the RP Act – ground survives), **(c)** that the outcome of the election has been materially affect as provided u/s. 100(1)(d)(i) of the RP Act (improper acceptance of any nomination – ground rendered infructuous) and **(d)** that the outcome of the election has been materially affect as provided u/s. 100(1)(d)(ii) of the RP Act (corrupt practice by an agent, other than the election agent of the candidate – ground survives). It was also alleged in the Election Petition that the Respondent was on the voter list of two constituencies namely, Sidhi and Sihawal and that the Respondent, after coming to know about the objection raised by the head of the BJP at Sidhi with regard to the name of the Respondent in the electoral rolls of two constituencies as aforesaid mentioned, filed an application for the deletion of his name from the voter list Sihawal constituency.

4. The Petitioner has further alleged that the Respondent is guilty of suppression and misrepresentation of facts in the affidavit as he did not disclose the immovable properties of his wife Smt. Preeti Patel. It is alleged that the wife of the Petitioner was owning a property in the name of Vanshpati Smriti Shiksha Samiti, in patwari halka Pachour R.I. Circle Waidhan, District Singrauli. It is further alleged that the Petitioner has only disclosed his name in the voter list of 78 Sihawal constituency but suppressed information relating to

the presence of his name in the voter list of 77 Sidhi constituency.

5. The main allegation relate to the corrupt practices of the Respondent as he had exceeded the limits of electoral expenditure. According to the Petitioner, every candidate had to maintain a separate and correct account of all the expenditures incurred by the candidate in the course of the election, especially the period between his nomination and the date of declaration of the results. The maximum limit of expenditure has been prescribed. In the present case, it is undisputed that the expenditure limit fixed by the election commission was sixteen lakh rupees. It is alleged that the Respondent and his agent have furnished wrong information relating to the expenses in respect of printing materials like flags, posters etc. The specifics of the alleged inaccurate information are given in paragraph 20 of the election petition.
6. According to the Petitioner, in the election campaign of the Respondent, three meetings were held out of which two were village Pahadi on 16/11/2013 and one at Mayapur on 18/11/2013 and one at the District Head Quarter on 19/11/2013. Petitioner alleges that as per his information, there was no permission for the meeting on 16/11/2013 and that the same was attended by the eminent congress leader Ajay Singh who arrived in a helicopter and addressed the meeting in which the dais was also shared by the Respondent and that he did not disclose the half the expenditure incurred on hiring the helicopter as the Respondent also had shared the dais with Ajay Singh. Likewise, the Petitioner has alleged

in paragraph 22 of the petition that on 18/11/2013, a campaign meeting was held at Mayapur in which the star campaigner, Mr. Jyotiraditya Scindia, arrived by helicopter and canvassed for votes on behalf of the Respondent and shared the Diaz with the Respondent. It is further alleged that the meeting held at the district headquarters was addressed by Mr Rahul Gandhi of the Congress party who also canvassed for votes in favour of the Respondent who shared the daiz with Rahul Gandhi. It is the case of the Petitioner that the responded did not disclose the expenditure incurred in hiring the helicopters.

7. The Petitioner also alleged that the Respondent did not give the correct details relating to the expenditure incurred in printing material and also public meetings rallies in the election campaign. It is further alleged that the respondent had committed corrupt practices in the election campaign and furnished wrong details of account which was in excess of limit prescribed by the Election Commission of India. It was also alleged that they Respondent did not furnish correct information about the vehicles taken on and the allowance paid to the driver. The details of the expenses of vehicle bearing number MP-66-C-0480 and MP-17 C- 2403 and MP-66-C-097(sic) have not been furnished by the Respondent. The payment of ₹33,698.40 and ₹62,627 made by the respondent to Chaturvedi and Chandel petrol filling centres was allegedly not disclosed by him as election expenditure.

