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मध्यप्रदेश राजपत्र

(असाधारण)

प्राधिकार से प्रकाशित

क्रमांक 135]

भोपाल, मंगलवार, दिनांक 25 अप्रैल 2023—वैशाख 5, शक 1945

विधि और विधायी (निर्वाचन) कार्य विभाग

भोपाल, दिनांक 25 अप्रैल 2023

फा. क्र. EP.41,39,40,32,46,47,34,33,38,45—2019—चार—32.— माननीय उच्च न्यायालय द्वारा निम्नांकित निर्वाचन याचिकाओं के संबंध में पारित निर्णय बाबत भारत निर्वाचन आयोग की निम्नलिखित अधिसूचनाएं सर्वसाधारण की जानकारी हेतु प्रकाशित की जाती है :-

क्र. (1)	निर्वाचन याचिका क्र. (2)	आयोग की अधिसूचना क्र. (3)	दिनांक (4)
1.	41 / 2019	82 / म.प्र.—लो.स. / (41 / 2019) 2023	27—3—2023
2.	39 / 2019	82 / म.प्र.—लो.स. / (39 / 2019) 2023	27—3—2023
3.	40 / 2019	82 / म.प्र.—लो.स. / (40 / 2019) 2023	27—3—2023
4.	32 / 2019	82 / म.प्र.—लो.स. / (32 / 2019) 2023	27—3—2023
5.	46 / 2019	82 / म.प्र.—लो.स. / (46 / 2019) 2023	27—3—2023
6.	47 / 2019	82 / म.प्र.—लो.स. / (47 / 2019) 2023	27—3—2023
7.	34 / 2019	82 / म.प्र.—लो.स. / (34 / 2019) 2023	27—3—2023
8.	33 / 2019	82 / म.प्र.—लो.स. / (33 / 2019) 2023	27—3—2023
9.	38 / 2019	82 / म.प्र.—लो.स. / (38 / 2019) 2023	27—3—2023
10.	45 / 2019	82 / म.प्र.—लो.स. / (45 / 2019) 2023	27—3—2023

राजेश कुमार कौल, सचिव.

भारत निर्वाचन आयोग
निर्वाचन सदन, अशोक रोड, नई दिल्ली-110 001

नई दिल्ली, तारीख 27 मार्च 2023-6 चैत्र, 1945 (शक)

अधिसूचना

सं.- 82/म.प.-लोक सभा/(41/2019)/2023 - लोक प्रतिनिधित्व अधिनियम, 1951 (1951 का 43) की धारा 106 के अनुसरण में, भारत निर्वाचन आयोग, 2019 की निर्वाचन याचिका सं. 41 में मध्य प्रदेश उच्च न्यायालय के दिनांक 27.09.2022 के निर्णय/आदेश को एतद्वारा प्रकाशित करता है (श्री पंकज संघवी विरुद्ध श्री शंकर लालवानी)

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

ELECTION COMMISSION OF INDIA
Nirvachan Sadan, Ashoka Road, New Delhi-110 001
New Delhi, Dated 27th March, 2023 – 6 Chaitra, 1945 (Saka)

NOTIFICATION

No. 82/MP-HP/(41/2019)/2023 - In pursuance of Section 106 of the representation of the People Act, 1951 (43 of 1951), the Election Commission hereby publishes the Judgment order dated 27.09.2022 of the High Court of Madhya Pradesh in the Election Petition No. 41 of 2019 (Sh. Pankaj Sanghvi Vs. Sh. Shankar Lalwani).

REGISTERED AD. TOP PRIORITY
HIGH COURT OF MADHYA PRADESH
BENCH AT INDORE

Endt. No. ../ Election Pet. No. 41/2019 Indore, Dt. 29/09/2022

Process ID No. 162365 to 162375.

In Compliance of Hon'ble Court order dt. 27/09/2022 passed in Election Petition No. 41/2019 (Pankaj Sanghvi Vs. Shankar Lalwani) copies of Hon'ble Court's order dated 27/09/2022 is forwarded to :-

1. The Election Commission of India, New Delhi.
2. The Speaker, Lok Sabha, New Delhi
3. The Speaker, Madhya Pradesh State Legislative Assembly, Bhopal (M.P.)
4. The Chief Election Officer, Bhopal (M.P.)
5. The Returning Officer, Parliamentary Constituency No. 26, Indore, District Indore (M.P.)
6. The District Election Officer/ Collector Indore (M.P.)
7. The Chief Secretary Govt. of M.P., Bhopal (M.P.)
8. The Principal Registrar (Judl.) High Court of M.P., Jabalpur (M.P.)
9. The Principal Registrar, High Court of M.P. Bench at Gwalior (M.P.)
10. The Secretary, High Court Bar Association, High Court Premises, Indore (M.P.)
11. Editor ILR (Supreme Court Section) High Court of M.P. Bench at Indore (M.P.)

For information and necessary action in connection with Election of Parliamentary Constituency No. 26, Indore, District Indore (M.P.)



DEUPTY REGISTRAR (M)

IN THE HIGH COURT OF MADHYA PRADESH

AT INDORE

BEFORE

HON'BLE SHRI JUSTICE SUBODH ABHYANKAR

ELECTION PETITION No. 41 of 2019

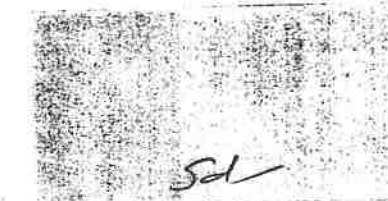
PANKAJ SANGHVI S/O JAYANTILAL SANGHVI

vs.

SHANKAR LALWANI S/O JAMNADAS LALWANI

Reserved for order : 13.07.2022

Post for : 27.09.2022



(Subodh Abhyankar)

JUDGE

IN THE HIGH COURT OF MADHYA PRADESH
AT INDORE

BEFORE

HON'BLE SHRI JUSTICE SUBODH ABHYANKAR

ELECTION PETITION No. 41 of 2019

Between:-

**PANKAJ SANGHVI S/O JAYANTILAL
SANGHVI, AGED ABOUT 58 YEARS, 42/2,
VALIABH NAGAR, INDORE (MADHYA
PRADESH)**

.....PETITIONER

(BY SHRI ABHINAV DHANODKAR, ADVOCATE)

AND

**SHANKAR LALWANI S/O JAMNADAS
LALWANI, AGED ABOUT 57 YEARS, 3,
SAKET MANISHIPURI, INDORE (MADHYA
PRADESH)**

.....RESPONDENT

(BY SHRI HARSHWARDHAN SHARMA, ADVOCATE)

Reserved for order on : 13.07.2022

Passed on : 27.09.2022

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

ORDER

01. Heard on I.A.No.9524/2019, which is an application filed
by the respondent Shankar Lalwani under Order 7 Rule 11 of the

C.P.C. read with Section 100 (2) Representation of People's Act, 1951 (hereinafter referred as the Act of 1951) for dismissal of the Election Petition.

02. The aforesaid application has been filed by the respondent alleging that the Election Petition is liable to be dismissed as it has been filed beyond the period of 45 days as prescribed under Section 81 of the Act of 1951. It is submitted that the result of the Parliamentary election of 2019 were declared on 23.5.2019; whereas the election petition was presented before this Court on 8.7.2019, which is on 47th day. It is also submitted that there is non-compliance of mandatory provisions of Section 83 (1) (c) of the Act of 1951, as proper affidavit has not been filed in support of the Election Petition and in fact two affidavits have been filed which is not the requirement of the law and thus, on this account also, the petition is liable to be dismissed.

03. It is also alleged that there is non-compliance of mandatory provisions of Section 81(3) of the Act of 1951, as the identical copy of the petition has not been supplied to the respondent as the copy of the petition is not signed by the petitioner on each page and every page and it has not been attested as the true copy of the petition.

04. Another ground is non-joinder of the necessary party. It is alleged that the petition has been filed by the petitioner only on the ground of Section 100(1)(d)(iv) of the Act 1951, which provides

that an Election Petition can be filed if there is non-compliance of any provisions of the Constitution or of the Act of 1951 or any Rules or order made under the said Act; whereas in the petition, the petitioner has made allegations against the Returning Officer for not following the instructions issued by the Election Commission of India for mandatory counting and matching the results of VVPATS and CUs from randomly polling stations. And other allegations have also been levelled against the Returning Officer. In such circumstances, the Returning Officer is necessary and proper party for disposal of this petition and in his absence the petition deserves to be dismissed.

05. The respondent has also contended that no cause of action has accrued to the petitioner to file this election petition as the petition itself is vague, as the total margin of votes with which the respondent has won the election are 547754 votes and there is no pleadings in this regard as to how the alleged non-compliance of the Election Commission's order could have materially affected the elections specially when the petitioner has alleged deliberate negligence against the Returning Officer without impleading him as a party. Thus, it is submitted that the election petition being without substance is liable to be dismissed at this stage only as the trial of the Election Petition before this Court would only lead to wastage valuable time of this Court.

06. Reply to the aforesaid application has been filed by the

election petitioner-Pankaj Sanghvi, rebutting the grounds raised and the allegations levelled in the aforesaid application.

07. So far as the issue of delay in filing the election petition is concerned, Shri Abhinav Dhanodkar, learned counsel for the petitioner has drawn the attention of this Court to the fact that the 45 days from the date of declaration of election would be on 08.07.2019; whereas the petition has been filed on 09.7.2019 as on 08.7.2019, there was Sunday and the petition was filed on the next working day i.e. on 09.7.2019, the Monday, thus, it is submitted that the petition was well within limitation.

08. In respect of the other grounds raised by the respondent are concerned, it is submitted that petitioner has pleaded all the relevant facts in the election petition in accordance with law and the affidavits filed are also duly signed and properly verified in accordance with the Act of 1951 and the signed copies of the election petition have been sent along with the process fee and thus, no case for interference is made out.

09. Heard the counsel for the parties and also perused the record.

10. So far as the objection raised by the respondent that the petition has been filed after the prescribed period of limitation of 45 days is concerned, it is found that it has been filed within 45 days from the date of election, for the reasons that the 45 days from the date of presentation of the election petition would be on

8.7.2019 as the election results were declared on 23.5.2019; whereas the petitioner has been filed on 9.7.2019 and since on 8.7.2019 there was Sunday, the petition has been filed on the next working day i.e., on Monday falling on 09.7.2019. Thus it is held that the petition has been filed within limitation.

11. Regarding non-joinder of necessary party as the contention of the respondent is that the petitioner has not made the returning officer as a party, this Court is of the opinion that the Returning Officer is not a necessary party although he can be a witness. Thus, the aforesaid ground is not available to the respondent.

12. So far as objections regarding accrual of the cause of action and the lack of pleadings as to how the election of the returned candidate would be materially affected is concerned, wherein it is alleged that the petitioner has neither pleaded the violation of any law nor any documentary proof has been attached to show the violation of any of the provision falling within the ambit of Section 100(1)(d)(iv) of the People's Act, for this purpose, it is necessary to re-produce the averments made in the election petition. The relevant extracts of the same are reproduced as under:-

“15. That, Rule 56-D of the Rules was introduced by way of an amendment w.e.f. 14.08.2013 i.e. pursuant to introduction of the system of VVPAT, and the same reads as follows:

“56-D. Scrutiny of paper trail. -

(1) Where printer for paper trail is used, after the entries made in the result sheet are announced, any candidate, or in his absence, his election agent or any of his counting

agents may apply in writing to the returning officer to count the printed paper slips in the drop box of the printer in respect of any polling, stating or polling stations.

(2) On such application being made, the returning officer shall, subject to such general or special guidelines, as may be issued by the Election Commission, decide the matter and may allow the application in whole or in part or may reject in whole, if it appears to him to be frivolous or unreasonable.

(3) Every decision of the returning officer under sub-rule 92) shall be in writing and shall contain the reasons there for.

(4) If the returning officer decides under sub-rule (2) to allow counting of the paper slips either wholly or in part or parts, he shall-

(a) do the counting in the manner as may be directed by the Election Commission;

(b) if there is discrepancy between the votes displayed on the control unit and the counting of the paper slips, amend the result sheet in the Form 20 as per the paper slips count;

(c) announce the amendments so made by him; and

(d) complete and sign the result sheet."

16. That, the Commission had issued instruction/order dated 13.10.2017 for verification of VVPAT paper slips-Pilot Testing. Such instructions required mandatory verification of VVPAT paper slips randomly selected 01 (on G) polling station per Assembly Constituency on a 'pilot' basis. This mandatory verification of VVPAT of 01 (one) polling station (randomly selected) will be in addition to the provision of Rule 56-D of the Rules. The relevant portion of such instruction/order dated 13.10.2017 is quoted hereunder:

" For this pilot verification of VVPAT paper slips of randomly, selected 01 (one) polling station per Assembly Constituency, the following procedure shall be followed:

1. The verification of VVPAT paper slips

of randomly selected 01 (one) polling station for each Assembly Constituency shall be taken after the completion of the last round of counting of votes recorded in the EVMs.

2. The random selection of 01 (one) polling station per Assembly Constituency shall be done by Draw of lots, by the Returning Officer concerned, in the presence of candidates/their agents and the General Observer appointed by the Commission for that Assembly Constituency.

3. The draw of lots must be conducted immediately after the completion of the last round counting of votes recorded in the EVMs (Control Units) in the designated Counting Hall for the particular Assembly Constituency.

4. A written intimation regarding the conduct of draw of lots for the random selection of 01 (one) polling station for verification of VVPAT Slips shall be given by the Returning Officer to the Candidates/their election agents well in advance.

5. The following procedure shall be followed for the conduct of draw of lots:-

a. White colour paper cards of postcard size shall be used for conducting the draw of lots.

b. Total number of such paper cards should be equal to total number of polling stations in the Assembly Constituency.

c. The paper cards shall have pre-printed Assembly Constituency number, AC name and date of polling on the top, and the polling station number in the centre. Each digit of the polling station number shall be at least 1" X 1" (1 inch by 1 inch) size and printed in black ink.

d. The paper cards to be used for draw of lots should be four-folded in such a way that polling station number is not visible.

e. Each paper card shall be shown to the candidates/their agents before folding and dropping in the container.

f. The paper cards shall be kept in the big container and must be shaken before picking up 01 (one) slip by the Returning Officer.

A copy of aforesaid instruction/order dated 13.10.2017 which has been downloaded from the official website of the Commission is filed herewith as Annexure-P/9.

17. That, the method and procedure of random selection of one polling station per Assembly Constituency was also provided in detail by draw of lots in the aforesaid instruction/order dated 13.10.2017, the relevant portion of which is already quoted.

18. That, the verification of VVPAT paper slips in accordance with the aforesaid instructions dated 13.10.2017 was made as a general procedure applicable to all the elections, to say mandatory, in respect of one polling station per Assembly Constituency, randomly selected and, more so, as a suo moto action without requiring application from any candidate or otherwise. This process is in addition to the process stipulated under Rules 56-D of the Rules, which is done in case of a disputed, raised by way of filing application in writing by any candidate or his election agent to the Returning Officer.

19. That, the Hon'ble Supreme Court of India in Writ Petition (Civil) No. 273/2019 [N. Chandrababu Naidu &ors. Vs. Union of India & anr.] along with other connected writ petitions passed an order dated 08.04.2019 increasing number from one polling station per Assembly Constituency to five polling station per Assembly constituency for verification of VVPAT paper slips. Pursuant to the aforesaid directions of the Hon'ble Supreme Court, the Election Commission of India issued instructions dated 21.05.2019 for mandatory counting and matching result of VVPATs &

CUs from 5 (five) randomly selected polling stations in each State Legislative Assembly Constituency for auditing and testing if any EVM records votes differently vis-à-vis the slips printed by the corresponding VVPAT attached to it. Clauses 4 (a) to 4 (e) of such instructions are quoted hereunder for ready reference, which read as under:-

"4. Mandatory Verification of VVPAT Slips:

a) The Purpose of mandatory counting and matching result of VVPATs and CUs from 5 randomly selected polling stations is to audit and test if any EVM records votes differently vis-à-vis the slip printed by the corresponding VVPAT attached to it. However, there are multiple scenarios owing to human error or non-adherence to the extant instructions by the polling staff during actual polls in which the total VVPAT slip count may vary from the CU count. A few illustrative scenarios are cases where VVPAT slips are not fully removed from VVPAT after mock poll or CRC not done in CU after mock poll or other such cases of human error.

b) In case there is any mismatch between electronic candidature-wise result of Control Unit and the candidate-wise VVPAT slips manual count, recounting of the VVPAT slips of that particular VVPAT shall be conducted till the recount is tallied with the EVM count or one of the previous VVPAT slips count. However, in all such cases before taking up the recount, VVPAT slip pertaining to the candidates whose result of CU count and VVPAT count is not tallying, counting supervisor shall recheck the elections symbols of each VVPAT slip carefully of each bundle one-by-one and ensure that all bundles contain the VVPAT slip of the candidate concerned only. Recount shall be taken up, only after following the above process.

c) Even after following the above process, if the electronic count of the Control Unit and VVPAT slips manual count still do not tally, the VVPAT slip count will prevail as per Rule 56(D)(4)(b) of the Conduct of Elections

Rules, 1961 and result sheet shall be amended and final result announced accordingly.

d) Detailed report in respect of all cases of mandatory VVPAT Slip verification, as well as VVPAT slip count done under Rule 56 D shall be submitted to the Commission through the CEO immediately after the completion of the counting process in the prescribed format.

e) A thorough analysis/enquiry shall be conducted in due course in all cases where the VVPAT slip count failed to tally with the electronic result of the CU and the exact reasons, technological procedural, systematic, human error or lapses in compliance shall be ascertained and appropriate action(s) taken by the Commission.

20. That, the aforesaid instruction/order of the Commission dated 21.05.2019, which has been downloaded from the official website of the Commission is filed herewith as Annexure-P/10.

21. That, the aforesaid order/instruction also provide for deleting the data of Mock poll from the controlling unit and removal of mock-poll slips from the VVPAT paper slips from the drop box of the VVPAT and in failure to do so, the procedure has been prescribed in para 2(a) thereof and the same is quoted hereunder: -

"a) In all pre-identified cases (on poll day, during scrutiny of documents on P+1 day etc), where mock poll is either not erased from the Control Unit or VVPAT paper slip pertaining to mock poll not removed (fully or partially), the 'concerned Control Unit (s) shall be kept aside during counting of votes i.e., these polling stations will not be taken up for counting during the regular round-wise counting of the Control Units. The Table allocated to such polling stations shall be kept vacant during the relevant round of counting. The list of all pre-identified

polling stations shall be shared with the contesting candidates before the commencement of process of counting."

22. That, the Returning Officer did not follow the instructions issued by the Commission mandatory counting and matching result of VVPATs and CUs from randomly selected polling stations to audit and test if any EVM records votes consistently or differently vis-a-vis the slips printed by the corresponding VVPAT attached to it. likewise, the Mock poll from the Controlling Units (CU) was not deleted as also the mock polls slips from VVPATs were not removed and, therefore, such data had become a data of the entire election, which has materially affected the result of 26 Parliamentary Constituency, Indore

23. That, the Returning Officer did not exhibit the paper cards used for draw of lots for random selection of one polling station in each Assembly Constituency. The Officer present at the scene showed only one paper card as to how other cards would be. He did not show other paper cards or did nothing by which he could exhibit to the candidate or his election agent that such paper card corresponding to all the polling stations of the Assembly Constituency. A box full of paper cards which were pre-folded was brought into the room from somewhere and used for draw of lots and accordingly polling station was picked up for random verification. The procedure followed was in utter disregard of the aforesaid instruction/order dated 13.10.2017 of the Commission contained in Annexure-P/9.