AVERMENTS IN THE WRITTEN STATEMENT

8. As regards the allegation of concealment of necessary facts by the respondent is concerned, the specifics of which are that there is no declaration to the effect of the properties owned by the wife of the respondent. To this, the respondent has in paragraph No.2 of his written statement, which is in response to para 4 of the election petition, stated that the land is owned by the Vanshpati Smriti Shiksha Samiti, which is a body corporate, and an educational society registered under the provisions of the MP Societies Registrikaran Adhiniyam 1973. It is further stated therein that the body corporate is entitled to acquire, own and possess movable and immovable assets in its name. The respondent has further averred that his wife Mrs. Preeti Patel is one of the office bearers of the society and therefore is authorised to represent the society in her capacity as office bearer. Thus, the respondent states that the mention of the name of his wife Mrs. Preeti Patel in any property recorded as the office bearer of the society does not mean that the property is owned by his wife. Therefore, the respondent has rejected the allegation of the election petitioner that he has deliberately concealed material facts relating to the properties owned by his wife under the name of Vanshpati Smriti Shiksha Samiti.
9. As regards the allegation made by the petitioner in paragraph 6 that the respondent made an expenditure in excess of the expenses of ₹8,80,027.60 as declared by him in his statement of election expenditure the respondent averred that it is incorrect and has denied the same. The respondent has

also denied the allegations in a detailed manner with regard to the averments made in paragraph Nos. 6A, 6B, 6C, 6D, 6E, 6F and 6G. The contents of the rebuttal in the written statement relating to these paragraphs are not being reproduced in detail as the same does not deal with corrupt practices. The response of the respondent with regard to the averments events and allegations made in paragraph 7 of the petition, have been of complete denial. The same also are not being reproduced extensively herein as they do not relate to corrupt practices.

10. As regards the allegations levelled against the respondent in paragraph No.8 of the election petition, which relates to an expenditure in excess of the amount accounted for by the respondent and which can come under the definition of corrupt practice, the respondent in his written statement has completely denied the same.

11. As regards the allegations levelled by the election petitioner in paragraph 9 of the election petition pertaining to the alleged disqualification or ineligibility of the respondent on account of mention of his name in the voter list of 2 constituencies the respondent has denied the same but however the same is not being reproduced extensively as the same does not pertain to a corrupt practice.

12. Paragraph 10 of the election petition once again pertains to the respondent not having given the correct and proper election expenditure in the statement submitted by him, has

been denied by the respondent in his response to the said paragraph in the election petition.

13. This Court framed the following issues: (1) whether the Respondent has committed corrupt practice by exceeding the prescribed limit of expenditure? (2) Whether the Respondent has not disclosed immovable property of his wife namely Smt. Preeti Patel? (3) Whether the name of the Respondent found in two constituencies, does not debar or render him ineligible to contest the election? (4) Whether the wife of the Respondent namely Preeti Patel was holding immovable property as the office bearer of an educational society registered under the M.P. Societies Registrikaran Adhiniyam 1973? Effect? (5) Whether the Respondent has paid a huge amount to his campaigners namely Yogeshwar Prasad, Kamal Singh Parihar, Mohammad Asin, Ram Pratap, Ramesh Pual, Ram Pratap Kewat, Lallu and Mohd Abdul? If yes, whether he has not included the aforesaid amount in his expenditure during elections? (6) Relief and Costs? 7(a) Whether the rectification of defects made in the election petition would relate back to the date of Physical presentation in the registry of this Court? 7(b) If no, whether this election petition is barred by law of limitation?.

14. As the only issue that survives for consideration are the allegations against the Respondent relating to Corrupt Practices and issues formulated by the Court pertaining to corrupt practices being issue No. 1, 2, 4 and 5 only remain relevant.

15. As regards issue number one, the averments relating to the same are made in para No.6 of the petition wherein it has been alleged that the respondent has shown a total expenditure of ₹8,88,027.60 in the expenditure return submitted by him. It has also been alleged by the petitioner that the respondent has not given proper statement of the material which was provided in the election meetings and in fact incurred more expenses on the materials than what was allowed to him by the returning officer. In the same paragraph it was further alleged that the respondent held big rallies at Pahadi, Mayapur, and Sidhi in the 78 Sihaval assembly constituency in which, star campaigners were Mr Ajay Singh, Mr Scindia and Mr Rahul Gandhi who appeared as main speakers and came using helicopter which was not disclosed by the respondent in his statement of expenditure relating to these rallies. It is further alleged by the petitioner that no details of arrangements made at these rallies were disclosed nor any description of the so called arrangements have been given by the respondent on the basis of which, the petitioner has claimed an understated disclosure of expenditure by the respondent. In paragraph 7 of the petition, the petitioner alleged that the respondent had printed election stationery on 14/11/2013 and a diminish rate of printing charges was shown in the expenditure statement. According to the petitioner the respondent is alleged to have incurred an expenditure of Rs. 1,31,000 /-, Rs. 75,000/-, Rs. 13,200/- and Rs. 1,05,500/- vide bills which

were annexure P/6 to the petition and that the same was not accounted for in the expenditure return.

16. The petitioner has examined himself as P.W.1 and has stated in paragraph 6 that for the assembly election the candidate is entitled to spend a maximum of Rs.16,00,000/- and that the respondent spent more than Rs.16,00,000/- in his election campaign. He further states that as per his information, the respondent has not given a complete information of expenditure to the election Commission and has restricted the disclosure of expenditure to Rs. 8,00,000/- . P.W.1 further says that according to his information, the respondent has incurred an expenditure of more than Rs.16,00,000/- in his election campaign.
17. In paragraph 7 of his chief examination, P.W.1 has stated that during the election campaign, the respondent had held 3 election meetings at Sidhi which was attended by Mr. Ajay Singh at Pahadi, and by Mr Jyotiraditya Scindia at Sihaval. It was also stated by P.W.1 that in one of the meetings Mr Rahul Gandhi came by helicopter. P.W.1 further stated that the respondent has not incurred the said expenditure from his expenses and therefore by necessary implication has alleged that these three meetings have not been accounted for by the respondent in his return of expenditure. In para 10 of his examination in chief, P.W.1 has stated that the respondent had not disclosed the correct expenditure of printing of posters and banners and he made expenditure of more than Rs.16,00,000/-.

18. From the examination-in-chief of the petitioner/ P.W.1, it is clear that he has not given any detail of the actual expenditure incurred by the respondent nor any details of the quantity or quality of the printing material on which this expenditure, according to the petitioner, has been made. Thus, from his examination-in-chief, it appears that P.W.1 has given unsubstantiated, sweeping statements without precision.
19. In his cross-examination, P.W.1 has stated in paragraph 22 that he has filed three banners and posters along with the petition. P.W.1 has admitted that in none of the banners and posters, there is any mention of any rally. To a suggestion by the learned counsel for the respondent that P.W.1 had got these banners and posters printed himself, he has answered in the negative. He further states that he has collected all these posters from the common public to whom it was distributed. In para 26 of his cross-examination, P.W.1 has stated that he does not know as to how many posters were put in place by the respondent. It was the allegation of the petitioner that he had got this information from the owner of Vijayant Graphics but has denied that suggestion that he personally knows the owner of the said Vijayant Graphics. He further states that he had gone to two printers at Sidhi to collect information from them, out of these only Vijayant Graphics had given him information. The witness, however, has stated that it is correct to suggest that no poster can be printed by any printer without seeking approval from the candidate for whom it was being printed and the election

officer. Thus, it is clear from the statement of the petitioner who has been examined as P.W.1 that he has not made any factual statement disclosing the excess expenditure allegedly incurred by the respondent in the printing of election material. It is also pertinent to state herein that the petitioner has not examined any of the printers, to whom payment was made by the respondent. Though the petitioner has named the printer in his testimony, he has not examined any of them.

20. The respondent has examined himself in defence and has categorically stated in paragraph 8 of his testimony that he had submitted his election expenditure return as exhibit D6 in the office of the Election Officer. The said expenditure, according to the respondent, was duly scrutinised by the Election Officer. He further states that during the election, the officers of the Election Commission and the representatives of the parties had inspected and verified the expenditure made by the respondent and during such scrutiny of exhibit D6, no objection was ever raised or communicated. In paragraph 7, the respondent has further stated in his examination-in-chief that he had obtained the copy of the letter dated 13.1.2015 sent by the District Election Officer to the office of the Election Commission endorsing the expenditure returns of all candidates of Sihaval constituency which were scrutinised and accepted. The said letter has been exhibited as exhibit D7. In the detailed cross-examination, a suggestion was made to the respondent by the petitioner's counsel that the election stationery was got

printed at a lower rate than the rate prescribed by the Election Officer, which suggestion was denied by the respondent who stated categorically that rates have been shown conforming to the rates prescribed by the election office.