24. That, the Election Commission of India is having power of overall superintendence, direction and control of election under Article 324 of the Constitution of India. The instructions/orders issued by the Election Commission of India thus have statutory force and are required to be mandatorily followed in

the entire election process.

25. That, the instructions/orders issued by the Election Commission of India dated 21.05.2019, contained in Annexure-P/10, were not followed by the Returning Officer, due to which the result of election of the returned candidate i.e. respondent herein, has been materially affected.

26. That, the result of the returned candidate has been materially affected as random checking of Five Polling booths in one Assembly Constituency with VVPAT was not done with Controlling Unit (CU), so as to verify that paper slip of VVPAT matches with the total number of votes recorded in CU and this amounts to non-observance of the mandatory requirement as directed by the Hon'ble Supreme Court as also the Commission. The data shifting in favour of returned candidate could not be and cannot be ruled out inasmuch as the adequate safeguard directed to be followed by Hon'ble Supreme Court as also the Commission was not given effect to in letter and spirit.

27. That, since the result of respondent is being materially affected on account of non-compliance of the instructions/ orders dated 13.10.17 and 21.05.2019 issued by the Election Commission of India, contained in Annexure P-09 and P-10 therefore, the same is liable to be declared as null and void under Section 100(1)(d)(iv) of the Act.

28. That, as per the requirement of law the petitioner has deposited security amount in the sum of Rs.2000/- vide receipt dated 18.07.2019, a copy of which is filed herewith as Annexure-P/11.

29. That, the petitioner further states that this petition is within limitation.

30. An affidavit in support of this application is filed

herewith.

PRAYER

In the facts and circumstances of the present case following reliefs has been prayed for:-

(i) That, this Hon'ble Court may kindly be pleased to call for the entire records from the office of District Election Officer in respect of 26 Lok Sabha Constituency, Indore (M.P.)

(ii) That, this Hon'ble Court may kindly be pleased to declare the election of the respondent from 26 Lok Sabha Constituency, Indore (M.P.) as null and void;

(iii) Any other relief to which this Hon'ble Court may deems fit and proper in the interest of justice may also be granted;

(iv) Cost of the petition."

13. A close scrutiny of the election petition reveals that the entire election petition has been filed with general objections only about the non compliance of the rules and guidelines issued by the Election Commission which are not at all case-centric in nature. In other words, there is no reference of any violation of guidelines issued by the Election Commission of India *regarding* any specific polling booth of the 26 Loksabha Constituency, or any specific electronic voting machine, or any specific polling officer and in the presence of any specific election agent of the petitioner before whom such irregularity or non-compliance has taken place, but what is averred in the election petition is the various rules, instructions and orders which the Returning Officer is required to follow, regarding the operation of the electronic voting machine.

This court is of the considered opinion that the election petition is drafted in such a manner that the objections raised therein can be copied and pasted in just about every other election petition, questioning the election of any other Parliamentary seat anywhere in India. In such circumstances, when the pleadings of the Election Petition being vague and lacs the material facts, its outcome appears to be a forgone conclusion.

14. Reference in this regard may be had to the judgment rendered by the Apex Court in the case of **Madiraju Venkata Ramana Raju vs. Peddireddigari Ramachandra Reddy**, reported in (2018) 14 SCC 1. The relevant extract of the said judgment reads as under:

“38. It is well settled that the election petition will have to be read as a whole and cannot be dissected sentence-wise or paragraph-wise to rule that the same does not disclose a cause of action. Cause of action embodies a bundle of facts which may be necessary for the plaintiffs to prove in order to get a relief from the Court.

The reliefs claimed by the appellant are founded on grounds inter alia ascribable to Section 100(1)(d)(i). Further relief has been claimed to declare the appellant as having been elected under Section 101 of the 1951 Act. The cause of action for filing the election petition, therefore, was perceptibly in reference to the material facts depicting that the nomination form of Respondent 1 was improperly accepted by the Returning Officer.

39. On reading the election petition as a whole, we have no hesitation in taking a view that the High Court misdirected itself in concluding that the election petition did not disclose any cause of action with or without Paras 2 and 9 to 11 of the election petition.

Indeed, the pleadings of the election petition should be precise and clear containing all the necessary details and particulars as required by law. “Material facts” would mean all the basic facts constituting the ingredients of the grounds stated in the election petition in the context of relief to declare the election to be void. It is well

established that in an election petition, whether a particular fact is material or not and as such required to be pleaded, is a question which depends on the nature of the grounds relied upon and the special circumstances of the case. Particulars, on the other hand, are the details of the case set up by the party. The distinction between "material facts" and "full particulars" has been delineated in *Mohan Rawale v. Damodar Tatyaba*. This judgment has been adverted to in the reported decision relied on by the parties. The Court noted thus: (SCC pp. 397-99, paras 10-18)

"10. We may take up the last facet first. As Chitty, J. observed, "There is some difficulty in affixing a precise meaning to"

the expression "discloses no reasonable cause of action or defence". He said: "In point of law ... every cause of action is a reasonable one." (See *Republic of Peru v. Peruvian Guano Co.*) A reasonable cause of action is said to mean a cause of action with some chances of success when only the allegations in the pleading are considered. *But so long as the claim discloses some cause of action or raises some questions fit to be decided by a Judge, the mere fact that the case is weak and not likely to succeed is no ground for striking it out. The implications of the liability of the pleadings to be struck out on the ground that it discloses no reasonable cause of action are quite often more known than clearly understood. It does introduce another special demurrer in a new shape. The failure of the pleadings to disclose a reasonable cause of action is distinct from the absence of full particulars.* The distinctions among the ideas of the "grounds" in Section 81(1); of "material facts" in Section 83(1) (a) and of "full particulars" in Section 83(1)(b) are obvious. The provisions of Section 83(1)(a) and (b) are in the familiar pattern of Order 6 Rules 2 and 4 and Order 7 Rule 1(e) of the Code of Civil Procedure. There is a distinction amongst the "grounds" in Section 81(1); the "material facts" in Section 83(1)(a) and "full particulars" in Section 83(1)(b).

11. Referring to the importance of pleadings a learned author says: 'Pleadings do not only define the issues between the parties for the final decision of the court at the trial, they manifest and exert their importance throughout the whole process of the litigation. They show on their face whether a reasonable cause of action or defence is disclosed. They provide a guide for the proper mode of trial and particularly for the trial of preliminary issues of law or fact. They demonstrate upon which party the burden of proof lies, and who has the right to open the case. They act as a measure for comparing the evidence of a party with the case which he has pleaded. They determine the range of the admissible evidence which the parties should be prepared to adduce at the trial. They delimit the relief which the court can award. ...'[See: Jacob: "*The Present Importance of Pleadings*" (1960) *Current Legal Problems*, at pp. 175-76.]

40. In *Harkirat Singh*, this Court once again reiterated thus: (SCC p. 526-28, paras 46-48)

"46. From the above provisions, it is clear that an election petition must contain a concise statement of "material facts" on which the petitioner relies. It should also contain "full particulars" of any corrupt practice that the petitioner alleges including a full statement of names of the parties alleged to have committed such corrupt practice and the date and place of commission of such practice. Such election petition shall be signed by the petitioner and verified in the manner laid down in the Code of Civil Procedure, 1908 (hereinafter referred to as "the Code") for the verification of pleadings. It should be accompanied by an affidavit in the prescribed form in support of allegation of such practice and particulars thereof.

47. All material facts, therefore, in accordance with the provisions of the Act, have to be set out in the election petition.

If the material facts are not stated in a petition, it is liable to be dismissed on that ground as the case would be covered by clause (a) of sub-section (1) of Section 83 of the Act read with clause (a) of Rule 11 of Order 7 of the Code.

48. The expression "material facts" has neither been defined in the Act nor in the Code. According to the dictionary meaning, "material" means "fundamental", "vital", "basic", "cardinal", "central", "crucial", "decisive", "essential", "pivotal", "indispensable", "elementary" or "primary". Burton's Legal Thesaurus (3rd Edn.), p. 349.] The phrase "material facts", therefore, may be said to be those facts upon which a party relies for its claim or defence. In other words, "material facts" are facts upon which the plaintiff's cause of action or the defendant's defence depends. What particulars could be said to be "material facts" would depend upon the facts of each case and no rule of universal application can be laid down. It is, however, absolutely essential that all basic and primary facts which must be proved at the trial by the party to establish the existence of a cause of action or defence are material facts and must be stated in the pleading by the party."

(emphasis supplied)

Again in paras 51 and 52, this Court observed thus: (SCC pp. 527-28)

"51. A distinction between "material facts" and "particulars", however, must not be overlooked. "Material facts" are primary or basic facts which must be pleaded by the plaintiff or by the defendant in support of the case set up by him either to prove his cause of action or defence. "Particulars", on the other hand, are details in support of material facts pleaded by the party. They amplify.

refine and embellish material facts by giving distinctive touch to the basic contours of a picture already drawn so as to make it full, more clear and more informative.

"Particulars" thus ensure conduct of fair trial and would not take the opposite party by surprise.

52. All "material facts" must be pleaded by the party in support of the case set up by him. Since the object and purpose is to enable the opposite party to know the case he has to meet with, in the absence of pleading, a party cannot be allowed to lead evidence. Failure to state even a single material fact, hence, will entail dismissal of the suit or petition. Particulars, on the other hand, are the details of the case which is in the nature of evidence a party would be leading at the time of trial."

(emphasis supplied)

15. In the aforementioned facts and circumstances of the case, taking into account the lack of pleadings regarding the material facts, this Court is of the considered view that this is a fit case to invoke the powers conferred on this Court by Order 7 Rule 11 of CPC to reject the plaint at the threshold only. Accordingly, the application I.A.No.9524/2019 is hereby allowed and the Election petition is hereby dismissed.

No costs.

Sd./-
(SUBODH ABHYANAKAR)
Judge.

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

भारत निर्वाचन आयोग
निर्वाचन सदन, अशोक रोड, नई दिल्ली-110 001

नई दिल्ली, तारीख 27 मार्च 2023-6 चैत्र, 1945 (शक)

अधिसूचना

सं.- 82/म.प.-लोक सभा/(39/2019)/2023 - लोक प्रतिनिधित्व अधिनियम, 1951 (1951 का 43) की धारा 106 के अनुसरण में, भारत निर्वाचन आयोग, 2019 की निर्वाचन याचिका सं. 39 में मध्य प्रदेश उच्च न्यायालय के दिनांक 19.09.2022 के निर्णय/आदेश को एतद्वारा प्रकाशित करता है (श्रीमती मधु भगत विरुद्ध डॉ डाल सिंह बिसेन)

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

ELECTION COMMISSION OF INDIA
Nirvachan Sadan, Ashoka Road, New Delhi-110 001
New Delhi, Dated 27th March, 2023 – 6 Chaitra, 1945 (Saka)

NOTIFICATION

No. 82/MP-HP/(39/2019)/2023 - In pursuance of Section 106 of the representation of the People Act, 1951 (43 of 1951), the Election Commission hereby publishes the Judgment order dated 19.09.2022 of the High Court of Madhya Pradesh in the Election Petition No. 39 of 2019 (Smt. Madhu Bhagat Vs. Dr. Dhal Singh Bisen).

HIGH COURT OF MADHYA PRADESH : AT MAIN SEAT JABALPUR

PROCESS ID.162483/22

BY RAD MODE

NO. Comp.No.5/EP.39/2019

JABALPUR Dt.

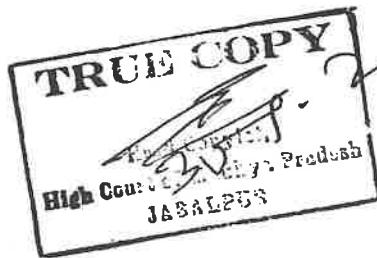
To,

The Under Secretary,
Election Commission of India,
Nirvachan Sadan, Ashoka Road,
New Delhi- 110001.

Subject : Election Petition No. 39/2019 (Madhu Bhagat Vs. Dr. Dhal Singh Bisen) filed under section 100(1)(D),(IV) of the representation of peoples Act 1951.

Sir,

As directed I am to inform you that as per Court order dated 19/09/2022, Election Petition No. 39/2019 stands dismissed for want of prosecution . Copy of order dated 19/09/2022, is enclosed herewith for information and necessary action.



Yours faithfully

[Signature]
24.9.22

Deputy Registrar M(J-III)

Encl:-

1. Five photo-stat copies of order dated 19/09/2022.
2. Two certified copies of order dated 19/09/2022.

**IN THE HIGH COURT OF JUDICATURE PRINCIPAL
SEAT AT JABALPUR**

Election Petition No. 39 /2019

Petitioner:

Madhu Bhagat,
S/o Late R.D. Bhagat,
aged about 53 years,
R/o Village & Post Charegaon-2,
Tehsil & District Balaghat (M.P.)

versus

Respondent (Judicial)

Dr. Dhal Singh Bisen,
S/o Late Shri Sevakram Bisen,
aged about 66 years,
Resident of S.P. Bungalow,
Babariya Road, C V Raman
Ward, Barapatthar, Seoni,
District Seoni (M.P.)

**ELECTION PETITION UNDER SECTION 100(1)(D)
(IV) OF THE REPRESENTATION OF PEOPLES
ACT, 1951.**

The petitioner is seeking to call in question the election of respondent as a Member of House of People (Lok Sabha), Parliamentary Constituency No.15, Balaghat, Lok Sabha Constituency (M.P.) inter-alia, on the following facts and grounds :-

1. That, the petitioner is a citizen of India and is permanently residing on the address mentioned in the cause-title.

IN THE HIGH COURT OF MADHYA PRADESH
AT JABALPUR

BEFORE

HON'BLE SMT. JUSTICE NANDITA DUBEY

ON THE 19th OF SEPTEMBER, 2022

ELECTION PETITION No. 39 of 2019

BETWEEN:-

MADHU BHAGAT S/O LATE R.D.
BHAGAT, AGED ABOUT 53 YEARS,
VILLAGE AND POST CHAREGAON-2,
TEHSIL AND DISTT. BALAGHAT
(MADHYA PRADESH)

.....PETITIONER

(NONE)

AND

DR. DIAL SINGH BISEN, S/O LATE SHRI
SEVAKRAM BISEN, AGED ABOUT 66
YEARS S.P. BUNGALOW, BABARIYA
ROAD, C.V. RAMAN WARD,
BARAPATTHAR, SEONI (MADHYA
PRADESH)

.....RESPONDENTS

(NONE)

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

ORDER

In view of the instructions pleaded by the counsel for the petitioner, SPC was issued, it has been served on the petitioner on 08.08.2022 as per the report. However, none has appeared so far on behalf of the petitioner.



It seems that the petitioner is not interested in prosecuting this petition. It is, therefore, dismissed for want of prosecution.

Sd./-
(NANDITA DUBEY)
Judge.

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

भारत निर्वाचन आयोग
निर्वाचन सदन, अशोक रोड, नई दिल्ली-110 001

नई दिल्ली, तारीख 27 मार्च 2023-6 चैत्र, 1945 (शक)

अधिसूचना

सं.- 82/म.प.-लोक सभा/(40/2019)/2023 - लोक प्रतिनिधित्व अधिनियम, 1951 (1951 का 43) की धारा 106 के अनुसरण में, भारत निर्वाचन आयोग, 2019 की निर्वाचन याचिका सं. 40 में मध्य प्रदेश उच्च न्यायालय के दिनांक 23.08.2022 के निर्णय/आदेश को एतद्वारा प्रकाशित करता है (श्री कमल सिंह मरावी विरुद्ध श्री फगगन सिंह कुलस्ते)

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

ELECTION COMMISSION OF INDIA
Nirvachan Sadan, Ashoka Road, New Delhi-110 001
New Delhi, Dated 27th March, 2023 – 6 Chaitra, 1945 (Saka)

NOTIFICATION

No. 82/MP-HP/(40/2019)/2023 - In pursuance of Section 106 of the representation of the People Act, 1951 (43 of 1951), the Election Commission hereby publishes the Judgment order dated 23.08.2022 of the High Court of Madhya Pradesh in the Election Petition No. 40 of 2019 (Sh. Kamal Singh Maravi Vs. Sh. Faggan Singh Kulaste).

HIGH COURT OF MADHYA PRADESH : AT MAIN SEAT JABALPUR

PROCESS ID.162724/22

BY RAD MODE

NO. Comp.No.5/EP.40/2019

JABALPUR Dt.

To,

The Under Secretary,
Election Commission of India,
Nirvachan Sadan, Ashoka Road,
New Delhi- 110001.

Subject : Election Petition No. 40/2019 (**Shri Kamal Singh Maravi**
Vs. Shri Faggan Singh Kulaste) filed under section 100(1)
(D),(IV) of the representation of peoples Act 1951.

Sir,

As directed I am to inform you that as per Court order dated 23/08/2022, Election Petition No.40/2019 stands dismissed as withdrawn . Copy of order dated 23/08/2022, is enclosed herewith for information and necessary action.

Yours faithfully


27.9.22

Deputy Registrar M(J-III)

Encl- 1. Five photo-stat copies of order dated 23/08/2022.

2. Two certified copies of order dated 23/08/2022.

**IN THE HIGH COURT OF JUDICATURE PRINCIPAL
SEAT AT JABALPUR**

Election Petition No. 40 /2019

Petitioner:

Shri Kamal Singh Maravi,

S/o Babulal Maravi,

Aged about 58 years,

Resident Gram Manga, Post Gajraj

Tehsil Bhugri, District,

Mandla(M.P.)

Presented by Shri Kamal Singh Maravi
is identified by Shri. Anand Kumar
Advocate at 11.30 a.m./p.m. on 21.11.19
is properly drawn up, within time and
properly stamped.
It is accompanied by requisite number of
true copies, list of documents, registered
address, P.F. and receipt of security deposit
of Rs. 2,000/-

Versus
Registrar (Judicial-II)

Respondent:

Shri Faggan Singh Kulaste,

s/o Late Shobhan Singh,

aged about 59 years

Village Jewra, Post- Deorikala

(M.P.)

**ELECTION PETITION UNDER SECTION 100(1)(d)
(iv) OF THE REPRESENTATION OF PEOPLES
ACT, 1951.**

The petitioner is seeking to call in question the election of respondent as a Member of the House of People (Lok Sabha), Parliamentary Constituency. No.14, Mandla, Lok Sabha (Scheduled Tribe) Constituency (M.P.), inter alia, on the following facts and grounds :-

1. That, the petitioner is a citizen of India and is permanently residing on the address mentioned in the cause.



IN THE HIGH COURT OF MADHYA PRADESH
AT JABALPUR

BEFORE

HON'BLE SHRI JUSTICE DINESH KUMAR PALIWAL

ON THE 23rd OF AUGUST, 2022

ELECTION PETITION No. 40 of 2019

Between:-

KAMAL SINGH MARAVI S/O BABULAL MARAVI,
AGED ABOUT 58 YEARS, R/O GRAM MANGA,
POST GAJRAJ, TEHSIL BHUGRI (MADHYA
PRADESH)

.....PETITIONER

(BY SHRI SANJAY AGRAWAL, ADVOCATE)

AND

FAGGAN SINGH KULASTE S/O SHOBHAN SINGH,
AGED ABOUT 59 YEARS, VILLAGE JEWRA, POST
DEORIKATA (MADHYA PRADESH)

.....RESPONDENT

(BY SHRI ADITYA KHANDEKAR, ADVOCATE)

This appeal coming on for admission this day the court passed the following:

ORDER

Learned counsel for the petitioner seeks permission to withdraw this election petition.

Permission is granted.

This election petition is **dismissed** as withdrawn and not pressed.

Sd./-
(DINESH KUMAR PALIWAL)
Judge.