21. Thus, from an appreciation of the aforementioned evidence, it appears that the petitioner has failed to establish that the respondent had got election material published in a quantity that was larger than that what was mentioned in his expenditure return. The petitioner failed to establish that the respondent had made payment for the extra stationery and that the same was not mentioned in his expenditure return and thereby the respondent was guilty of committing corrupt practice. Thus, as regards the issue of having shown incorrect expenditure with regard to printing of election material is concerned, the same stands not proved by the petitioner.

22. As regards the allegation of excess expenditure made during the three election meetings held in favour of the respondent, the petitioner/P.W.1 has stated in paragraph 7 of his examination-in-chief that the respondent had organised big public meetings at three places. One was at Sidhi and the second was at Sihaval. Out of these, in one of the public meetings, Mr Ajay Singh "Rahul" had come in the public meeting which had taken place at Pahadi. In the meeting at Sihaval, Mr Scindia is stated to have attended and in another public meeting, Mr Rahul Gandhi is stated to have been present. In paragraph 8, the petitioner states that the star

campaigner of the Congress party was Mr Ajay Singh, Mr. Scindia and Mr Rahul Gandhi who had come by a helicopter.

It is further stated by the petitioner in his testimony that the father of respondent no.1 Mr. Indrajeet Patel had also come with the star campaigners and that his information relating to the same was on the basis of seeing the CD of the Election Commission, which he has filed along with the election petition. From the statements of the petitioner, it appears that the three speakers mentioned herein above were the star campaigners of the Congress party.

23. It is relevant to mention here that the three meetings were known to the Election Commission who had deputed its representatives to do the survey of the expenditure made and as a proof, had done videography of the three meetings which was recorded on a CD. That apart, the respondent had categorically stated in paragraph no.6 and 7 of his testimony that he had submitted his return of election expenditure to the election officer and the same was scrutinised and accepted without any objection. It is also relevant to mention here that the petitioner in his testimony has not given the details as to what the exact arrangements were made by the respondent for these three meetings. The statement of the petitioner before this court has been generalised and in paragraph no.9 of his examination-in-chief, he states that the three meetings were large and that the dias was filled with banners and posters. Necessary particulars were not spelt out in the testimony. During cross examination, in paragraph no.17, the petitioner admitted that he was not present in any

of the three meetings detailed in his examination-in-chief. He further states in his testimony that he has not disclosed the names of those persons who had given him the information about these three public meetings. He also admitted in paragraph no.21 that the fact that the meetings of the three campaigners were big and all over banners and posters were affixed was within his knowledge at the time of filing the election petition and if the same is not mentioned in the election petition he cannot give any reason as to why it was omitted. During cross examination in paragraph no.22, the petitioner stated that the meeting of Rahul Gandhi was at Sidhi and that the same comes within the Sihaval legislative assembly constituency. He further admitted that it is true that Rahul Gandhi did not have any meetings in the Sihaval legislative constituency. He further admits that the posters and banners that he placed along with the election petition bears any mention of any of the three rallies and finally, he says that he has collected all the three banners from people to whom these banners were distributed.

24. In paragraph no.24 of his testimony, he submits that he has no personal information about the amount actually expended by the respondent and under what head. He further states that he has produced a copy of the respondents election expenditure and on the basis of that he says that he had actually made an expenditure in excess of the prescribed limit which was not disclosed. He further admits that he did not make any complaint in this regard to the election officer. The petitioner thereafter states in paragraph no.25 of his

testimony that it is true that the election officer has accepted the details of the election expenditure of the respondent and accepted them to be correct.

25. The petitioner examined PW-5 Khilawan Das Gupta who claims that he is a retired Revenue Inspector and was on election duty. He further states that it was under his supervision videography of the public meeting was done at Pahadi and Mayapur. In paragraph no.2 of his testimony in chief the witness states that the meeting at village Pahadi had taken place in a mini stadium and at village Mayapur the meeting had taken place at the government school Patulakhi. He further states that he was present during the meetings and that the respondent's father was seen on the dias. He further states that at Mayapur Mr.Scindia had given a speech. At Pahadi, according to this witness, on the Dias along with Rahul Singh, respondent Indrajeet Patel had given speeches. During his testimony, an objection was taken by the respondents counsel who stated that witness number no.5 has been introduced in evidence for the first time by the petitioner without there being any factual basis or pleadings to support and substantiate his personal presence at the time of the alleged meetings. The said objection has been kept reserved to be considered at the time of passing the final order. It is a cardinal principle of law that if there is no pleading in respect of a particular fact, the same cannot be taken into consideration or proved by the witness in testimony, where the fact has not been mentioned in the pleadings. Under the circumstances, the objection taken by

the respondent with regard to non-consideration of the evidence of PW-5 is sustained. There are no pleadings by the petitioner with regard to the fact stated by PW-5 in his testimony before the trial court. Under the circumstances, the fact stated before this court for the first time by PW-5 cannot be considered in the absence of pleadings revealing the same. Therefore, accepting the objections of the respondents, this court shall not consider the evidence of PW-5 Khilawan Das Gupta. Thus, from the evidence adduced by the petitioner with regard to the excessive expenditure incurred allegedly by the respondent in holding the three election rallies, the same stands not proved. *Thus, issue No.1 has not been proved beyond reasonable doubt by the Petitioner.*

26. Issue number no.2 and 4 raises the question whether the respondent has not disclosed immovable property of his wife Smt. Preeti Patel and whether the wife of the respondent was holding immovable property as an office bearer of an educational society registered under the M.P. Societies Registrickaran Adhiniyam, 1973. In this regard, Rule 4 (A) of the Conduct of Election Rules, 1961 [herein-after referred to as "the Rules of 1961") prescribes that the candidate or his proposer, as the case may be, shall at the time of delivery to the returning officer, the nomination paper under sub section (1) of section 33 of the Representation of the Peoples Act, 1951, also deliver to him a sworn affidavit by the candidate in Form-26. This is required to be given in the prescribed statutory Form and therefore, it is explicit that the

information specifically sought for is required to be given and the candidate cannot add or substitute any additional information in the affidavit that is filed. Part-A of the Form bears general details of the candidate and his family and the number in nature of the criminal case pending, if any, it also includes the details of movable and immovable assets of the candidate, his or her spouse and dependent children. The affidavit is to reveal the required details of movable and immovable assets and liabilities existing as on the date of signing and filing of the affidavit but does not include the details of assets owned or possessed in the past but not presently with the candidate.

27. It is alleged in paragraph no.5 of the petition that there has been no disclosure by the respondent with respect to the properties of the Vanshpati Smriti Shiksha Samiti of which the wife of the respondent is the Secretary. Thus, it is the case of the petitioner that there has been non-disclosure of the properties of the wife of the respondent which would be corrupt practice. It is the respondent's case that the details of the immovable property allegedly owned by the wife of the respondent on the date of filing of nomination with required particulars of survey number, house number or any other identification details was not given and that the burden of establishing the same was on the petitioner. It is also the case of the respondent that such documentary evidence pertaining to the ownership of such property by the wife of the respondent but also not produced by the petitioner and that the petitioner has not made any statement in his testimony

regarding any property that was recorded and registered in the name of the wife of the respondent. In paragraph no.3, the petitioner has stated that as per his information, land at Baidhan was recorded in the name of Vanshpati Smriti Shiksha Samiti of which the wife of the respondent is the Secretary. The petitioner, however, has failed to adduce any evidence by way of documents that though, the properties are in the name of the Vanshpati Smriti Shikshan Samiti, they actually belong to the wife of the respondent. In his cross-examination, the petitioner in paragraph no.13 stated that it is true that Smt. Preeti Patel, wife of Kamleshwar Patel, is Secretary of Vanshpati Smriti Shikshan Samiti. He goes on to say that he does not know the legal status of the said society and does not know if the society is an educational society registered under the provisions of the M.P.Societies Registrikaran Adhiniyam, 1973. Thereafter, he admits that it is correct that the society is an educational society which runs schools and colleges. He further states that he is unaware if the society is run by elected managing committee and whether the election of the said committee takes place after three years and that the members of the Executive Committee keep changing. He further professes ignorance about the nature of the society whether it is a body corporate and who has the power to acquire and possess the property on behalf of the society. He further states that he did not make any attempt to seek information as to where the society had acquired the property from. He further states that it is correct to suggest that in paragraph no.3 of his examination-

in-chief, the statement that he had made regarding property owned by the wife of the respondent was not mentioned in the affidavit is the one which is recorded in the name of the society in the revenue record. Thus, from the evidence of the Petitioner before this court, it has not been proved that on the date of filing of the affidavit along with the nomination, the property, which was allegedly not mentioned in the affidavit, was actually recorded in the name of the wife of the respondent. It is also relevant to mention here that the respondent who himself was a witness before this court has testified that he has correctly stated along with the nomination form the correct details of movable and immovable properties owned by him, his wife and family members and that he had not suppressed any information in this regard. *As the said allegation was to be proved by the petitioner beyond reasonable doubt and which the petitioner has failed to do so, the second issue also stands not proved against the respondents.*