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

भारत निर्वाचन आयोग
निर्वाचन सदन, अशोक रोड, नई दिल्ली-110 001

नई दिल्ली, तारीख 27 मार्च 2023-6 चैत्र, 1945 (शक)

अधिसूचना

सं.- 82/म.प.-लोक सभा/(32/2019)/2023 - लोक प्रतिनिधित्व अधिनियम, 1951 (1951 का 43) की धारा 106 के अनुसरण में, भारत निर्वाचन आयोग, 2019 की निर्वाचन याचिका सं. 32 में मध्य प्रदेश उच्च न्यायालय के दिनांक 25.08.2022 के निर्णय/आदेश को एतद्वारा प्रकाशित करता है (श्री दीवान शैलेंद्र सिंह विरुद्ध श्री राव उदय प्रताप सिंह)

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

ELECTION COMMISSION OF INDIA
Nirvachan Sadan, Ashoka Road, New Delhi-110 001
New Delhi, Dated 27th March, 2023 – 6 Chaitra, 1945 (Saka)

NOTIFICATION

No. 82/MP-HP/(32/2019)/2023 - In pursuance of Section 106 of the representation of the People Act, 1951 (43 of 1951), the Election Commission hereby publishes the Judgment order, dated 25.08.2022 of the High Court of Madhya Pradesh in the Election Petition No. 32 of 2019 (Sh. Diwan Shailendra Singh Vs. Sh. Rao Uday Pratap Singh).

HIGH COURT OF MADHYA PRADESH : AT MAIN SEAT JABALPUR

PROCESS ID.162386/22

BY RAD MODE

NO. Comp.No.5/EP.32/2019

JABALPUR Dt.

To,

The Under Secretary,
Election Commission of India,
Nirvachan Sadan, Ashoka Road,
New Delhi- 110001.

Subject : Election Petition No. 32/2019 (Diwan Shailendra Singh Vs. Rao Uday Pratap Singh) filed under section 100(1)(D),(IV) of the representation of peoples Act 1951.

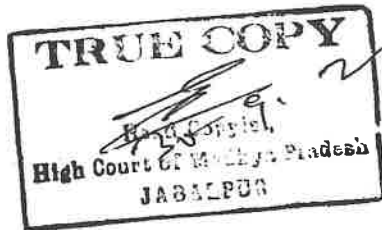
Sir,

As directed I am to inform you that as per Court order dated 25/08/2022, Election Petition No. 32/2019 stands dismissed as withdrawn. Copy of order dated 25/08/2022, is enclosed herewith for information and necessary action.

Yours faithfully

Blj
29.9.22

Deputy Registrar M(J-III)



Encl:-

1. Five photo-stat copies of order dated 25/08/2022.
2. Two certified copies of order dated 25/08/2022.

Diwan Shailendra
6/7/19
stamped by me
(Amir Ahmad)
378/119 6/7

**IN THE HIGH COURT OF JUDICATURE
PRINCIPAL SEAT AT JABALPUR**

Election Petition No. ³² /2019

Petitioner:

presented by Shri. Diwan Shailendra Singh
is identified by Shri. Amir Ahmad
locate at 3.35 a.m./p.m. on 6.7.19.
is properly drawn up, within time and
properly stamped.
is accompanied by requisite number of
true copies, list of documents, registered
address, P.F. and receipt of security deposit
Rs. 2,000/-

Diwan Shailendra Singh,
S/o Diwan Chandra Bhan Singh,
aged about 39 years,
R/o Post Rampura,
Tehsil Tendukheda,
District Narsinghpur (M.P.)

Versus
Registrar (Judicial-II)

Respondent:

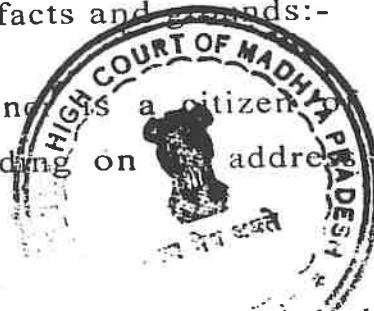
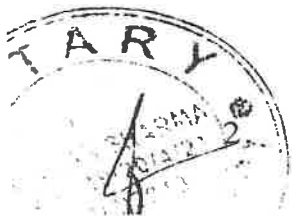
Rao Uday Pratap Singh,
S/o Shri Laxmi Narayan Singh,
aged about 52 years,
R/o village Lolri,
Tahsil Tendukheda
District Narsinghpur (M.P.).

**ELECTION PETITION UNDER SECTION
100(1)(D) (IV) OF THE
REPRESENTATION OF PEOPLES ACT, 1951.**

The petitioner is seeking to call in question the election of respondent as a Member of the House of People (Lok Sabha), Parliamentary Constituency No.17, Hoshangabad, Lok Sabha Constituency (M.P.), *inter-alia*, on the following facts and grounds:-

1. That, the petitioner is a citizen of India and is permanently residing on address mentioned in the cause-title.

That, in the State of Madhya Pradesh there are 29 Lok Sabha Parliamentary Constituencies and



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

BEFORE

HON'BLE SHRI JUSTICE SANJAY DWIVEDI

ON THE 25th OF AUGUST, 2022

ELECTION PETITION No. 32 of 2019

Between:-

**DIWAN SHAILENDRA SINGH S/O DIWAN
CHANDRA BUAN SINGH, AGED ABOUT 39
YEARS, R/O POST RAMPURA, TEHSIL
TENDUKHEDA, DISTRICT NARSINGHPUR
(MADHYA PRADESH).**

.....PETITIONER

**(BY SHRI SANJAY AGRAWAL, SENIOR ADVOCATE ASSISTED BY
SHRI SARANSH KULSHRESHTHA, FOR THE PETITIONER)**

AND

**RAO UDAY PRATAP SINGH, S/O SHRI LAXMI
NARAYAN SINGH, AGED ABOUT 52 YEARS,
R/O VILLAGE LOLRI TAHSIL TENDUKHEDA
(MADHYA PRADESH).**

.....RESPONDENTS

(BY SHRI ADITYA KHANDEKAR, ADVOCATE)

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

ORDER

Learned counsel for the petitioner seeks withdrawal of the petition.

Accordingly, this petition is **dismissed as withdrawn.**

Sd./-
(SANJAY DWIVEDI)
Judge.

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

भारत निर्वाचन आयोग
निर्वाचन सदन, अशोक रोड, नई दिल्ली-110 001

नई दिल्ली, तारीख 27 मार्च 2023-6 चैत्र, 1945 (शक)

अधिसूचना

सं.- 82/म.प.-लोक सभा/(46/2019)/2023 - लोक प्रतिनिधित्व अधिनियम, 1951 (1951 का 43) की धारा 106 के अनुसरण में, भारत निर्वाचन आयोग, 2019 की निर्वाचन याचिका सं. 46 में मध्य प्रदेश उच्च न्यायालय के दिनांक 01.08.2022 के निर्णय/आदेश को एतद्वारा प्रकाशित करता है (श्री प्रताप सिंह विरुद्ध श्री प्रह्लाद सिंह 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 27th March, 2023 – 6 Chaitra, 1945 (Saka)

NOTIFICATION

No. 82/MP-HP/(46/2019)/2023 - In pursuance of Section 106 of the representation of the People Act, 1951 (43 of 1951), the Election Commission hereby publishes the Judgment order dated 01.08.2022 of the High Court of Madhya Pradesh in the Election Petition No. 46 of 2019 (Sh. Pratap Singh Vs. Sh. Prahlad Singh Patel).

HIGH COURT OF MADHYA PRADESH : AT MAIN SEAT JABALPUR

PROCESS ID.131786/22

BY RAD MODE

NO. Comp.No.5/EP.46/2019

JABALPUR Dt.

To,

The Under Secretary,
Election Commission of India,
Nirvachan Sadan, Ashoka Road,
New Delhi- 110001.

Subject : Election Petition No. 46/2019 (Shri Pratap Singh Vs. Shri
Prahlad Singh Patel) filed under section 100(1)(D),(IV) of
the representation of peoples Act 1951.

Sir,

As directed I am to inform you that as per Court order dated
01/08/2022, Election Petition No. 46/2019 stands dismissed as
withdrawn . Copy of order dated 01/08/2022, is enclosed herewith for
information and necessary action.

Yours faithfully

Bij

29.9.22

Deputy Registrar M(J-II)

Encl:-

1. Five photo-stat copies of order dated 01/08/2022.

2. Two certified copies of order dated 01/08/2022.

TRUE COPY

S.O. 27

**IN THE HIGH COURT OF JUDICATURE PRINCIPAL
SEAT AT JABALPUR**

Election Petition No. 46 /2019

Petitioner:

**Pratap Singh,
S/o Jugraj Singh**

Date :-

Presented by Shri. Pratap Singh Aged about 59 years,
who is identified by Shri. Anu Aggarwal Resident of Village Bairagarh,
Advocate at 11.10 a.m/p.m. on 2/2/19 Post Pura, Tehsil Tendukheda,
District Damoh(M.P.)

It is properly drawn up, within time and properly stamped.

It is accompanied by requisite number of spare copies list of documents, registered address, P.F. and receipt of security deposit of Rs. 2,000/-

Respondent:

Shri Prahlad Singh Patel,
Registrar (Judicial-II)

"son of Muam Singh Patel,
aged about 59 years,
resident of G.F.23, Sainik
Colony, Sahid Gulab Singh
Ward, District Jabalpur (MP)"

**ELECTION PETITION UNDER SECTION 100(1)(D)
(IV) OF THE REPRESENTATION OF PEOPLES
ACT, 1951.**

The petitioner is seeking to call in question the election of respondent as a Member of the House of People (Lok Sabha), Parliamentary Constituency No.7, Damoh, Lok Sabha Constituency (M.P.), *inter-alia*, on the following facts and grounds :-

1. That, the petitioner is a citizen of India and is permanently residing on the address mentioned in the cause-title.

IN THE HIGH COURT OF MADHYA PRADESH
AT JABALPUR

BEFORE

HON'BLE SHRI JUSTICE SUSHRUT ARVIND DHARMADHIKARI

ON THE 1st OF AUGUST, 2022

ELECTION PETITION No. 46 of 2019

Between:-

PRATAP SINGH S/O JUGRAJ SINGH, AGED
ABOUT 59 YEARS, VILLAGE BAIRAGARH POST
PURA TEHSIL TENDUKHEDA, DISTRICT DAMOH
(MADHYA PRADESH)

.....PETITIONER

(BY SHRI SANJAY KUMAR AGRAWAL - SENIOR ADVOCATE WITH
SHRI SHEESH AGRAWAL - ADVOCATE)

AND

SHRI PRAHLAD SINGH PATEL S/O MUIAM SINGH
PATEL, AGED ABOUT 59 YEARS, R/O G.F.23,
SAINIK COLONY, SAHID GULAB SINGH WARD,
JABALPUR (MADHYA PRADESH)

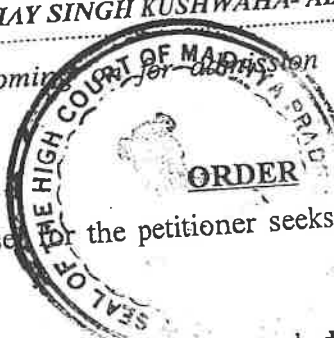
.....RESPONDENTS

(BY SHRI ABHAY SINGH KUSHWAHA- ADVOCATE)

This appeal coming for admission this day, the court passed the
following: •

Learned counsel for the petitioner seeks leave of this Court to withdraw
the present petition.

Accordingly, the instant petition stands dismissed as withdrawn.



Sd./-
(S. A. DHARMADHIKARI)
Judge.

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

भारत निर्वाचन आयोग
निर्वाचन सदन, अशोक रोड, नई दिल्ली-110 001

नई दिल्ली, तारीख 27 मार्च 2023-6 चैत्र, 1945 (शक)

अधिसूचना

सं.- 82/म.प.-लोक सभा/(47/2019)/2023 - लोक प्रतिनिधित्व अधिनियम, 1951 (1951 का 43) की धारा 106 के अनुसरण में, भारत निर्वाचन आयोग, 2019 की निर्वाचन याचिका सं. 47 में मध्य प्रदेश उच्च न्यायालय के दिनांक 02.08.2022 के निर्णय/आदेश को एतद्वारा प्रकाशित करता है (श्रीमती किरण सिंह अहिरवार विरुद्ध डॉ. वीरेंद्र कुमार)

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

ELECTION COMMISSION OF INDIA
Nirvachan Sadan, Ashoka Road, New Delhi-110 001
New Delhi, Dated 27th March, 2023 – 6 Chaitra, 1945 (Saka)

NOTIFICATION

No. 82/MP-HP/(47/2019)/2023 - In pursuance of Section 106 of the representation of the People Act, 1951 (43 of 1951), the Election Commission hereby publishes the Judgment order dated 02.08.2022 of the High Court of Madhya Pradesh in the Election Petition No. 47 of 2019 (Smt. Kiran Singh Ahirwar Vs. Dr. Virendra Kumar).

HIGH COURT OF MADHYA PRADESH : AT MAIN SEAT JABALPUR

PROCESS ID.131826/22

BY RAD MODE

NO. Comp.No.5/EP.47/2019

JABALPUR Dt.

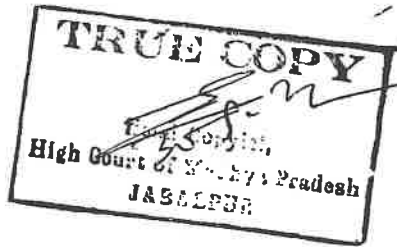
To,

The Under Secretary,
Election Commission of India,
Nirvachan Sadan, Ashoka Road,
New Delhi- 110001.

Subject : Election Petition No. 47/2019 (Smt. Kiran Singh Ahirwar
Vs. Dr. Virendra Kumar) filed under section 100(1)(D),(IV)
of the representation of peoples Act 1951

Sir,

As directed I am to inform you that as per Court order dated 02/08/2022, Election Petition No. 47/2019 stands dismissed as withdrawn . Copy of order dated 02/08/2022, is enclosed herewith for information and necessary action.



Yours faithfully

Bkj
29.4.22

Deputy Registrar M(J-II)

Encl:-

1. Five photo-stat copies of order dated 02/08/2022.
2. Two certified copies of order dated 02/08/2022.

**IN THE HIGH COURT OF JUDICATURE PRINCIPAL
SEAT AT JABALPUR**

Election Petition No. 47 /2019

*Identified
by me to
Smt. Kiran
Ahirwar
3756/10*

Petitioner: Smt. Kiran Singh Ahirwar,
w/o Shri Asharam Singh,
aged about 47 years,
Resident of 201,
Madiya Village Madiya, Tehsil
Prithvipur District- Niwari
(M.P.)
It is properly drawn up, within time and
properly stamped
It is accompanied by requisite number of
spare copies, list of documents, registered
address, P.F. and receipt of security deposit
of Rs. 2,000/-

22/04/23
Versus
Reg. for Judicial-II

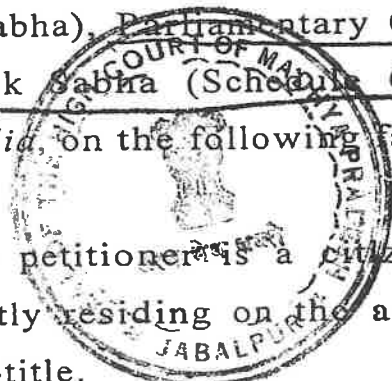
Respondent: Dr. Virendra Kumar,
S/o Amar Singh,
Aged about 65 years,
Resident of Ravindra Nath Tagore,
Marg, Ward No. 21,
District- Tikamgarh (M.P.)

**ELECTION PETITION UNDER SECTION 100(1)(d)
(iv) OF THE REPRESENTATION OF PEOPLES
ACT, 1951.**

The petitioner is seeking to call in question the election of respondent as a Member of the House of People (Lok Sabha), Parliamentary Constituency No.06, Tikamgarh, Lok Sabha (Scheduled Caste) Constituency (M.P.), *inter-alia*, on the following facts and grounds :-

1. That, the petitioner is a citizen of India and is permanently residing on the address mentioned in the cause-title.

TARA
MDAS KARMA
01/04/24



IN THE HIGH COURT OF MADHYA PRADESH
AT JABALPUR

BEFORE

HON'BLE SMT. JUSTICE ANJULI PALO

ON THE 2nd OF AUGUST, 2022

ELECTION PETITION No. 47 of 2019

Between:-

SMT. KIRAN SINGH AHIRWAR W/O SHRI ASHARAM
SINGH, AGED ABOUT 47 YEARS, 201, MADIYA,
VILLAGE MADIYA, TEHSIL PRITHVIPUR (MADHYA
PRADESH)

.....PETITIONER

(BY SHRI SANJAY AGRAWAL, SENIOR ADVOCATE WITH SHRI ANUJ
AGRAWAL, ADVOCATE)

AND

DR. VIRENDRA KUMAR S/O SHRI AMAR SINGH,
AGED ABOUT 65 YEARS, RAVINDRA NATH TAGORE
MARG, WARD NO. 21 (MADHYA PRADESH)

.....RESPONDENT

(BY SHRI VIJAYENDRA SINGH CHOUDHARY, ADVOCATE)

*This appeal coming on for evidence of petitioners this day, the court passed the
following:*

ORDER

Learned counsel for the petitioner seeks permission to withdraw this petition.

Learned counsel for the respondent has no objection.

Thus, petition is hereby dismissed as withdrawn.

Sd./-
(ANJULI PALO)
Judge.

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

भारत निर्वाचन आयोग
निर्वाचन सदन, अशोक रोड, नई दिल्ली-110 001

नई दिल्ली, तारीख 27 मार्च 2023-6 चैत्र, 1945 (शक)

अधिसूचना

सं.- 82/म.प.-लोक सभा/(34/2019)/2023 - लोक प्रतिनिधित्व अधिनियम, 1951 (1951 का 43) की धारा 106 के अनुसरण में, भारत निर्वाचन आयोग, 2019 की निर्वाचन याचिका सं. 34 में मध्य प्रदेश उच्च न्यायालय के दिनांक 15.11.2022 के निर्णय/आदेश को एतद्वारा प्रकाशित करता है (श्री देवाशीष जरारिया विरुद्ध श्रीमती संध्या राय)

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

ELECTION COMMISSION OF INDIA
Nirvachan Sadan, Ashoka Road, New Delhi-110 001
New Delhi, Dated 27th March, 2023 – 6 Chaitra, 1945 (Saka)

NOTIFICATION

No. 82/MP-HP/(34/2019)/2023 - In pursuance of Section 106 of the representation of the People Act, 1951 (43 of 1951), the Election Commission hereby publishes the Judgment order dated 15.11.2022 of the High Court of Madhya Pradesh in the Election Petition No. 34 of 2019 (Shri Devashish Jarariya Vs. Smt. Sandhya Rai).

HIGH COURT OF MADHYA PRADESH, BENCH GWALIOR

No. 16723...EP/34/2019

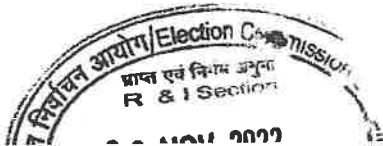
Gwalior, dated...23/11/22

Hon'ble High Court passed order on 15.11.2022 in Election Petition No. 34/2019. Copies of the order dated 15.11.2022 are being forwarded as under:-

1. The Election Commission of India, New Delhi,
2. The Speaker, Lok Sabha, New Delhi,
3. The Speaker, Legislative Assembly of Madhya Pradesh, Bhopal (M.P.),
4. The Chief Electoral Officer, Madhya Pradesh, Bhopal (M.P.),
5. The Returning Officer, Lok Sabha Constituency No. 02, Bhind (M.P.),
6. The Chief Secretary Govt. of Madhya Pradesh, Bhopal (M.P.),
7. The District Magistrate, Bhind, District- Bhind (M.P.),
8. The District Election Officer, Bhind, District- Bhind (M.P.),
9. The Principal Registrar (Judicial), High Court of M.P., Jabalpur (M.P.),
10. The Principal Registrar, High Court of M.P., Bench Indore (M.P.),
11. The Secretary, High Court Bar Association, Bench Gwalior, (M.P.).

For information and necessary action in connection with Election of Parliamentary Constituency No. 02, Bhind, (Schedule Caste) Lok Sabha constituency, District Bhind (M.P.).

Encl.:- True Copy of order dated- 15.11.2022
passed in E.P. 34/2019



Amesh
PRINCIPAL REGISTRAR
Principal Registrar
High Court of Madhya Pradesh
Bench Gwalior
22 NOV 2022

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

BEFORE

HON'BLE SHRI JUSTICE ANAND PATHAK

ELECTION PETITION No. 34 of 2019

Between:-

**DEVASHISH JARARIYA S/O PRAKASH CHANDRA
JATAV, AGED ABOUT 28 YEARS, R/O 11, HARSH
VIHAR, TRIMOORTI NAGAR, MELA GROUND,
DISTRICT GWALIOR (MADHYA PRADESH)**

.....APPLICANT

**(BY SHRI ALJO K. JOSEPH AND SHRI MANAS DUBEY
-ADVOCATES)**

AND

**SMT. SANDHYA RAI W/O SHRI SUMAN RAI,
AGED ABOUT 45 YEARS, R/O HOUSE NO. 208,
WARD NO. 13, MORENA ROAD, AMBAH, TEHSIL
AMBAH, DISTRICT MORENA (M.P.)**

.....RESPONDENT

**(BY SHRI N.K. GUPTA – SENIOR ADVOCATE WITH SHRI S.D.
SINGH AND SHRI RAVI GUPTA -ADVOCATES)**

Reserved on	:	12-09-2022
Delivered on	:	15-11-2022

ORDER

Heard on I.A.No.1827/2020.

The instant application is under Sections 82 and 86 of the

Representation of People Act, 1951 read with Order VII Rule 11 of CPC at the instance of respondent for dismissal of Election Petition.

2. Precisely stated facts, necessary for adjudication are that petitioner has preferred the instant election petition whereby he challenged the election of respondent who has been declared as returned candidate from Parliamentary Constituency No.2, Bhind (M.P.). Polling was held on 12-05-2019 and on 23-05-2019, result was declared. As submitted, petitioner secured 3,27,809 votes whereas respondent secured 5,27,694 votes. According to result status, respondent defeated the petitioner by a margin of 1,99,885 votes.
3. Election Commission of India (hereinafter referred to as “the Commission”) issued the final result in form -20.
4. Petitioner through election petition called in question the election of respondent of Member of House of Peoples (Lok Sabha) from 02 Parliamentary Constituency, Bhind under Section 100(1)(d)(iv) of the Representation of People Act, 1954 (hereinafter referred as “the Act”).
5. Main allegations of petitioner in short are that during election process, Commission and its Officers did not comply the instructions/order dated 13-10-2017 (Annexure P/10) issued by the Commission as well as

instructions/order dated 21-05-2019 (Annexure P/11) issued by the Commission.

6. As per instructions dated 13-10-2017, certain directions were issued which are reproduced for ready reference:

“For this 'pilot' verification of VVPAT paper slips of randomly selected 01 (one) polling station per Assembly Constituency, the following procedure shall be followed:

- 1. The verification of VVPAT paper slips of randomly selected 01 (one) polling station for each Assembly Constituency shall be taken up after the completion of the last round of counting of votes recorded in the EVMs.*
- 2. The random selection of 01 (one) polling station per Assembly Constituency shall be done by Draw of lots, by the Returning Officer concerned, in the presence of candidates/their agents and the General Observer appointed by the Commission for that Assembly Constituency.*
- 3. The draw of lots must be conducted immediately after the completion of the last round counting of votes recorded in the EVMs (Control Units) in the designated Counting Hall for the particular Assembly Constituency.*
- 4. A written intimation regarding the conduct of draw of lots for the random selection of 01 (one) polling*

station for verification of VVPAT Slips shall be given by the Returning Officer to the Candidates/their election agents well in advance.

5. The following procedure shall be followed for the conduct of draw of lots:

- a. White paper cards of postcard size shall be used for conducting the draw of lots.*
- b. Total number of such paper cards shall be equal to total number of polling stations in the Assembly Constituency.*
- c. The paper cards shall have pre-printed Assembly Constituency number, AC name and date of polling on the top, and the polling station number in the centre. Each digit of the polling station number shall be atleast 1"x1" (1 inch by 1 inch) size and printed in black ink.*
- d. The paper cards to be used for draw of lots should be four folded in such a way that polling station number is not visible.*
- e. Each paper card shall be shown to the candidates/their agents before folding and dropping in the container.*
- f. The paper cards shall be kept in the big container and must shaken before picking up 01 (one) slip by the Returning Officer."*

7. Similarly as per allegations, clause 4(a), 4(e) of circular dated 21-05-2019 were not followed. Said clauses are reproduced for ready reference:

“4(a) The purpose of mandatory counting and matching result of VVPATs and CUs from 5 randomly selected polling stations is to audit and test if any EVM records votes differently vis-a-vis the slips printed by the corresponding VVPAT attached to it. However, there are multiple scenarios owing to human error or non-adherence to the extant instructions by the polling staff during actual polls in which the total VVPAT Slips count may vary from the CU count. A few illustrative scenarios are cases where VVPAT slips are not fully removed from the VVPAT after mock poll or CRC not done in CU after mock poll or other such cases of human error.

4(e) A thorough analysis/enquiry shall be conducted in due course in all cases where the VVPAT slips count failed to tally with the electronic result of the CU and the exact reasons, technological, procedural, systemic, human error or lapses in compliance shall be ascertained and appropriate action(s) taken by the Commission.”

8. In brief, it is the allegation of petitioner that authorities failed to delete the data of mock poll from the controlling unit and remove mock poll

slips from the VVPAT paper slips (Voter Verifiable Paper Audit Trail) from the drop box of VVPAT and in failure to do so procedure prescribed in para 2(a) of instruction dated 21-05-2019 is violated.

9. It is further alleged that returning officer did not follow the instructions issued by the Commission for mandatory counting and matching result of VVPAT and Controlling Units (CUs) from randomly selected polling stations to audit and test if any EVM records votes differently vis-a-vis the slips printed by the corresponding VVPAT attached to it. Likewise, the mock poll from the Controlling Units was not deleted as also the mock poll from VVPATs were not removed. Therefore, such data has become the data of entire election which has materially affected the result of Parliamentary Constituency, Bhind.
10. As alleged, returning officer did not exhibit the paper cards used for drawing of lots for random selection of one polling station in each Assembly Constituency. According to him, instructions/order issued by the Commission dated 21-05-2019 were not followed by the returning officer.
11. Notice was issued and respondent caused his appearance. Respondent filed an application under Sections 82 and 86 of the Act and Order VII

Rule 11 of CPC and submits that election petition does not disclose any cause of action. According to respondent, under Section 100(1)(d)(iv) of the Act, election can be challenged only on the ground when provisions of the Constitution and provisions of the Act or Rules or Order made under said Act are not complied with. Mere perusal of the petition, it appears that there is no pleading that any provision of the Constitution of India or statutory provisions of the Act, Rules and Order have not been complied with. Petition has been filed on the ground that circular dated 13-10-2017 and order and instruction dated 21-05-2019 has not been complied with. Therefore, it does not disclose cause of action because said circulars are not part of rules or orders of Commission.

12. According to learned counsel for the respondent, bald allegations have been levelled and no specific instances have been given where non compliance of said circulars could have been alleged. It is not the case of petitioner that Commission did not adhere to rule 56 D of the Conduct of Elections Rules, 1961 (hereinafter referred to as "the Rules"). It only says that circulars were not followed.
13. Circular dated 21-05-2019 is subsequent to the election held on 12-05-2019. By that time, returning officer had no authority to proceed as per

circular dated 21-05-2019.

14. Rule 56 D of the Rules prescribes that candidate shall make an application to the returning officer to count the printed paper slips in the drop box in the printer in respect of any polling stations or station. Here, no such application was preferred. In absence of any application, no cause of action is supposed to be arisen. He relied upon the judgment of Apex Court in the matter of **Lakshmi Charan Sen Vs. A.K.M. Hasan Uzzaman**, (1985) 4 SCC 689, **Samar Singh Vs. Kedar Nath alias K.N. Singh and others**, 1987 Supp. SCC 663, **Anil Vasudev Salgaonkar Vs. Naresh Kushali Shigaonkar**, (2009) 9 SCC 310, **Ram Sukh Vs. Dinesh Agarwal**, (2009) 10 SCC 541.
15. *Per contra*, learned counsel for the petitioner filed reply to the said application and contested the averments. According to him, Commission is entitled to issue directions to the Chief Electoral Officers and such directions are binding upon the later but their violation cannot create rights and obligations unknown to the Election Law. While relying upon the judgment of **Lakshmi Charan Sen (supra)** and **Dr. Subramanian Swamy Vs. Election Commission of India**, (2013) 10 SCC 500, it is submitted by learned counsel for the petitioner that the

guidelines issued by the Commission is having binding force. Therefore, according to him, the instructions were to be followed and in the event of violation of such instructions, election petition is maintainable. He relied upon the finding given by the Coordinate Bench of this Court at Indore Bench in Election Petition No.45/2019 vide order dated 10-08-2021 and Election Petition No.38/2019 vide order dated 13-06-2022 and seeks parity. According to him, case deserves to be tried.

16. Heard learned counsel for the parties at length and perused the documents appended thereto.
17. Main ground raised in the application by the respondent is in relation to cause of action. As per respondent, there no material fact in the election petition which constitute a triable cause of action.
18. So far as scope of application and expression cause of action is concerned Hon'ble Supreme Court time and again discussed this aspect in detail. Hon'ble Apex Court in the case of **Hardwari Lal Vs. Kanwal Singh AIR 1972 SC 515** and in **Azhar Hussain Vs. Rajiv Gandhi, AIR 1986 SC 1253** categorically held that a suit (election petition) which does not furnish cause of action can be dismissed summarily. The mandate of Apex Court is categorical that all the facts which are

essential to clothe the petition with complete cause of action must be pleaded and failure to plead even a single material fact would amount to disobedience of the mandate of Section 83 (1) (a) of the Act of 1951. Election petition therefore can be and must be dismissed if it suffers from any such defect. (See: **Azhar Hussain Vs. Rajiv Gandhi AIR 1986 SC 1253**). The Apex Court in this case considered inter play between Sections 83 and 86 of Act of 1951.

- 19- Not only this in the case of **D. Ramachandran Vs. R.V. Janakiraman, (1999) 3 SCC 267**, the Apex Court opined that in all cases of preliminary objection, the test is to see whether any of the reliefs prayed for could be granted to the appellant if the averments made in the election petition are proved to be true. For the purpose of considering a preliminary objection, the averments in the petition should be assumed to be true and the Court has to find out whether those averments disclose a cause of action or a triable issue as such. (Para 8).

In (1999) 2 SCC 217 [**H.D. Revanna Vs. G. Puttaswamy Gowda and others**], the Apex Court opined that Section 86 does not refer to Section 83 and non-compliance with Section 83 does not lead to dismissal under Section 86. It was held that non-compliance with Section

ALIOR

83 may lead to dismissal of the petition if the matter falls within the scope of Order VI Rule 16 or Order VII Rule 11 CPC.

In (2009) 9 SCC 310 [Anil Vasudev Salgaonkar Vs. Naresh Kushali Shigaonkar], the Apex Court opined that election petition can be summarily dismissed if it does not furnish the cause of action in exercise of the power under the Code of Civil Procedure. Appropriate orders in exercise of the powers under the Code can be passed if the mandatory requirements enjoined by Section 83 of the RP Act to incorporate the material facts in the election petition are not complied with (Para 50).

20. It was further held that there is no definition of “material facts” either in the R.P. Act, nor in CPC. Thus, after taking stock of a plethora of judgments, the Apex Court opined that all facts necessary to formulate a complete cause of action should be termed as “material facts”. All basic and primary facts which must be proved by a party to establish the existence of cause of action or defence are material facts. “Material facts” in other words mean the entire bundle of facts which would constitute a complete cause of action (Para 58).”

21. In the case of Madiraju Venkata Ramana Raju Vs. Peddireddigari

Ramachandra Reddy and others, (2018) 14 SCC 1, Apex Court again considered the scope of Order VII Rule 11 of CPC.

- 22-** Therefore, as per Section 87 of the Act of 1951 and the mandate of Apex Court from time to time, it is clear that election petition can be dismissed at the threshold by way of application under Order VII Rule 11 of CPC if material facts lack 'Cause of Action'. Now, this Court will deal the allegations accordingly.
- 23.** In the present case, petitioner has relied upon the instruction dated 13-10-2017 (Annexure P/10) and instruction dated 21-05-2019 (Annexure P/11). So far as instruction dated 13-10-2017 is concerned first para itself indicates that it was in respect of "Pilot Testing regarding verification of VVPAT paper slips". The procedure which was prescribed for pilot verification was in respect of General Elections of State Legislative Assembly of Himachal Pradesh and Gujarat wherein mandatory following of VVPAT paper slips of randomly selected one polling station per Assembly Constituency had to be done on pilot basis. Therefore, procedure was prescribed accordingly. Perusal of initial paragraph clarifies the position:

"To,

The Chief Electoral Officers of

- 1. Gujarat, Gandhinagar*
- 2. Himachal Pradesh, Shimla.*

Subject: Verification of VVPAT paper slips Pilot Testing -regarding

Sir,

I am directed to state that the Commission has mandated that VVPATs will be used with EVMs at all polling stations in all future General/Bye -Elections to the Parliament and the State Legislative Assemblies, including the upcoming General Elections to State Legislative Assemblies of Himachal Pradesh and Gujarat at all Assembly Constituencies. Now, the Commission has directed that in the General Elections to State Legislative Assemblies of Himachal Pradesh and Gujarat mandatory verification of VVPAT paper slips of randomly selected 01 (one) polling station per Assembly Constituency shall be done on a 'pilot' basis. The above mandatory verification of VVPAT paper slips of 01 (one) polling station (randomly selected) will be in addition to the provisions of Rule 56D of the Conduct of Election Rules, 1961.

For this 'pilot' verification of VVPAT paper slips of randomly selected 01 (one) polling station per Assembly

Constituency, the following procedure shall be followed:

- 1. The verification of VVPAT paper slips of randomly selected 01 (one) polling station for each Assembly Constituency shall be taken up after the completion of the last round of counting of votes recorded in the EVMs.*
- 2. The random selection of 01 (one) polling station per Assembly Constituency shall be done by Draw of lots, by the Returning Officer concerned, in the presence of candidates/their agents and the General Observer appointed by the Commission for that Assembly Constituency.*
- 3. The draw of lots must be conducted immediately after the completion of the last round counting of votes recorded in the EVMs (Control Units) in the designated Counting Hall for the particular Assembly Constituency.*
- 4. A written intimation regarding the conduct of draw of lots for the random selection of 01 (one) polling station for verification of VVPAT Slips shall be given by the Returning Officer to the Candidates/their election agents well in advance."*

24. Perusal of said circular gives an expression that it was in respect of Assembly Elections of Himachal Pradesh and Gujarat and therefore, instructions were referred to the Chief Electoral Officers of Gujarat,

Gandhinagar and Himachal Pradesh, Shimla. Subject itself indicates regarding Pilot Testing.

25. Petitioner nowhere mentioned the fact in the election petition that these circulars were later on adopted by the Commission for Parliamentary Election, 2019 and thereafter not implemented. Pilot testing in Assembly Election cannot be borrowed automatically in Parliamentary Elections.
26. Even if it is assumed that such instructions were applicable in the Parliamentary Election, 2019 also, even then question arises regarding allegations itself. Petitioner has nowhere mentioned any breach of instruction in specific terms. Method and procedure is of random election of one polling station per Assembly Constituency (as per instructions dated 13-10-2017) and method and procedure of random selection of five polling stations in each State Legislative Constituency in Parliamentary Elections (as per instructions dated 21-05-2019) were breached or not and even if breached then in which Assembly constituency, has not been explained. Similarly, in which constituency and in which polling station this irregularity was caused has not been explained. In other words, it was duty of the petitioner that he ought to have referred non compliance in specific terms by mentioning the facts

that in particular constituency particular/specific five polling stations did not comply the instructions dated 13-10-2017 or 21-05-2019 in specific terms.

27. Keeping in view the fact that instructions dated 21-05-2019 was subsequent to the date of polling in Bhind where polling took place on 12-05-2019, therefore, it was the minimum requirement for the petitioner that he could have referred the illegality/irregularity if any, committed by the returning candidate or any presiding officer as instructed in the instructions dated 21-05-2019.
28. In absence of any specific averments, which are required in election petition, plea of respondent gains ground that no triable cause of action exists against the respondent. In para 18, 19, 22 to 23 and 26 allegations have been raised but they are omnibus in nature and reflect allegations of non compliance of circular/instruction. In what manner and to what extent said instructions were not followed with specific actual details are not mentioned in the petition, therefore, if election petition is tried further then it would be a futile exercise and harassment to the respondent.
29. Election is Festival of Democracy, therefore, festivity of returned

candidate cannot be diluted on such flimsy pretext because it may pollute democratic spirit and pious purpose for which elections are being held. Popular will of Sovereign (Read People) cannot be toppled at the drop of a hat or with wild allegations, surmises or conjectures. It should have some foundation for some corrupt practice or for non compliance of any statutory provision as referred in the Act of 1951.

30. So far as reliance of petitioner over two judgments passed by the Coordinate Bench at Indore is concerned, from the facts of Election Petition No.38/2019 and Election Petition No.45/2019, it do not appear that facts of those election petitions were so vague or omnibus which could have attracted rigours of Order VII Rule 11 of CPC. Here, in the instant case such vagueness and omnibus allegations appear and no specific imputation exist. Facts of those cases apparently move in different factual realm. Therefore, both the orders are of no help to the cause of petitioner.

31- Cumulatively, after due consideration, this Court is of the considered opinion that respondent has made out his case on the basis of grounds contained in the application by way of Order VII Rule 11 (a) of CPC and petitioner could not plead material facts in election petition to

proceed further. Lingering of election petition amounts to hanging of **The Sword of Damocles** over the respondent and he would not be able to serve the people of constituency wholeheartedly for which he is elected and obliged to perform.

- 32- *Resultantly*, application (I.A.No.1827/2020) is allowed. Consequently, the election petition preferred by the petitioner is hereby dismissed.

Sd./-
(ANAND PATHAK)
Judge.

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

भारत निर्वाचन आयोग
निर्वाचन सदन, अशोक रोड, नई दिल्ली-110 001

नई दिल्ली, तारीख 27 मार्च 2023-6 चैत्र, 1945 (शक)

अधिसूचना

सं.- 82/म.प.-लोक सभा/(33/2019)/2023 - लोक प्रतिनिधित्व अधिनियम, 1951 (1951, का 43) की धारा 106 के अनुसरण में, भारत निर्वाचन आयोग, 2019 की निर्वाचन याचिका सं. 33 में मध्य प्रदेश उच्च न्यायालय के दिनांक 06.02.2023 के निर्णय/आदेश को एतद्वारा प्रकाशित करता है (कंकर मुंजारे विरुद्ध मुख चुनाव आयुक्त एवं अन्य)

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

ELECTION COMMISSION OF INDIA
Nirvachan Sadan, Ashoka Road, New Delhi-110 001
New Delhi, Dated 27th March, 2023 – 6 Chaitra, 1945 (Saka)

NOTIFICATION

No. 82/MP-HP/(33/2019)/2023 - In pursuance of Section 106 of the representation of the People Act, 1951 (43 of 1951), the Election Commission hereby publishes the Judgment order dated 06.02.2023 of the High Court of Madhya Pradesh in the Election Petition No. 33 of 2019 (Kankar Munjare Vs. Mukha Chunav Ayukt & Oths.).