28. The respondent in paragraph no.3 of his examination-in-chief has categorically stated that Vanshpati Smriti Shikshan Samiti is a registered education society which runs educational institutions and that his wife Smt. Preeti Patel is the Secretary of the said society. The respondent has also proved the registration certificate of the society as Exhibit-D/3 and the list of office bearers of the society is Exhibit-D/4. He is also proved the byelaws of the society as Exhibit-D/5. In his testimony before this court, the petitioner has stated that his wife is the Secretary of the said society. He has

... further stated that the lands are purchased by the society from its own financial resources, and they are recorded in the name of the society in the revenue record and the office bearers name is only mentioned as the representative through whom the documents have been executed. Thus, the respondent has been able to establish that his wife's name appears in the record as a secretary of the society and not in the capacity of an owner of the land owned by the society and therefore, issue number no.4 also stands answered in favour of the respondent and against the petitioner.

29. Issue number 5 is whether the respondent had paid a huge amount to his campaigners namely Yogeshwar Prasad, Kamal Singh Parihar, Mohammad Asim, Ram Pratap, Ramesh Paul, Ram Pratap Kewat, Lallu and Mohammad Abdul.
30. In this regard, the petitioner has examined himself as a witness and has stated in paragraph 10 of his examination-in-chief that the respondent no.1 Kamaleshwar Patel had given money to Kamal Singh Parihar, Yogeshwar Dwivedi, Ram Pratap Nai and number of other persons for his election campaigning. Besides these sweeping statements, no specific facts has been mentioned by the petitioner with regard to the basis of the information whether the same was as per his personal knowledge or whether it was on the basis of information received by him. In paragraph 22, while being cross-examined, the petitioner stated that the aforementioned people came and informed the petitioner that they were paid money for election campaigning when they

were sitting at Dabbu hotel of Davesar. He says he does not remember the date when the information was given. In paragraph 23 of the cross-examination, this witness states that he does not remember the name of Ram Pratap Nai. He also says that he does not remember the name of Kamal Singh Parihar and that he is unaware of where Kamal Singh parihar hails from.

31. Kamal Singh Parihar has been examined as P.W.2 and stated that in the last election he had worked for the Congress Party and worked in the Sihaval legislative constituency. He further says that he is not associated with any party and that he is a social worker. He further states that the respondent had requested the witness to campaign for him upon which P.W.2 told the respondent that he does not have a motorcycle and therefore is unable to campaign for him. Two or three days later, the witness says that the respondent had given this witness ₹80,000 to purchase a motorcycle. He further says that he purchased the motorcycle with the money given to him by the respondent but did not campaign for him. After the election, the witness says that he had given this information to Swaroop Narayan Dwivedi after the declaration of the Devsar election. He further states that the petitioner informed him that the respondent ought not to have won and there was malpractice indulged in by him for which he (Swaroop Narain Dwivedi) should be filing a petition. Upon this, the witness assured the petitioner that he would give evidence in his favour, and it is only there after

that he got the affidavit Exhibit- P/1 prepared and given to the petitioner.