HIGH COURT OF MADHYA PRADESH : AT MAIN SEAT JABALPUR
MEMORANDUM

PROCESS ID.25895/23

BY RAD MODE

NO. Comp.No.5/EP.33/2019

JABALPUR Dt.

To,

The Under Secretary,
Election Commission of India,
Nirvachan Sadan, Ashoka Road,
New Delhi- 110001.



Subject : Election Petition No. 33/2019 (**Kanker Munjare Vs. Mukhya Chunav Ayukt & Oths.**) filed under section 80& 81 of the Representation of the peoples Act 1951.

Sir,

As directed I am to inform you that as per Court order dated 06/02/2023 , Election Petition No. 33/2019 is dismissed. Copy of order dated 06/02/2023, is enclosed herewith for information and necessary action.

Yours faithfully

B. L. J.
13.2.23
Deputy Registrar M(J-III)

Encl- 1. Five photo-stat copies of order dated 06/02/2023.

2. Two certified copies of order dated 06/02/2023.

समक्ष श्रीमान मध्य प्रदेश उच्च न्यायालय, मुख्य पीठ जबलपुर

निर्वाचन याचिका क्रमांक 33 /2019

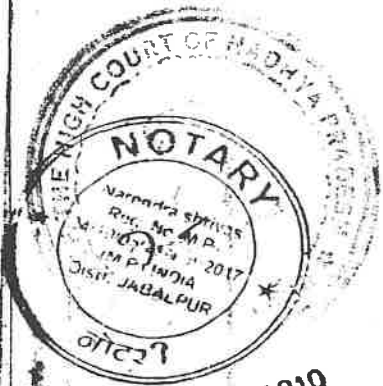
याचिकाकर्ता :

कंकर मुंजारे पिता श्री रामचंद्र मुंजारे,
व्यवसाय- कृषि, उम्र 67 वर्ष, निवासी- वार्ड
नं. 19, सर्किट हाउस रोड, बालाघाट,
तहसील व जिला बालाघाट म0प्र0।

विरुद्ध

उत्तरवादीगण

- 1 मुख्य चुनाव आयुक्त, द्वारा भारत निर्वाचन आयोग, निर्वाचन सदन, अशोका रोड, नई दिल्ली 110001 भारत।
- 2 मुख्य निर्वाचन पदाधिकारी म.प्र., निर्वाचन सदन, 17 अरेरा हिल्स, भोपाल म.प्र. 462011।
- 3 रिटनिंग अधिकारी, बालाघाट, जिला बालाघाट म0प्र0।
- 4 अली ए0एम0 खान पिता मो0 दिलावर खान, उम्र 62 साल, निवासी - शहीद वार्ड, कटंगी रोड, नूर मस्जिद के पास, सिवनी, तह0 व जिला सिवनी म0प्र0।
- 5 डॉ0 डालसिंग बिसेन पिता श्री सेवकराम बिसेन, उम्र 62 साल, निवासी- एस0पी0 बंगले के पास, बावटिया रोड, सी0बी0 हमन रोड, बालाघाट, सिवनी 480661 म0प्र0।
- 6 मधु भगत पिता श्री रामकृष्ण भगत, उम्र 49 साल, निवासी - ग्राम पोस्ट चरेगांव2, तहसील एवं जिला बालाघाट म0प्र0।
- 7 अभिषेक बिल्होरे पिता नामालूम, उम्र साल, निवासी- वार्ड नं0 11, ग्राम खैरी, तहसील खैरलांजी, जिला बालाघाट म0प्र0।
- 8 करण सिंह नागपुरे पिता श्री विशनदास नागपुरे, उम्र 38 साल, निवासी- ग्राम बिरनपुर, पोस्ट सावरी खुर्द, तहसील लांजी, जिला बालाघाट 481222 म0प्र0।
- 9 जयसिंग तेकाम पिता नामालूम, उम्र लगभग 63 साल, निवासी- ग्राम मोहगाँव, पोस्ट डोगरिया, तहसील परसवाडा, जिला बालाघाट म0प्र0।
- 10 भूकेश बंसोड पिता गजानन बंसोड, उम्र लगभग 42 साल, निवासी - वार्ड क्रमांक 9, ग्राम सावरी, तहसील खैरलांजी, जिला बालाघाट म0प्र0।
- 11 युवराज सिंह बैस पिता गेंदासिंग बैस, उम्र लगभग 49 साल, निवासी- 26/3, नेवरगावकलावन, तहसील किरनापुर, जिला बालाघाट म0प्र0।
- 12 राजन मसीह पिता श्री जी मसीह, उम्र



By Kankar Munjare
I identified by me
SAYAM YADAV
25.4.2019

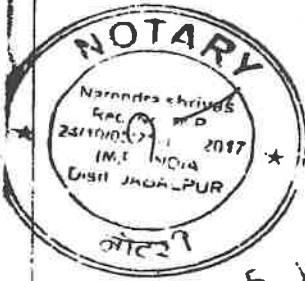
Shri: Kankar Munjare
At: Nari, Sayam Yadav
On: 25.4.2019
Up, within time and

by requisite number of documents, registered
of security deposit

लगभग 62 साल, निवासी- शांतिनगर, वार्ड नं० 14, किरनारपुर, तहसील किरनारपुर, जिला बालाघाट म०प्र०।

13. बाबू राजेन्द्र ढोके पिता श्री टीकाराम ढोके, उम्र लगभग 62 वर्ष निवासी-बुढ़ी वार्ड नं. 13 (सुभाषनगर) बालाघाट, तह. व जिला बालाघाट (म.प्र.)
14. सतीश तिवारी पिता नामालूम तिवारी, उम्र लगभग 42 वर्ष, निवासी-ग्राम पोस्ट देवरी तह. कटंगी, जिला बालाघाट (म.प्र.)
15. अधिवक्ता सत्यप्रकाश शुक्ले पिता नामालूम निवासी- वार्ड कं. 32, नर्मदा नगर बालाघाट, तह. व जिला बालाघाट (म.प्र.)
16. किशोर समरिते पिता श्री नानाजी समरिते, उम्र लगभग 56 वर्ष, निवासी- वार्ड कं.-3 लॉजी, तह. लॉजी, जिला बालाघाट (म.प्र.)
17. जी.एल.जी. तांडेकर पिता नामालूम, निवासी-ग्राम टेकाड़ी तिजू, पोस्ट शंकर पिपरिया, तह. खैरलॉजी, जिला बालाघाट (म.प्र.)
18. नारायण बंजारे पिता नामालूम, निवासी-ग्राम पोस्ट दमोह, तह. बिरसा, जिला बालाघाट (म.प्र.)
19. प्रीतम बोरकर पिता नामालूम, निवासी- ग्राम दुलापुर, पोस्ट बड़गांव, तह. लॉजी, जिला बालाघाट (म.प्र.) 481222।
20. बोधसिंह भगत पिता नामालूम, निवासी- ग्राम घुबड़गोदी, तह. खैरलॉजी, जिला बालाघाट (म.प्र.)
21. मकबूल शाह पिता नामालूम, निवासी- वार्ड नं. 12 लखनादोन, तह. लखनादोन, जिला सिवनी (म.प्र.)
22. श्रीमती मनीषा वैद्य पति नामालूम, निवासी- वार्ड नं. 12, ग्राम पंचायत गरी सूरज टाईल्स, पोस्ट गरी, तहसील बर्रा, जिला बालाघाट (म.प्र.)
23. मीर श्याम लिल्लारे लोधी पिता नामालूम, निवासी- ग्राम मोहगांव बेजू, तह. खैरलॉजी, जिला बालाघाट (म.प्र.)
24. राकेश कुमार पिता नामालूम, निवासी- ग्राम पोस्ट धपारा (गंगेरुआ) थाना अरी, तहसील बरघाट, जिला सिवनी (म.प्र.)
25. रूपलाल कुतराहे (समाज सेवक) लोधी पिता नामालूम, निवासी- वार्ड नं. 4, देवटोला, जिला बालाघाट (म.प्र.)

6/1/19
Registrar (Judicial-II)
Madhya Pradesh
Jabalpur



5 JUL 2019

निर्वाचन याचिका अंतर्गत धारा 80 एवं 81 लोक प्रतिनिधित्व अधिनियम, 1951 वास्ते बालाघाट संसदीय क्षेत्र 15 का लोकसभा निर्वाचन शून्य एवं निरस्त घोषित किये जाने बाबत

याचिकाकर्ता निम्नलिखित निवेदन करता है :-

IN THE HIGH COURT OF MADHYA PRADESH

AT JABALPUR

BEFORE

HON'BLE SHRI JUSTICE SANJAY DWIVEDI

ON THE 6th OF FEBRUARY, 2023

ELECTION PETITION NO.33/2019

BETWEEN:-

KANKAR MUNJARE, S/O SHRI RAMCHANDRA
MUNJARE, OCCUPATION AGRICULTURE, AGED
ABOUT 67 YEARS, R/O WARD NO.19, CIRCUIT
HOUSE ROAD, BALAGHAT, TAHSIL, AND
DISTRICT BALAGHAT (M.P.)

.....PETITIONERS

(BY SHRI SHYAM YADAV - ADVOCATE AND SHRI SANJAY
KUMAR MALVIYA - ADVOCATE)

- AND
1. MUKHA, CHUNAV AYUKT, THROUGH
BHARAT NIRVACHAN AYO, NIRVACHAN
SADAN, ASHOKA ROAD, NEW DELHI 110001
BHARAT.
 2. MUKHA NIRVACHAN PADADHIKARI M.P.
NIRVACHAN SADAN, 17, ARERA HILLS,
BHOPAL M.P.
 3. RETURNING ADHIKARI, BALAGHAT
DISTRICT BALAGHAT M.P.
 4. ALI A.M.KHAN, S/O MOHD. DILAWAR
KHAN, AGED 62 YEARS, R/O SHAHEED
WARD, KATNI ROAD, NEAR NOOR MASJID,
SEONI, TAHSIL AND DISTRICT SEONI M.P.
 5. DR. DHALSINGH BISEN, S/O. SHRI
SEVAKRAM BISEN, AGED 62 YEARS, R/O.
S.P. BANGLE KE PASS, BABRIYA ROAD, C.V.

RAMAN WARD, BARAPATHAR, SEONI,
480661, M.P.

6. MADHU BHAGAT S/O SHRI RAMDAYAL
BHAGAT, AGED 49 YEARS, R/O GRAM POST
CHAREGAON 2, TAHSIL AND DISTRICT
BALAGHAT M.P.
7. ABHISHEK BILHORE S/O. NOT KNOWN,
R/O. WARD NO.11, GRAM KHERI, TAHSIL
KHERLANJI, DISTRICT BALAGHAT M.P.
8. KARAN SING NAGPURE, S/O SHRI
VISANDAS NAGPURE, AGED 38 YEARS, R/O.
GRAM BIRANPUR, POST SAVRI KHURD,
TAHSIL LANJI, DISTRICT BALAGHAT M.P.
9. JAISING TEKAM, S/O. NOT KNOWN, AGED
63 YEARS, R/O. VILLAGE MOHGAON, POST
DONGRIYA, TAHSIL PARASWADA,
DISTRICT BALAGHAT M.P.
10. MUKESH BASOD S/O. MJANAN BASOD,
AGED 42 YEARS, R/O WARD NO.9, GRAM
SANVRI, TAHSIL KHERLANJI, DISTRICT
BALAGHAT M.P.
11. YUVRAJ SING BAIS, S/O GAINDASING,
AGED 49 YEARS, R/O. 26/3,
NEVRHAGAONKALAWAN, TAHSIL
KIRNAPUR, DISTRICT BALAGHAT M.P.
12. RAJAN MASEEH S/O SHRI G. MASEEH,
AGED ABOUT 62 YEARS, R/O.
SHANTINAGAR, WARD NO.14, KIRNAPUR,
TAHSIL KIRNAPUR, DISTRICT BALAGHAT
M.P.
13. BABU RAJENDRA DHOKE, S/O. SHRI
TIKARAM DHOKE, AGED 62 YEARS, R/O
BUDHI WARD NO.13, (SUBHASHNAGAR)
BALAGHAT, TAHSIL & DISTRICT
BALAGHAT M.P.
14. SATISH TIWARI, S/O NOT KNOWN, AGED 42
YEARS, R/O. GRAM POST DEVRI, TAHSIL
KATANGI, DISTRICT BALAGHAT M.P.
15. ADVOCATE SATPRAKASH SHULKE, S/O.
NOT KNOWN, R/O. WARD NO.32, NARMADA

**NAGAR, BALAGHAT, TAHSIL AND DISTRICT
BALAGHAT M.P.**

16. KISHORE SAMRITE, S/O. SHRI NANAJI SAMRITE, AGED 56 YEARS, R/O WARD NO.3, LANJI, TAHSIL LANJI, DISTRICT BALAGHAT M.P.
17. G.L.G. TANDEKAR, S/O NOT KNOWN, R/O. GRAM TEKADI TIJU, POST SHANKAR PIPRIYA, TAHSIL KHERLANJI, DISTRICT BALAGHAT M.P.
18. NARAYAN BANJARE S/O. NOT KNOWN, R/O. GRAM POST DAMOH, TAHSIL BIRSA, DISTRICT BALAGHAT M.P.
19. PREETAM BORKAR S/O NOT KNOWN, R/O. GRAM DULAPUR, POST BADGAON, TAHSIL LANJI DISTRICT BALAGHAT, M.P.
20. BODHSINGH BHAGAT S/O. NOT KNOWN, R/O. GRAM GHUBADGODI, TAHSIL KHERLANJI, DISTRICT BALAGHAT M.P.
21. MAQBOOL SHAJI, S/O NOT KNOWN, R/O. WARD NO.12, LAKHNADON, TAHSIL LAKHNADON, DISTRICT SEONI M.P.
22. SMT MANISHA BAIDYA S/O NOT KNOWN R/O. WARD NO.12, R/O. GRAM PANCHAYAT GARRA SURAJ TILES, POST GARRA, TAHSIL BARRA, DISTRICT BALAGHAT M.P.
23. MIR SHYAM LILHARE LODHI S/O NOT KNOWN, R/O GRAM MOHGAON BEJU, TAHSIL KHERLANJI, DISTRICT BALAGHAT M.P.
24. RAKESH KUMAR S/O NOT KNOWN, R/O. GRAM POST DHAPARA (GANGERUA) PS ARI, TAHSIL BARGHAT DISTRICT SEONI M.P.
25. ROOPLAL KUTRAHE (SAMAJ SEVAK) LODHI S/O. NOT KNOWN, R/O WARD NO4, DEVTOLA, DISTRICT BALAGHAT M.P.

.....RESPONDENTS

(RESPONDENT NO.5 BY SHRI GYANENDRA SINGH BAGHEL – ADVOCATE)
(NOBODY APPEARED FOR OTHER RESPONDENTS)

Reserved on: 30.01.2023

Pronounced on: 06.02.2023

This petition having been heard and reserved for orders, coming on for pronouncement this day, the Court pronounced the following:

ORDER

Invoking Sections 80 & 81 of the Representation of People Act, 1951 (in short “Act, 1951”) this election petition has been filed by the petitioner questioning the Election of Parliamentary Constituency No.15 and for declaring such election as void and it be cancelled.

2. The succinct portrayal of facts as per the petitioner is that in an election of Parliamentary Constituency conducted in the year 2019, the petitioner was one of the candidates, who participated in that election and submitted his nomination form on 09.04.2019 disclosing the fact that he is a resident of Balaghat and his name finds place in the voter-list. Similarly, other candidates have also submitted their nomination forms. In furtherance thereto, the scrutiny of nomination papers got done on 10.04.2019 and the date of withdrawal of nomination form was fixed till 12.04.2019. Further, the date of polling was scheduled as 29.04.2019 and date of counting of votes was fixed as 23.05.2019 and the date of concluding the election was 27.05.2019. The election program was declared by the Election Commission, which is made appendage to the election petition.

(i) In pursuance to the notification issued by the Government of India on 02.04.2019, the election got conducted. The election petitioner participated in the election from Balaghat Constituency and submitted

his nomination form as a candidate of Bahujan Samaj Party (BSP). His nomination papers were accepted and was granted BSP's symbol i.e. Elephant.

(ii) Respondent No.16 Kishore Samrite also submitted his nomination form as independent candidate giving incorrect information in the nomination form and also suppressing certain material information with regard to his past criminal antecedents, but even though his nomination was accepted and he was allowed to contest the election. As averred in the election petition, respondent No.16 was awarded with a punishment of five years conviction and against the judgment of criminal trial, Cr.A.No.27/2010 was filed and was pending in the High Court. Although the sentence was temporarily suspended by the High Court, but still according to the election-petitioner, respondent No.16 was not eligible to participate in the election. Astoundingly, the returning officer while ignoring the said material aspect, accepted his nomination paper and also allotted him symbol of 'Cup & Plate'. As per the election petitioner, the acceptance of nomination form of respondent No.16 by the returning officer illegally vitiates the whole election illegal and as such it deserves to be declared void.

(iii) As scheduled, on 29.04.2019 the polling was done and all the Electronic Voting Machines (EVM) used in the election were kept in strong-room inasmuch as counting was scheduled for 23.05.2019 that is after a period of 24 days. As per the petitioner, on the date of counting of votes, it was noticed that EVMs of polling booth No.100 of Lanji; booth No.9 of Paraswara Constituency Chandna; booth No.23 Silgi; booth No.28 Khalondi; booth No.65 Chudki; booth No.57 Sahjana and booth No.24 of Bhalwa, were surprisingly found 99% charged. An immediate objection with regard to astonished defect was reported to the

incharge of the booths by the representatives of the political parties saying as to how even after 24 days, EVMs can display 99% charged, but brushing aside those objections even counting was continued and the election result was also declared in which respondent No.5 secured 696102 votes; election-petitioner secured 85177 votes and respondent No.16 secured 7365 votes.

(iv) In the election petition, it is also averred that respondent No.5 did not disclose the material information that the lands comprised in khasra No.772 of Gram Pipariya Tahsil Balaghat; khasra No.306/4 of Gram Anagarh and khasra No.124/9 of Gram Jiyarat, belonged to his family members i.e. wife and sons and also did not disclose the information with regard to other immovable property. The election petition also contains that over the land comprised in khasra No.124/9 there situates a shop in which a liquor shop was being run and the cost of said shop was around Rs.6 lakh and that was one of the main source of income of respondent No.5, but in the affidavit filed along with nomination form, this fact has not been disclosed. This illegality has also been overlooked by the returning officer while accepting the form of respondent No.5 whereas this material suppression was the very ground for rejecting the nomination form of respondent No.5. The election of respondent No.5 is also challenged on the ground that the returning officer committed illegality in accepting the nomination form of respondent No.16 and as such the whole election was vitiated and thus it be cancelled.

(v) It is further averred in the petition that respondent No.5 did not disclose the actual assets and suppressed material information with regard to properties owned by him and also did not disclose the fact that on his land, he is running a liquor shop which is one of the main sources of his income and as such respondent No.5 be declared ineligible to

contest the election and his election on these grounds can be declared void. It is also alleged that the objection with regard to defect in EVMs in number of polling booths is not entertained by the returning officer properly and as such the election is illegal and should be cancelled.