32. Upon being cross-examined P.W.2 says that Vishwamitra Pathak had also contested the election in 2013 from the Bharatiya Janata Party but he does not remember whether Vishwamitra Pathak had given his (PW2's) name in the said election as his (Vishwamitra Pathak's) election agent. He further says that he does not remember if he had given his photograph to Vishwamitra Pathak or had signed any documents as is representative. Upon being cross-examined, Kamal Singh Parihar has stated in paragraph 4 of his cross-examination that the receipt and bill of the motorcycle which was purchased was with him and that he had purchased it in Devsar from one Gupta agency. He further says that he does not remember the date of purchase. On being asked about the receipt and bill of the motorcycle, this witness states that after the declaration of result, the respondent put pressure on him and, therefore he signed the sale document sent by the respondent and handed over the motorcycle and that he neither has the bill nor any other document pertaining to the motorcycle. In paragraph 6 of his cross-examination P.W.2 states that he knows that taking bribe in an election is an offence. He further states that he did not canvass for the respondent because he was bribed but because the respondent approached him and therefore he acceded to his request. He further states that he did not canvass for the respondent because he liked the respondent, but he only canvassed for him because the respondent had

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requested him to canvass for him. He further states that he did not experience any happiness upon the respondent winning the election and that later he came to know that the respondent had provided motorcycles to thousands like him and that is why he did not like the respondent winning the election. He further states that he does not recall whether a list of those thousands such people who were provided motorcycles by the respondent was given to him by the petitioner or not. He further states that this was the general discussion that was going on. Significantly in paragraph 7 this witness states that he does not know the village from where the petitioner hails. Immediately thereafter he says that the petitioner is from Jhakarwal village. He further states that at the hotel he told the petitioner that he has wrongly been defeated by the respondent and urged the petitioner to file a petition and that this witness would help him. From the above, it appears that P.W.2 was the person who suggested to the petitioner to file the petition and that he would assist him. His contention that he did not canvass for the respondent because he liked him and only canvassed because he was requested so by the respondent does not inspire confidence. This witness further states that he experienced no happiness upon the victory of the respondent. This connected with the fact that the witness himself states that he was the one who influenced the petitioner to file the election petition goes to reveal that there was great proximity between P.W.2 and the petitioner that he may have been inimically inclined towards the respondent and therefore has

testified against him. However, as the evidence adduced by P.W.2 is purely oral in nature with no documentary evidence even relating to the alleged motorcycle that was purchased by the witness upon the money given by the respondent is unbelievable as he was not able to produce any documents pertaining to the said purchase. Under the circumstances, the statement of P.W.2 cannot be relied upon to come to a finding of fact that he was influenced in a dishonest manner by the respondent.

33. P.W.3 is Ram Pratap Nai. In his examination-in-chief he says that he was given ₹1,00,000 by the respondent before the elections for the purpose of canvassing for him and that he canvassed for the respondent and with the said money he distributed food and drink to the people in the constituency. Further says that after the voting process was over he informed the petitioner that he was bribed by the respondent and gave an affidavit in his favour. In cross-examination this witness has stated that he met the petitioner per chance at the mechanics shop where he was getting his motorcycle repaired and where also the petitioner had come. He further submits that it was there that he informed the petitioner that he was given a lakh of rupees by the respondent for the purpose of canvassing. He further says that it was on the same day that he executed the affidavit and gave the same to the petitioner. The statement of this witness is unbelievable. He has in a very nonchalant manner admitted having taken bribe money in order to influence voters on behalf of the respondent. But for his oral statement and the affidavit

disclosing the same there is no evidence produced by this witness to show or to impress upon the Court that what he has stated under oath is the truth. Under the circumstances, the statement of this witness is unreliable

34. Similar is the statement of P.W.4 who says that he took money from the respondent and canvassed for him, and similar to P.W.3 this witness has also stated that he was given rupees one lakh by the respondent with which he canvassed in securing the votes of Muslims and tribals in his village. But for the bald statement, there is no other evidence given by the witness. The statement of these witnesses who are alleged that they have been bribed by the respondent are not worthy of placing any reliance upon as they have not been corroborated. It would have been another story if any of the persons who were won over by these witnesses to have voted in favour of the respondent had also appeared before this court and testified to that effect giving particulars of date and time, then the statement of these witnesses may have been reliable. *Under the circumstances, the statement of these witnesses are held to be unreliable by this Court and the allegations and the issue number 5 framed there upon with regard to whether the respondent had bribed these witnesses in order to secure their cooperation in canvassing for votes, does not stand proved and is rejected.*

35. Thus, in view of what has been held by this Court hereinabove and the evidence of the witnesses which has been appreciated, this Court holds that the petitioner has been unable to prove any of the issues relating to corrupt practices which are Issue Nos.1, 2, 4 and 5 against the respondent and therefore, the election petition fails and is dismissed.

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