(vi) Respondent No.5, who is main contesting respondent, as his election was put to question and was a returned candidate, submitted his written-statement therein denied the allegations made in the election petition and also submitted that no information with regard to his property was concealed by him. It is also stated in the written-statement that if nomination form of respondent No.16 was found illegally accepted, it does not materially affect the election because he secured only 7365 votes, whereas respondent No.5 secured 696102 votes. It is also stated in the written-statement that the objection with regard to defect in EVMs was pointed-out, which was duly entertained by the returning officer in time, but did not find any substance in the objection inasmuch as the experts from the company which supplied EVMs, were called, who personally examined the machines and opined that there was no perceivable defect. The written-statement further contains that the election was conducted with all fairness and there is no significant reason available to get the whole election annulled that too on the basis of petitioner's unfounded apprehension.

3. At trial, this Court framed as many as six issues. The parties produced their witnesses and led their evidence. For the purpose of convenience those issues are reproduced hereinbelow-

“(i) Whether the nomination paper of respondent No.16 was improperly accepted?

(ii) Whether the respondent No.16 was disqualified from contesting the election for the reason of his being convicted and sentenced to 5 years imprisonment in

S.T.No.15/2017?

(iii) Whether the election in so far as it concerns the respondent No.5/Returned candidate has been materially affected by the improper acceptance of his nomination?

(iv) Whether respondent No.5/Returned candidate has not disclosed his income and details of other immovable properties, if yes, whether it has materially affected the election?

(v) Whether the EVM of polling booth No. 9, 12, 23, 28, 65, 57 and 24 of Parliamentary Constituency No.15 were tampered and if yes, whether the election deserves to be set aside?

(vi) Relief and costs?"

4. Juxtaposing the issues framed with the pleadings and evidence led by the parties, to evade repetitiveness, I find it profitable to answer certain issues by clubbing them together. Accordingly, Issue Nos.(i), (ii) & (iii) are conjointly dealt with and answered.

Issue Nos.(i), (ii) & (iii)

Adumbration of pleadings in regard to these issues is made in paragraphs No.4, 5 and 6 of the election petition. It is contended by the learned counsel for the petitioner that in the statement of election-petitioner, it is stated that form of respondent No.16 Kishore Samrite was wrongly accepted inasmuch as he was awarded sentence for a term of five years imprisonment and as such he was ineligible to contest the election. A specific query was also made to the Collector being a returning officer, who clarified that nomination form of Kishore Samrite was Ex.P/11 and whatever information given by him in affidavit were correct and that it does not come within his jurisdiction to conduct an enquiry with regard to testing the veracity of supplied information. To reinforce this submission, learned counsel has placed reliance on the decision of the Supreme Court *in re Resurgence India v. Election*

Commission of India and another (2014) 14 SCC 189, pinpointing paragraphs 20 and 21, which I feel it apt to quote hereunder:-

“20. Thus, this Court held that a voter has the elementary right to know full particulars of a candidate who is to represent him in the Parliament and such right to get information is universally recognized natural right flowing from the concept of democracy and is an integral part of Article 19(1)(a) of the Constitution. It was further held that the voter's speech or expression in case of election would include casting of votes, that is to say, voter speaks out or expresses by casting vote. For this purpose, information about the candidate to be selected is a must. Thus, in unequivocal terms, it is recognized that the citizen's right to know of the candidate who represents him in the Parliament will constitute an integral part of Article 19(1)(a) of the Constitution of India and any act, which is derogative of the fundamental rights is at the very outset ultra vires.

21. With this background, Section 33A of the RP Act was enacted by Act 72 of 2002 with effect from 24.08.2002. Thus, the purpose of the Act 72 of 2002 was to effectuate the right contemplated in Association for Democratic Reforms (supra). However, the legislators did not incorporate all the suggestions as directed by this Court in the above case but for mandating all the candidates to disclose the criminal antecedents under Section 33A by filing an affidavit as prescribed along with the nomination paper filed under Section 33(1) of the RP Act so that the citizens must be aware of the criminal antecedents of the candidate before they can exercise their freedom of choice by casting of votes as guaranteed under the Constitution of India. As a result, at present, every candidate is obligated to file an affidavit with relevant information with regard to their criminal antecedents, assets and liabilities and educational qualifications.”

Learned counsel for the election petitioner further placed reliance on a decision of Supreme Court *in re Krishnamoorthy v. Sivakumar*

and others (2015) 3 SCC 467, focusing on paragraphs 86 and 94, **which** are indispensable to be reproduced hereunder:-

“86. From the aforesaid, it is luculent that free exercise of any electoral right is paramount. If there is any direct or indirect interference or attempt to interfere on the part of the candidate, it amounts to undue influence. Free exercise of the electoral right after the recent pronouncements of this Court and the amendment of the provisions are to be perceived regard being had to the purity of election and probity in public life which have their hallowedness. A voter is entitled to have an informed choice. A voter who is not satisfied with any of the candidates, as has been held in *People's Union for Civil Liberties (NOTA case)*, can opt not to vote for any candidate. The requirement of a disclosure, especially the criminal antecedents, enables a voter to have an informed and instructed choice. If a voter is denied of the acquaintance to the information and deprived of the condition to be apprised of the entire gamut of criminal antecedents relating to heinous or serious offences or offence of corruption or moral turpitude, the exercise of electoral right would not be an advised one. He will be exercising his franchisee with the misinformed mind. That apart, his fundamental right to know also gets nullified. The attempt has to be perceived as creating an impediment in the mind of a voter, who is expected to vote to make a free, informed and advised choice. The same is sought to be scuttled at the very commencement. It is well settled in law that election covers the entire process from the issue of the notification till the declaration of the result. This position has been clearly settled in *Hari Vishnu Kmath v. AhmadIshaque and others* [(2006) 7 SCC 1], *Election Commission of India v. Shivaji* [(2001) 3 SCC 594] and *V.S. Achuthanandan v. P.J. Francis and Another* [AIR 1955 SC 233]. We have also culled out the principle that corrupt practice can take place prior to voting. The factum of non-disclosure of the requisite information as regards the criminal antecedents, as has been stated hereinabove is a stage prior to voting.

94. In view of the above, we would like to sum up our conclusions:

94.1 Disclosure of criminal antecedents of a candidate, especially, pertaining to heinous or serious offence or offences relating to corruption or moral turpitude at the time of filing of nomination paper as mandated by law is a categorical imperative.

94.2 When there is non-disclosure of the offences pertaining to the areas mentioned in the preceding clause, it creates an impediment in the free exercise of electoral right.

94.3 Concealment or suppression of this nature deprives the voters to make an informed and advised choice as a consequence of which it would come within the compartment of direct or indirect interference or attempt to interfere with the free exercise of the right to vote by the electorate, on the part of the candidate.

94.4 As the candidate has the special knowledge of the pending cases where cognizance has been taken or charges have been framed and there is a non-disclosure on his part, it would amount to undue influence and, therefore, the election is to be declared null and void by the Election Tribunal under Section 100(1)(b) of the 1951 Act.

94.5 The question whether it materially affects the election or not will not arise in a case of this nature."

Further, learned counsel for the election petitioner placed reliance on decision of the Supreme Court *in re Mairembam Prithviraj v. Pukhrem Sharatchandra Singh* (2017) 2 SCC 487, particularly paragraph 23, which is reproduced hereunder:-

"23. It is clear from the above judgment in *Durai Muthuswami* [(1973) 2 SCC 45] that there is a difference between the improper acceptance of a nomination of a returned candidate and the improper acceptance of nomination of any other candidate. There is also a difference between cases where there are only

two candidates in the fray and a situation where there are more than two candidates contesting the election. If the nomination of a candidate other than the returned candidate is found to have been improperly accepted, it is essential that the election Petitioner has to plead and prove that the votes polled in favour of such candidate would have been polled in his favour. On the other hand, if the improper acceptance of nomination is of the returned candidate, there is no necessity of proof that the election has been materially affected as the returned candidate would not have been able to contest the election if his nomination was not accepted. It is not necessary for the Respondent to prove that result of the election in so far as it concerns the returned candidate has been materially affected by the improper acceptance of his nomination as there were only two candidates contesting the election and if the Appellant's nomination is declared to have been improperly accepted, his election would have to be set aside without any further enquiry and the only candidate left in the fray is entitled to be declared elected."

By placing reliance on the above judgments, particular paragraphs thereof quoted above, the principal contention of learned counsel for the petitioner is that as per the provisions of Section 33A of Act, 1951, it is clear that when a candidate suffering a punishment of imprisonment for a period of more than two years, then he is not eligible to contest the election.

To keep clarity in the understanding, Section 33A is reproduced hereunder:-

"33A. Right to information- (1) A candidate shall, apart from any information which he is required to furnish, under this Act or the rules made thereunder, in his nomination paper delivered under sub-section (1) of section 33, also furnish the information as to whether—

(i) he is accused of any offence punishable with imprisonment for two years or more in a pending case in

which a charge has been framed by the court of competent jurisdiction;

(ii) he has been convicted of an offence [other than any offence referred to in sub-section (1) or sub-section (2), or covered in sub-section (3), of section 8] and sentenced to imprisonment for one year or more.

(2) The candidate or his proposer, as the case may be, shall, at the time of delivering to the returning officer the nomination paper under sub-section (1) of section 33, also deliver to him an affidavit sworn by the candidate in a prescribed form verifying the information specified in sub-section (1).

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

Shri Shyam Yadav, learned counsel for the election petitioner submitted that in view of referral of the decisions of the Supreme Court that accepting the nomination form of a candidate not eligible to contest the election, is a situation which materially affects the election and as such it be declared void and need to be annulled.

Shri Baghel, learned counsel appearing for respondent No.5 submitted that in the nomination form of respondent No.16, marked as Ex.P/11, required information about the criminal case has been disclosed by him and also disclosed about the pendency of appeal against conviction before the High Court. As such, there was nothing illegal on the part of respondent No.16 and his nomination form was rightly accepted by the returning officer. Even otherwise, if the nomination form of respondent No.16 is accepted illegally, that does not materially affect the election and as such on the said ground the election

of returned candidate cannot be brought under the clouds. He further submitted that Section 100 (1)(b) of Act, 1951 provides the grounds under which election can be declared void and he submitted that the grounds raised by the petitioner in his petition are neither available to him nor are they in consonance with the required grounds for getting declared the election of returned candidate void. It is germane to quote Section 100 of Act, 1951, which read thus:-

“100. Grounds for declaring election to be void.—(1) Subject to the provisions of sub-section (2) if 2 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 [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 [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, 2

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 8[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 10[***] 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 12[the High Court] may decide that the election of the returned candidate is not void.”

Shri Baghel, learned counsel for respondent No.5 submitted that acceptance of nomination form of any of the candidates illegally is not a ground of declaring the election void. Instinctively, ground (1)(d) very categorically provides that accepting the nomination form improperly if **materially affects** the election of returned candidate then only it can be declared void. He further submitted that here in the case at hand, the votes secured by respondent No.16 if at all counted in favour of election petitioner, even then that would not affect the election of returned candidate. He also submitted that all the decisions, in which petitioner has placed reliance, are related with the acceptance of nomination form of a returned candidate, not disclosing the material fact and information with regard to criminal antecedent. But, here in this case, the petitioner is not alleging anything against acceptance of nomination form of returned candidate, rather alleging improper acceptance of nomination form of respondent No.16, who was not the returned candidate and even otherwise his election does not materially affect the election of returned candidate. Shri Baghel submitted that issue No.(i) could not be proved

by the petitioner and if at all it is considered to be proved, that cannot be a ground for declaring the election of returned candidate void. To bolster his submissions, Shri Baghel has placed reliance on the decision of Supreme Court in *re Vashist Narain Sharma v. Dev Chandra and others* AIR 1954 SC 513, wherein the situation "the result of the election has been materially affected" has been dealt with and it has been observed as under:-

"Before an election can be declared to be wholly void under section 100(1) (c), the Tribunal must find that "the result of the election has been materially affected." These words have been the subject of much controversy before the Election Tribunals and it is agreed that the opinions expressed have not always been uniform or consistent.

These words seem to us to indicate that the result should not be judged by the mere increase or decrease in the total number of votes secured by the returned candidate but by proof of the fact that the wasted votes would have been distributed in such a manner between the contesting candidates as would have brought about the defeat of the returned candidate.

The next question that arises is whether the burden of proving this lies upon the petitioner who objects to the validity of the election. It appears to us that the volume of opinion preponderates in favour of the view that the burden lies upon the objector. It would be useful to refer to the corresponding provision in the English Ballot Act, 1872, section 13 of which is as follows:-

"5. No election shall be declared invalid by reason of a non-compliance with the rules contained in the first schedule to this Act, or any mistake in the use of the forms in the second schedule to this Act, if it appears to the Tribunal having cognizance of the question that the election was conducted in accordance with the principles laid down in the body of this Act, and that such non-compliance or mistake did not affect the result of the election."

This section indicates that an election is not to be declared invalid if it appears to the Tribunal that non-compliance with statutory rules or any mistake in the use of such forms did not affect the result of the election. This throws the onus on the person who seeks to uphold the election. The language of section 100(1) (c), however, clearly places a burden upon the objector to substantiate the objection that the result of the election has been materially affected. On the contrary under the English Act the burden is placed upon the respondent to show the negative, viz., that the result of the decision has not been affected.

This view was expressed in *Rai Bahadur Surendra Narayan Sinha v. Amulyadhane Roy & others* (1), by a Tribunal presided over by Mr. (later Mr. Justice) Roxburgh. The contention advanced in that case was that the petitioner having established an irregularity it was the duty of the respondent to show that the result of the election had not been materially affected thereby. The Tribunal referred to the provisions of section 13 of the Ballot Act and drew a distinction between that section and the provisions of paragraph 7(1)(c) of Corrupt Practices Order which was more or less on the same lines as section 100(1)(c).

They held that the onus is differently placed by the two provisions. While under the English Act the Tribunal hearing an election petition is enjoined not to interfere with an election if it appears to it that non-compliance with the rules or mistake in the use of forms did not affect the result of the election, the provision of paragraph 7(1) (c) placed the burden on the petitioner. The Tribunal recognized the difficulty of offering positive proof in such circumstances but expressed the view that they had to interpret and follow the rule as it stood."

Likewise, *in re Mahadeo v. Babu Udai Partap Singh and others* AIR 1966 SCC 824, the Supreme Court dealt with the situation "improper rejection and improper acceptance of nomination paper — material effect on election" and observed as under:-

"Before dealing with this question, it is necessary to consider briefly the legislative history of the statutory provision contained in s. 100 (1) (d) (iv). The present provisions contained in s. 100 of the Act have been introduced by the Amending Act 27 of 1956. Section 100 (1) (d) (iv) reads thus "Subject to the provisions of sub-section (2), if the Tribunal is of opinion that the result of the election, in so far as it concerns a returned candidate, has been materially affected 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 Tribunal shall declare the election of the returned candidate to be void". Before the amendment of 1956, the relevant provision in s. 100(1) (c) read thus :-

"If the Tribunal is of opinion that the result of the election has been materially affected by the improper acceptance or rejection of any nomination, the Tribunal shall declare the election to be wholly void".

Furthermore, Shri Baghel, placed reliance on a decision *in re Paokai Haokip v. Rishang and others* AIR 1969 SC 663 wherein the Supreme Court while dealing with the situation "burden to prove that election was materially affected", has observed as under:-

"12. In our opinion, the decision of the learned Judicial Commissioner that the election was to contravention of the Act and the Rules was correct in the circumstances of this case; but that does not alter the position with regard to s. 100(1)(d)(iv) of the Act. That section requires that the election petitioner must go a little further and prove that the result of the election had been materially affected. How he has to prove it has already been stated by this Court and applying that test, we find that he has significantly failed in his attempt and therefore the election of the returned candidate could not be avoided. It is no doubt true that the burden which is placed by law is very strict; even if it is strict it is for the courts to apply it. It is for the Legislature to consider whether it should be altered. If there is another way of determining the burden, the law should say it and not the courts. It is

only in given instances that, taking the law as it is, the courts can reach the conclusion whether the burden of proof has been successfully discharged by the election petitioner or not. We are satisfied that in this case this burden has not been discharged. The result is Sup. CI/69-10 that the appeal must succeed and it is allowed. The election of the returned candidate will stand. The costs in the Judicial Commissioner's Court will be as ordered. The election petitioner who apparently was not so much at fault as the Government in changing the polling stations, shall bear only half the costs of the appellant in this Court."

Over and above, Shri Baghel relied upon a decision *in re Shiv Charan Singh v. Chandra Bhan Singh and others* AIR 1988 SC 637 while dealing with the situation "improper acceptance of nomination paper · election petitioners failing to prove that election of returned candidate was materially affected, came to observe as under:-

"9. We are in respectful agreement with the view taken by this Court in the aforesaid decisions. The election of a returned candidate cannot be declared void on the ground of improper acceptance of nomination paper of a contesting candidate unless it is established by positive and reliable evidence that improper acceptance of the nomination of a candidate materially affected the result of the election of the returned candidate. The result of the election can be affected only on the proof that the votes polled by the candidate whose nomination paper had wrongly been accepted would have been distributed in such a manner amongst the remaining candidates that some other candidate (other than the returned candidate) would have polled the highest number of valid votes. In other words the result of the election of the candidate cannot be held to have been materially affected unless it is proved that in the absence of the candidate whose nomination paper was wrongly accepted in the election contest, any other candidate (other than the returned candidate) would have polled the majority of valid votes.



In the absence of any such proof the result cannot be held to have been materially affected. The burden to prove this material effect is difficult and many times it is almost impossible to produce the requisite proof. But the difficulty in proving this fact does not alter the position of law. The legislative intent is clear that unless the burden howsoever difficult it may be, is discharged, the election cannot be declared void. The difficulty of proving the material effect was expressly noted by this Court in Vashist Narain Sharma's and Paokai Haokip's, cases and the Court observed that the difficulty could be resolved by the Legislature and not by the Courts. Since then the Act has been amended several times, but Parliament has not, altered the burden of proof placed on the election petitioner under Section 100(1)(d) of the Act. Therefore the law laid in the aforesaid decisions still hold the field. It is not permissible in law to avoid the election of the returned candidate on speculations or conjectures relating to the manner in which the wasted votes would have been distributed amongst the remaining validly nominated candidates. Legislative intent is apparent that the harsh and difficult burden of proving material effect on the result of the election has to be discharged by the person challenging the election and the Courts cannot speculate on the question. In the absence of positive proof of material effect on the result of the election of the returned candidate, the election must be allowed to stand and the Court should not interfere with the election on speculation and conjectures.

10. In the instant case Shiv Charan Singh the appellant had polled 21443 votes and Roshan Lal had polled 16496 the next highest number Of votes. There was thus a difference on 4497 votes between the votes polled by the appellant and Roshan Lal. Kanhaiya Lal whose nomination paper had improperly been accepted, had secured 17841 votes which were wasted. The election petitioners did not produce any evidence e to discharge the burden that improper acceptance of the nomination paper of Kanhaiya Lal materially affected the result of

the election of the returned candidate. On the other hand the appellant who was the returned candidate produced 21 candidates representing cross section of the voters of the constituency. All these witnesses had stated before the High Court that in the absence of Kanhaiya Lal in the election contest, the majority of the voters who had voted for Kanhaiya Lal would have voted for Shiv Charan Singh the appellant. The High Court in our opinion rightly rejected the oral testimony of the witnesses in view of this Court's decision in Vashist Narain Sharma's case. The High Court however having regard to the votes polled by the appellant Roshan Lal and Kanhaiya Lal held that the result of the election was materially affected. The High Court held that in view of the fact that difference between Shiv Charan Singh the appellant and Roshan Lal was only 4497 and Kanhaiya Lal, whose nomination was improperly accepted had secured 17841 votes therefore it could reasonably be concluded that the election was materially affected. In our opinion the High Court committed error declaring the appellant's election void on speculations and conjectures.

11. Indisputably, the election petitioners had failed to discharge the burden of proving the fact that the result of election of the appellant had been materially affected by reason of improper acceptance of the nomination paper of Kanhaiya Lal. In the absence of any positive evidence produced by the election petitioners, it was not open to the High Court to record findings that the result of the election was materially affected. The High Court's findings relating to the material effect on the result of the election are based on conjectures and surmises and not on any evidence. The Legislature has, as noted earlier placed a difficult burden on the election petitioner to prove that the result of the election was materially affected by reason of improper acceptance of nomination paper of a candidate (other than the returned candidate) and if such burden is not discharged the election of the returned candidate must be allowed to stand as held by this Court in Vashist Narain Sharma's and in Paokai Haokip's case. It is true that the burden placed on the

election petitioner in such circumstances is almost impossible to discharge. But in spite of the fact that this Court had highlighted this question on more than one occasion, Parliament has not amended the relevant provisions although the Act has been subjected to several amendments. It is manifest that law laid down by this Court in Vashist Narain Sharma's case and Paokai Haokip's case holds the field and it is not permissible to set aside the election of a returned candidate under Section 100(1)(d) on mere surmises and conjectures. If the improperly nominated candidate had not been in the election contest, it is difficult to comprehend or predicate with any amount of reasonably certainty the manner and the proportion in which the voters who exercised their choice in favour of the improperly nominated candidate would have exercised their votes. The Courts are ill-equipped to speculate as to how the voters could have exercised their right of vote in the absence of improperly nominated candidate. Any speculation made by the Court in the this respect would be arbitrary and contrary to the democratic principles. It is a matter of common knowledge that electors exercise their right of vote on various unpredictable considerations. Many times electors cast their vote on consideration of friendship, party affiliation, local affiliation, caste, religion, personal relationship and many other imponderable considerations. Casting of votes by electors depends upon several factors and it is not possible to forecast or guess as to how and in what manner the voters would have exercised their choice in the absence of the improperly nominated candidate. No inference on the basis of circumstances can successfully be drawn. While in a suit of proceedings it may be possible for the Court to draw inferences or proceed on probabilities with regard to the conduct of parties to the suit or proceedings, it is not possible to proceed on probabilities or draw inferences regarding the conduct of thousands of voters, who may have voted for the improperly nominated candidate. In the instant case there were 11 contesting candidates. If Kanaiya Lal whose nomination paper had been improperly accepted was not in the

election contest, it is difficult to say in what proportion the voters who had voted for him would have voted for the remaining candidates. There is possibility that many voters who had gone to the polling station to cast their votes in favour of Kanaiya Lal may not have gone to exercise their vote in favour of the remaining candidates. It is probable that in the absence of Kanaiya Lal in the election contest, many voters would have voted for the returned candidate as he appeared to be the most popular candidate. It is difficult to comprehend that the majority of the voters who exercised their choice in favour of Kanaiya Lal would have voted for the next candidate Roshan Lal. It is not possible to forecast how many and in what proportion the votes would have gone to one or the other remaining candidates and in what manner the wasted votes would have been distributed among the remaining contesting candidates. In this view, the result of the returned candidate could not be declared void on the basis of surmises and conjectures."

Taking strength of the decisions relied upon and quoted hereinabove, Shri Baghel submitted that it is clear the election of returned candidate did not get materially affected due to acceptance of nomination paper of respondent No.16. He further submitted that even otherwise there is no pleading or proof by the petitioner that the acceptance of nomination form of respondent No.16 did materially affect the election of returned candidate. To reinforce, he placed reliance on a decision *in re Rajesh Kumar v. Devendra Singh* 2013(3) MPLJ 640, in which the High Court has considered this aspect and observed that the election petitioner is obligated to plead and prove that acceptance of nomination form improperly, materially affected the election of returned candidate. In absence of specific pleading in that regard, the election cannot be declared void.

Of late, the Supreme Court *in re Rajendra Kumar Meshram v.*

Vanshmani Prasad Verma and another 2017(2) MPLJ 262 while dealing with such situation, came to observe that before declaring the election void, the High Court is also required to carry out exercise to find out whether improper acceptance of nomination had materially affected the result of election or not. Relevant is paragraph 9, which is reproduced as under;-

“9. Under Section 100 (1)(d), an election is liable to be declared void on the ground of improper acceptance of a nomination if such improper acceptance of the nomination has materially affected the result of the election. This is in distinction to what is contained in Section 100(1)(c) i.e. improper rejection of a nomination which itself is a sufficient ground for invalidating the election without any further requirement of proof of material effect of such rejection on the result of the election. The above distinction must be kept in mind. Proceeding on the said basis, we find that the High Court did not endeavor to go into the further question that would be required to be determined even if it is assumed that the appellant- returned candidate had not filed the electoral roll or a certified copy thereof and, therefore, had not complied with the mandatory provisions of Section 33(5) of the 1951 Act. In other words, before setting aside the election on the above ground, the High Court ought to have carried out a further exercise, namely, to find out whether the improper acceptance of the nomination had materially affected the result of the election petition. This has not been done notwithstanding issue No.6 framed which is specifically to the above effect. The High Court having failed to determine the said issue i.e. issue No.6, naturally, it was not empowered to declare the election of the appellant returned candidate as void even if we are to assume that the acceptance of the nomination of the returned candidate was improper.”

Enlightened by the above-quoted enunciation of law and considering the existing fact-situation of the case, it is clear that the

petitioner never pleaded in the petition that acceptance of nomination form of respondent No.16 materially affected the election of returned candidate and factually also it is not the situation because total votes secured by respondent No.16 are much-less in comparison to the votes secured by returned candidate. Thus, these issues i.e. issue Nos.(i), (ii) & (iii) are answered in negative.

Issue No.(v)

The relatable pleadings to this issue are made in paragraphs 7 and 8 of the election petition. The election petitioner (PW1) in paragraph 2 of his statement has supported those pleadings and stated that despite making complaint to the returning officer, no heed was paid to it. The representative of the election petitioner namely Mukesh Kumar Vasnik (PW2) has also so stated in his statement but in cross-examination, he stated that he did not have any information as to on which table counting of votes pertaining to booth Nos.9, 23, 28, 57 and 65 was done and he was also not aware as to who was the agent on the polling booths and whether any complaint was made by him to the returning officer about defect in EVMs. He also stated that he made a complaint (Ex.P/8) with regard to some of the polling booths, although that complaint was made after completion of fifth-round counting. PW3 Ravi Shankar also stated in his statement that he had also tried to make complaint about the defect in EVMs, but his complaint was not taken care of.

Shri Shyam Yadav, learned counsel for the petitioner submitted that when complaint with regard to defect in EVMs was made, then it was obligatory for the returning officer to cease the counting process and at-first resolve the dispute as made in complaint, but that was not done. Thus, it is clear that due to defect in EVMs whole election was

vitiated and on that basis it is imperative to cancel the election of returned candidate.

In contrast, Shri Baghel, learned counsel for respondent No.5 opposed the submissions made on behalf of the petitioner and submitted that the returning officer has been examined as PW4, who has categorically stated in his statement that the objection was received by him with regard to defect in EVMs used in polling booth Nos.9, 12, 23, 28, 65 and 57, in which cognizance was properly taken and representative of Company which supplied EVMs was also called and after getting checked EVMs, the representative submitted a report that there was no defect in EVMs.

A meticulous scrutiny to the statement of returning officer gives a notion that oftentimes, in almost every election where EVMs are used, objection lamenting defect in EVMs is raised and the Election Commission on several occasions dealt with such objection and nothing substantial could be brought to the surface and even an overt opportunity was provided to the persons raising such objection for giving strict proof showing that EVMs are defective, but no such proof could ever be presented. Even in the case at hand, there is no material available to deduce that EVMs used in the election were found defective. Obviously, there is no reason to disbelieve the statement of returning officer i.e. Collector, Balaghat that representative of EVM company was called, who in turn, examined and submitted a report. Moreover, the whole procedure was properly followed during the course of election and on each & every important occasions, the representative of respective candidates were present and in their presence EVMs were kept in strong-room, then later-on opened for the purpose of counting of votes. Indeed, there appears no defect in the procedure which could

demonstrate that there was any possibility of tampering EVMs so as to increase the number of votes of any candidates. Momentarily, if the defect as has been pointed-out in EVMs of selected polling booths is considered to be true and the total votes cast in those polling booth for the sake of presumption is considered to be in favour of the election petitioner, even then it does not materially affect the result of returned candidate.

In view of the above discourse, I am of the opinion that issue No. (v) is neither proved nor can it be a ground to declare the election of returned candidate void, which could be made basis to cancel the election of returned candidate. Thus, this issue too is answered in negative.

Issue No.(iv) -

So far as this issue is concerned, it has been given-up by the counsel for the election petitioner on the ground that as they failed to prove anything against the returned candidate and as such no argument relatable to this issue was urged.

5. In view of the above discourse made in details dealing with the issues framed by this Court and answering those in negative, I find the election petition being bereft of substance. The inadequacy of pleadings and proof will not succour the disgruntled election-petitioner, who lost the battle of election as the luck would have it. The ray of hope strengthened by the decisions cited on behalf of election petitioner, will also not yield any positive result for the election-petitioner in the fact-situation of the case inasmuch as the decisions cited on behalf of returned candidate are more befitting the fact-situation involved in the case at hand

6. *Ex consequentia*, the election petition is hereby dismissed.

Sd./-
(SANJAY DWIVEDI)
Judge.

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

भारत निर्वाचन आयोग
निर्वाचन सदन, अशोक रोड, नई दिल्ली-110 001

नई दिल्ली, तारीख 27 मार्च 2023-6 चैत्र, 1945 (शक)

अधिसूचना

सं.- 82/म.प.-लोक सभा/(38/2019)/2023 - लोक प्रतिनिधित्व अधिनियम, 1951 (1951 का 43) की धारा 106 के अनुसरण में, भारत निर्वाचन आयोग, 2019 की निर्वाचन याचिका सं. 38 में मध्य प्रदेश उच्च न्यायालय के दिनांक 03.02.2023 के निर्णय/आदेश को एतद्वारा प्रकाशित करता है (कांतिलाल भूरिया विरुद्ध गुमान सिंह डामोर)

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

ELECTION COMMISSION OF INDIA
Nirvachan Sadan, Ashoka Road, New Delhi-110 001
New Delhi, Dated 27th March, 2023 – 6 Chaitra, 1945 (Saka)

NOTIFICATION

No. 82/MP-HP/(38/2019)/2023 - In pursuance of Section 106 of the representation of the People Act, 1951 (43 of 1951), the Election Commission hereby publishes the Judgment order dated 03.02.2023 of the High Court of Madhya Pradesh in the Election Petition No. 38 of 2019 (Kantilal Bhuriya Vs. Guman Singh Damor).

REGISTERED AD. TOP PRIORITY
HIGH COURT OF MADHYA PRADESH
BENCH AT INDORE



Endt. No. ./ Election Pet. No. 38/2019 Indore, Dt. 11/02/2023

Process ID No. 26156 to 26165.

In Compliance of Hon'ble Court order dt. 03/02/2023 passed in Election Petition No. 38/2019 Kantilal Bhuriya Vs. Guman Singh Damor) copies of Hon'ble Court's order dated 03/02/2023 is forwarded to :-

1. The Election Commission of India, New Delhi.
2. The Speaker, Lok Sabha, New Delhi
3. The Speaker, Madhya Praesh State Legislative Assembly, Bhopal (M.P.)
4. The Chief Election Officer, Bhopal (M.P.)
5. The Returning Officer, House of People (Lok Sabha), Parliamentary Constituency No.24, Ratlam Lok Sabha (Schedule Caste) Constituency (M.P.)
6. The District Election Officer, Collectorate, Ratlam (M.P.)
7. The Chief Secretary Govt. of M.P., Bhopal (M.P.)
8. The Principal Registrar (Judl.) High Court of M.P., Jabalpur (M.P.)
9. The Principal Registrar, High Court of M.P. Bench at Gwalior (M.P.)
10. The Secretary, High Court Bar Association, High Court Premises, Indore (M.P.)

For information and necessary action in connection with Election of House of People (Lok Sabha), Parliamentary Constituency No.24, Ratlam Lok Sabha (Schedule Caste) Constituency (M.P.)

HIGH COURT OF MADHYA PRADESH INDORE BENCH
Single Bench of Hon'ble Shri Justice Vivek Rusia.

31.01.2023 :

E.P. No. 38/2019

Shri Abhinav Dhanodkar, learned counsel for the petitioner.

Shri Vivek Patwa with Shri Bhuwan Gautam and Shri Rushil

Shukla, learned Advocates for the respondent.

Heard the learned counsel for the parties.

Case is closed for orders.


(VIVEK RUSIA)
JUDGE

Alok/-

03.02.2023 :

Order passed signed and dated.


(VIVEK RUSIA)
JUDGE

HIGH COURT OF MADHYA PRADESH : BENCH AT INDORE

(SINGLE BENCH : HON. Mr. JUSTICE VIVEK RUSIA)

Election Petition No. 38 of 2019

Kantilal Bhuriya

---Petitioner.

Versus

Guman Singh Damor.

---Respondent.

ORDER

Post for : 03.02.2023


(VIVEK RUSIA)

JUDGE.

03.02.2023

IN THE HIGH COURT OF MADHYA PRADESH
AT INDORE
BEFORE

HON'BLE SHRI JUSTICE VIVEK RUSIA

Election Petition No. 38 of 2019

BETWEEN:-

KANTILAL BHURIYA S/O. LATE NANURAM BHURIYA, AGED ABOUT
68 YEARS, R/O. 107, GOPAL COLONY, DISTRICT JHABUA. (M.P.)

.....PETITIONER

(SHRI ABHINAV DHANODKAR, LEARNED COUNSEL FOR THE
PETITIONER.)

AND

GUMAN SINGH DAMOR S/O. LATE SHRI NAHAR SINGH DAMOR,
AGED : 62 YEARS, R/O. VILLAGE UMARKOT, TEHSIL RAMA,
DISTRICT JHABUA (M.P.)

.....RESPONDENTS

(SHRI VIVEK PATWA WITH SHRI BHUVAN GAUTAM AND SHRI RUSHIL
SHUKLA, LEARNED COUNSEL FOR THE RESPONDENT.)

Reserved on : 31.01.2023.

Pronounced on : 03.02.2023

*This Election Petition having been heard and reserved for order,
coming on for pronouncement this day, the Court pronounced the
following :*

ORDER

The petitioner has filed the present election petition to declare

the election of the respondent / returned candidate as void.

The facts of the case as pleaded in the Election Petition are as under :

1. The President of India by notifications issued under sub-section (2) of Section 14 of the Representation of Peoples Act, 1951 (hereinafter referred to as "the R.P. Act of 1951" for short) published in Official Gazettes dated 2.4.2019, 10.4.2019, 16.4.2019 and 22.4.2019 vide Annexure P/1 to P/4 for conducting the election of the Lok Sabha Constituencies in the State of M.P. to elect the members to the House of the People (Lok Sabha). The election was to be held in four phases in the State of M.P. Accordingly, the Election Commission of India issued Press Note for the announcement of the schedule for General Elections, 2019 for the Lok Sabha on 10.3.2019 and according to which, the schedule of election in respect of different Parliamentary Constituencies in the State of M.P. was also issued vide Annexure P/5. The election program in respect of Parliamentary Constituency No.24 Ratlam was as under :

29.4.2019 Last date for filing of nomination.

30.4.2019 Scrutiny of nomination.

2.5.2019 Last date for withdrawing of candidature.

19.5.2019 Date of Polling.

23.5.2019 Counting of votes.

27.5.2019 Date before which the election shall be completed.

2. Under the aforesaid election program the petitioner submitted his Nomination papers from the Indian National Congress to contest

the election from Parliamentary Constituency No.24 Ratlam and likewise the respondent also submitted his Nomination paper as the candidate of the Bhartiya Janata Party. As per schedule, the election was held on 19.5.2019. Thereafter, the result of the said Parliamentary Constituency was declared on 23.5.2019 vide Annexure P/6. The final result was issued by the Election Commission of India in Form 20 vide Annexure P/9. The present petitioner secured 605467 votes and the respondent secured 694243 votes, thus, the respondent won the election by the margin of 88776 votes accordingly, and the result was notified by the Election Commission of India.

3. Being aggrieved by the aforesaid the petitioner has filed the present election petition challenging the election of the respondent solely on the ground enumerated under Section 100 (1)(d)(iv) of the R.P. Act of 1951.

4. According to the petitioner, voting in all the Parliamentary Constituencies in the entire country was held by Electronic Voting Machine (EVM) under Rule 49A of the Conduct of Election Rules, 1961. The apex Court in *Civil Appeal No.9093/2013 (Dr. Subramanian Swamy V/s. Election Commission of India)* has directed the Election Commission of India to introduce Voter Verifiable Paper Audit Trail (VVPAT) together with the existing system of EVM. Thereafter, Rule 56-D was introduced w.e.f. 14.8.2013 for the introduction of the system of VVPAT allowing any candidate or his agent to apply in writing to the Returning Officer to recount the printed paper slips in the drop box of the printer in

respect of any polling station or polling stations.

5. It is further submitted that the Election Commission of India issued instruction/order dated 13.10.2017 vide Annexure P/11 for verification of VVPAT paper slips – pilot testing under which the verification of VVPAT paper slips was to be done randomly selected one polling station per Assembly Constituency on a pilot basis mandatory. It is further submitted that the Apex Court in the case of *N. Chandrababu Naidu V/s. Union of India* reported in (2019) 15 SCC 377, directed for the increase in number from one polling station per Assembly Constituency to five polling stations per Assembly Constituency for verification of VVPAT paper slips. After the aforesaid judgment of the Apex Court, the Election Commission of India issued an instruction/order dated 21.5.2019 for mandatory counting and matching the result of VVPATs & EVM from five randomly selected polling stations in each State Legislative Assembly Constituency for auditing and testing.

6. According to the petitioner, the said order/instruction also provides for deleting the data of the mock poll from the controlling unit and removal of mock-poll slips from the VVPAT paper slips from the drop box of the VVPAT. According to the petitioner, in the present election, the Returning Officers did not follow the instructions issued by the Election Commission of India for mandatory counting and matching counting of the result of VVPATs and EVM from five randomly selected polling stations for auditing and testing and its record. It is further alleged that the Returning Officers did not exhibit the paper cards used for the draw of lots for

random selection of one polling station in each Assembly Constituency. These are only allegations in the EP but no such objection was raised at the relevant point in time either by the petitioner or by his agents.

7. According to the petitioner, the Election Commission of India is having the power of overall superintendence, direction and control on elections in India by virtue of Article 324 of the Constitution of India, therefore, the instructions/orders issued by the Election Commission of India have statutory force and they all are required to be mandatorily followed. Since the instructions/orders dated 13.10.2017 (Annexure P/11) and dated 21.5.2019 (Annexure P/12) were not followed, therefore, the election of the respondent has materially been affected. There is also a breach and violation of the provisions contained in Section 100(1)(d)(iv) of the R.P. Act of 1951, hence the election of the respondent from Parliamentary Constituency No.24 Ratlam deserves to be declared null and void.

Return of the respondent

8. After notice, the respondent appeared and filed a detailed reply to the election petition by denying each and every allegation made in the election petition and praying for the dismissal of the election petition. It has specifically been pleaded that no provisions of the Constitution of India, R.P. Act of 1951 or the rules made thereunder have been violated. The election has not materially affected the result. It is denied that the system of VVPAT and printing of paper trail is for recounting or testing of total votes recorded in the controlling unit must match with the printed paper trails in VVPAT.

The aforesaid system has been introduced only for the purposes of audit and test of EVM. The provision contained in Rule 56-D does not apply to the instant case as no application for recounting was submitted by the petitioner or his election agent. It is further submitted that the instructions/orders issued by the Election Commission of India do not have any statutory force as the same has not been issued in any statute or under the provisions of the Conduct of Election Rules, 1961. Hence, the election has no substance and the same is liable to be dismissed at the threshold without wasting the further time of the High Court.

9. Before filing the return statement, the respondent also filed an application under Order 7 Rule 11 of the C.P.C. read with Sections 80, 81 and 83 of the R.P. Act of 1951 seeking dismissal of the election petition, however, the same has been dismissed vide order dated 28.5.2022.

Issues framed in the Election Petition

10. Thereafter, both parties submitted the proposed issues. Vide order dated 18.7.2022 this Court has framed the following issues for adjudication :

1. *Whether guidelines dated 13.10.2017 and 21.05.2019 issued by the Election Commission of India have statutory force?*
2. *Whether the Returning Officer of Parliamentary Constituency No.24 Ratlam (M.P.) violated mandatory guidelines with regard to counting and matching result of VVPATs and CUs from randomly selected polling stations?*
3. (a) *Whether the Returning Officer also violated the mandatory guidelines to remove mock-poll data from the control unit and mock-poll slips from VVPATs? If yes, then*
(b) *Whether the aforesaid date had become date of the entire election and materially affected the result of the Parliamentary*

Constituency No.24 Ratlam (M.P.)?

4. *Whether the respondent printed and distributed the dummy ballot papers contrary to the guidelines of the Election Commission of India? If yes, then*

(b) *Whether the aforesaid act of the respondent materially affected the result of the Parliamentary Constituency No.24 Ratlam (M.P.)?*

11. Thereafter, both parties submitted their long list of witnesses. The proceedings of this Election Petition remain held up for two years due to the Covid-19 pandemic.

12. On 5.9.2022, the petitioner examined himself as P.W.1 in which he deposed that without testing the EVMs the polling was started. In cross-examination, he admitted that he made an oral objection and he did not submit any objection in writing.

13. The petitioner filed an application under Order 16 Rule 6 of the C.P.C. for summoning the record pertaining to the election of Parliamentary Constituency No.24 Ratlam. Vide order dated 21.12.2022 this Court allowed the said application only in relation to the documents mentioned at Sr. No.3 and 5 of the application.

14. The election petition came up for hearing on 16.1.2023 and a direction was issued to the petitioner to file an appropriate application as to who should be directed to produce the documents mentioned at Sr. 3 and 5 in the application. On the next date of hearing i.e. on 20.1.2023, learned counsel appearing for both parties agreed that the entire election petition is based on the sole allegation that non-compliance of violation/non-compliance of Annexure P/11 and P/12 issued by the EC has materially affected the election of the returned candidate as contemplated under section 100(1)(d)(iv) of

the R.P. Act of 1951 and if this core issue is answered in negative, nothing will remain in the Election Petition for adjudication hence, this issue can be decided as a preliminary issue.

Submissions of petitioner's counsel

15. Shri Abhinav Dhanodkar learned counsel submitted that it is correct that the election of returned candidate i.e. the respondent is challenged by way of the present election petition only on the ground of non-compliance of orders/instructions issued by the Election Commission of India vide Annexures P/11 and P/12. i.e. under section 100(1) (d)(iv) of the RP Act 1951. Learned counsel elaborated his submission that Part XV, Article 324 of the Constitution of India deals with elections in India. Article 324 says that the superintendence, direction and control of the preparation of the electoral rolls for, and the conduct of, all elections to Parliament and the Legislature of every State and of elections to the offices of President and Vice-President held under this Constitution shall be vested in Election Commission. Thus, in the exercise of powers conferred under Article 324 of the Constitution of India, the Election Commission has vide power to issue guidelines, directions, etc. to subordinate Election Officers for a free and fair election. Such directions and orders are compiled in the Election Manual which is made available to all Government officers deputed for election duties and the candidates for following the procedure and norms prescribed under the law for contesting the election.

16. It is further submitted by the learned counsel that the elections are held under the provisions of the R.P. Act of 1951, Registration of

Electors Rules, 1960 and Conduct of Election Rules, 1961. Chapter II has been introduced in Conduct of Elections Rules, 1961 whereby voting by EVM has been introduced in India. In sections, 49A to 49X complete procedure has been prescribed for the purposes of voting by EVM. The apex Court in the case of N. Chandrababu Naidu (supra) has directed that if the number of EVM is increased to 5, the process of verification can be done by the same team of polling staff and supervisors/officials in order to record satisfaction with regard to full occupancy of the election record. The number of EVMs shall now be subject to verification so far as the VVPAT paper trail is concerned would be 5 per Assembly Constituency or Assembly Segments in a Parliamentary Constituency. It has been directed that the random selection of the machines would be subjected to the process of VVPAT paper trail verification as explained to the Hon'ble Court by Mr. Jain, Dy. Commissioner of the Election Commission in terms of the guidelines in force. It is further submitted that in the case of *A.C. Jose V/s. Sivan Pillai : AIR 1984 SC 921*, the apex Court has held that when there is Parliamentary Legislation or rules made thereunder, the Commission is free to pass any order in respect of the conduct of elections. Therefore, orders vide Annexure P/11 and P/12 are having the force of law in absence of any provision in the R.P. Act of 1951 as well as Conduct of Election Rules, 1961. It is further submitted by the learned counsel that in the case of *Union of India V/s. Association of Democratic Reforms : AIR 2002 SC 2112* and *S. Rukmini Madegowda V/s. Sate Election Commission : 2022 SCC OnLine SC 1218* the Apex

Court has explained the powers of the Election Commission under Article 324 of the Constitution of India to take care of surprise situations and it operates in areas left unoccupied by legislation. The interpretation given by the apex Court of Article 324 of the Constitution of India is binding on all the courts.

17. Learned counsel for the petitioner further submitted that a similar issue came up for consideration in E.P. No.45/2019 while considering the application filed under Order 7 Rule 11 of the C.P.C. for rejection of the election petition. Vide order dated 10.8.2021 this Court has held that instructions dated 13.10.2017 issued by the Election Commission are in addition to Rule 56-D of Conduct of Election Rules, 1961 and due to non-compliance of orders made under the R.P. Act of 1951 the election shall be declared as void. The instructions dated 21.5.201 are in the nature of orders under the R.P. Act of 1951 and dismissed the application. Against the said order, SLP was preferred which came to be dismissed vide order dated 16.9.2022. Hence, this petition is liable to be decided on merit by recording evidence.

Submissions of respondent's counsel

17. On the other hand, Shri Vivek Patwa learned counsel contended that no evidence is required when the entire petition is based on the allegation of non-compliance of orders dated 13.10.2017 and 21.5.2019 issued by the EC. If these orders are not having any statutory force, then the election cannot be declared void or set aside u/s. 100(1)(d)(iv) of the R.P. Act of 1951. It is further submitted that apart from other requirements; Section 100 provides

grounds for declaring an election to be void especially under Section 100(1)(d), if the High Court is of the opinion that the result of the election insofar as it concerns a returned candidate has been **materially affected** by non-compliance of provisions of the Constitution of India or of R.P. Act of 1951 or under the rules made thereunder, or order the High Court can declare the election of the said candidate as void. In the present case, the petitioner has nowhere pleaded in the petition as well as deposition that the election of the respondent has been materially affected due to the non-compliance of instructions/orders (Annexure P/11 & P/12). The importance of “materially affected” has been considered by the apex Court in the case of *Mangani Lal Mandal V/s. Bishnu Deo Bhandari : 2012) 3 SCC 314* in which it has been held that mere non-compliance or breach of the Constitution or the statutory provisions, by itself, does not result in invalidating the election of a returned candidate u/s. 100(1)(d)(iv) unless and until the result of the election has been materially affected. The apex Court has held that the election petition deserves dismissal at the threshold, yet it went into the whole trial consuming Court's precious time and putting the returned candidate in unnecessary trouble and inconvenience. Learned counsel has also placed reliance on the judgment of the apex Court in the case of *Kalyan Kumar Gogoi V/s. Ashutosh Agnihotri : (2011) 2 SCC 532* in which also it has been held that the scheme of Section 100 of the Act, especially Clause (d) of sub-section (1) clearly prescribes that in spite of the availability of grounds contemplated by sub-clauses (i) to (iv) of Clause (d), the

election of a returned candidate shall not be voided unless and until it is proved that the result of the election insofar as it concerns a returned candidate is materially affected. Learned counsel further submitted that in the present case, the respondent won the election by a margin of more than 88,000 votes, therefore, even if there was no verification of paper slips in 5 constituencies, it has not materially affected the election of the returned candidate. The petitioner in his cross-examination has admitted that he or his agent never made any complaint in writing about the malfunctioning of the EVM during the election.

Appreciations and conclusion

19. It is correct that the petitioner has challenged the election of the respondent only on the ground enumerated under Section 100(1)(d)(iv) of the R.P. Act of 1951. According to the petitioner, the orders (Annexure P/11 & P/12) issued by the Election Commission of India were not complied with, hence the election of the respondent has materially affected and the same is liable to be declared as void. Section 100(1)(d)(iv) is reproduced below :

“100. Grounds for declaring election to be void – (1)

Subject to the provisions of sub-section (2) if the High Court is of opinion -

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

(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.”

The above provision clearly provides the ground for declaring

the election as void by the High Court if the result of the election insofar as it concerns a returned candidate has been materially affected by any non-compliance with the provisions of the Constitution of India or the R.P. Act of 1951 or any rules made thereunder.

20. According to the petitioner, the order (Annexure P/12) issued by the Election Commission of India has not been followed. Section 2(e) of the Representation of Peoples Act, 1950 defines the word “order” and according to which, “order” means an order published in the Official Gazette. Section 2(1)(a) of the R.P. Act of 1951 says, each of the expressions defined in Section 2 or sub-section (1) of Section 27 of the Representation of the People Act, 1950, but not defined in this Act, shall have the same meaning as in the Act. Therefore, the definition of the word “order” defined in Section 2(e) of the Representation of People Act, 1950 has been borrowed in the R.P. Act of 1951 also. Section 3(39) of the General Clauses Act, 1897 defines the word “official gazette” and according to which “official gazette” shall mean the Gazette of India or the Official Gazette of a State. Admittedly, orders/instructions vide Annexure P/11 and P/12 issued by the Election Commission of India have not been published in the Official Gazette of India, therefore, non-compliance of the aforesaid orders cannot be a ground for declaring the election as void by this Court u/s. 100(1)(d)(iv) of the R.P. Act of 1951. Vide order dated 10.8.2021 passed in E.P. No. 45/2019 this Court has held that instructions dated 13.10.2017 issued by the Election Commission are in addition to Rule 56-D of Conduct of

Election Rules, 1961 and due to non-compliance of orders made under the R.P. Act of 1951 the election shall be declared as void but the definition of the word "the order" has not been considered by this court.

21. Learned counsel for the petitioner has argued that the election in question is liable to be declared as void because of non-compliance with the provisions of the Constitution or the provisions of the R.P. Act of 1951 and the rules made thereunder. The Election Commission has found a lacuna in Rule 56-D of the Conduct of Election Rules, 1961, therefore, in the exercise of powers conferred under Article 324 of the Constitution of India, the Election Commission of India has issued the order vide Annexure P/12 for verification of VVPAT paper slips. Hence, the order dated 21.5.2019 (Annexure P/12) can be considered a violation of Article 324 of the Constitution and Conduct of Election Rules, 1961.

22. Admittedly, there is no provision under the Constitution of India, R.P. Act of 1951 as well as in the Conduct of Election Rules, 1961 in respect of verification of VVPAT paper slips. Chapter II of Conduct of Election Rules, 1961 provides only for voting by EVM and in the entire Rule 49A to 49X, there is no such provision for trail or testing of the machines. Hence there cannot be any non-compliance of any provisions of the Constitution of India, R.P. Act of 1951 as well as Conduct of Election Rules, 1961. Annexures P/11 and P/12 have not been published in the Official Gazette, therefore, the same cannot be treated as orders u/s. 2(e) of the Representation of People Act, 1950 or 1951 for declaring the election as void u/s.

100(1)(d)(iv) of the R.P. Act of 1951.

23. Even otherwise, as held by the Apex Court in the case of Magani Lal Mandal (supra) the petitioner is required to prove that the result of the election has been materially affected. Merely alleging that there is non-compliance of the orders it cannot be held that the election has materially been affected. In the present case, there is only a pleading about non-compliance of Section 100(1)(d)(iv) of the R.P. Act of 1951 without any material to establish that the election of returned candidates has materially been affected. Para 10 to 13 of the aforesaid judgment are reproduced below :

“10. A reading of the above provision with Section 83 of the 1951 Act leaves no manner of doubt that where a returned candidate is alleged to be guilty of non-compliance of the provisions of the Constitution or the 1951 Act or any rules or orders made thereunder and his election is sought to be declared void on such ground, it is essential for the election petitioner to aver by pleading material facts that the result of the election insofar as it concerned the returned candidate has been materially affected by such breach or non-observance. If the election petition goes to trial then the election petitioner has also to prove the charge of breach or non-compliance as well as establish that the result of the election has been materially affected. It is only on the basis of such pleading and proof that the Court may be in a position to form opinion and record a finding that breach or non-compliance of the provisions of the Constitution or the 1951 Act or any rules or orders made thereunder has materially affected the result of the election before the election of the returned candidate could be declared void.

11. A mere non-compliance or breach of the Constitution or the statutory provisions noticed above, by itself, does not result in invalidating the election of a returned candidate under Section 100(1)(d)(iv). The sine qua non for declaring election of a returned candidate to be void on the ground under clause (iv) of 100(1)(d)(iv) is further proof of the fact that such breach or non-observance has resulted in

materially affecting the result of the returned candidate. In other words, the violation or breach or non-observation or non-compliance of the provisions of the Constitution or the 1951 Act or the rules or the orders made thereunder, by itself, does not render the election of a returned candidate void 100(1)(d)(iv). For the election petitioner to succeed on such ground viz., 100(1)(d)(iv), he has not only to plead and prove the ground but also that the result of the election insofar as it concerned the returned candidate has been materially affected. The view that we have taken finds support from the three decisions of this Court in (1) *Jabar Singh Vs. Genda Lal*³; (2) *L.R. Shivaramagowda and Others Vs. T.M. Chandrashekhar (dead) by LRs. and Others*⁴ and (3) *Uma Ballav Rath (Smt.) Vs. Maheshwar Mohanty (Smt) and others*⁵.

12. Although the impugned judgment runs into 30 pages, but unfortunately it does not reflect any consideration on the most vital aspect as to whether the non-disclosure of the information concerning the appellant's first wife and the dependent children born out of that wedlock and their assets and liabilities has materially affected the result of the election insofar as it concerned the returned candidate. As a matter of fact, in the entire election petition there is no pleading at all that suppression of the information by the returned candidate in the affidavit filed along with the nomination papers with regard to his first wife and dependent children from her and non-disclosure of their assets and liabilities has materially affected the result of the election. There is no issue framed in this regard nor there is any evidence let in by the election petitioner. The High Court has also not formed any opinion on this aspect.

13. We are surprised that in the absence of any consideration on the above aspect, the High Court has declared the election of the returned candidate to the 15th Lok Sabha from the Jhanjharpur Parliamentary Constituency to be void. The impugned judgment of the High Court is gravely flawed and legally unsustainable. As a matter of law, the election petition filed by the election petitioner deserved dismissal at threshold yet it went into the whole trial consuming Court's precious time and putting the returned candidate to unnecessary trouble and inconvenience.

Para 20 to 24 of the judgment passed by the apex Court in the case

of Kalyan Kumar Gogoi (supra) are reproduced below :

“20. The first question to be considered is whether there had been or not a breach of the Act and the Rules in the conduct of the election at this constituency. It is hardly necessary for this Court to go over the evidence with a view to ascertaining whether there was or was not a breach of the Act and the Rules in the conduct of the election concerned. Having read the evidence on record, this Court is in entire agreement with the decision of the learned Single Judge that by the change of venue of casting votes, breach of the provisions of Sections 25 and 56 of the Act read with Rule 15 of the Rules of 1961 was committed by the officials who were in charge of the conduct of the election at this constituency. This shows that the matter is governed by Section 100(1)(d) (iv) of the Act. The question still remains whether the condition precedent to the avoidance of the election of the returned candidate which requires proof from the election petitioner, i.e., the appellant that the result of the election had been materially affected insofar as the returned candidate, i.e., the respondent No. 2, was concerned, has been established in this case.

21. This Court finds that the learned Judge has recorded a finding that cogent and reliable evidence should be adduced by an election petitioner when election of the successful candidate is challenged on the ground of breach of provisions of Section 100(1)(d)(iv) of the Act. The contention advanced by Dr. Rajiv Dhavan, learned counsel for the appellant, that the test of either broad probabilities or the test of sufficiency of evidence should be applied while deciding the question whether the result of the elected candidate is materially affected or not cannot be accepted.

22. Section 100(1)(d)(iv) of the Act reads as under: -

"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) to (c)

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

(i) to (iii)

(iv) by any non-compliance with the provisions of the Constitution or of this Act or any rules or orders made under this Act, the High Court shall declare the election of the

returned candidate to be void."

23. It may be mentioned that here in this case non-compliance with the provisions of the Representation of People Act, 1951 and the Election Rules of 1961 was by the officers, who were in-charge of the conduct of the election and not by the elected candidate. It is true that if clause (iv) is read in isolation, then one may be tempted to come to the conclusion that any non-compliance with the provisions of the Constitution or of the Act of 1951 or any Rules of 1961 Rules or orders made under the Act would render the election of the returned candidate void, but one cannot forget the important fact that clause (d) begins with a rider, namely, that the result of the election, insofar as it concerns a returned candidate, must have been materially affected. This means that if it is not proved to the satisfaction of the Court that the result of the election insofar as it concerns a returned candidate has been materially affected, the election of the returned candidate would not be liable to be declared void notwithstanding non-compliance with the provisions of the Constitution or of the Act or of any Rules of 1961 Rules or orders made thereunder.

24. It is well to remember that this Court has laid down in several reported decisions that the election of a returned candidate should not normally be set aside unless there are cogent and convincing reasons. The success of a winning candidate at an election cannot be lightly interfered with. This is all the more so when the election of a successful candidate is sought to be set aside for no fault of his but of someone else. That is why the scheme of Section 100 of the Act, especially clause (d) of sub-Section (1) thereof clearly prescribes that in spite of the availability of grounds contemplated by sub-clauses (i) to (iv) of clause (d), the election of a returned candidate shall not be voided unless and until it is proved that the result of the election insofar as it concerns a returned candidate is materially affected. The volume of opinion expressed in judicial pronouncements, preponderates in favour of the view that the burden of proving that the votes not cast would have been distributed in such a manner between the contesting candidates as would have brought about the defeat of the returned candidate lies upon one who objects to the validity of the election. Therefore, the standard of proof to be adopted, while judging the question whether the result of the election insofar as it concerns a returned candidate is materially affected, would be proof

beyond reasonable doubt or beyond pale of doubt and not the test of proof as suggested by the learned counsel for the appellant."

In view of the foregoing discussion, this election petition must fail and the same is hereby dismissed with costs. —

Sd./-
VIVEK RUSIA,
Judge.

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

भारत निर्वाचन आयोग
निर्वाचन सदन, अशोक रोड, नई दिल्ली-110 001

नई दिल्ली, तारीख 27 मार्च 2023-6 चैत्र, 1945 (शक)

अधिसूचना

सं.- 82/म.प.-लोक सभा/(45/2019)/2023 - लोक प्रतिनिधित्व अधिनियम, 1951 (1951 का 43) की धारा 106 के अनुसरण में, भारत निर्वाचन आयोग, 2019 की निर्वाचन याचिका सं. 45 में मध्य प्रदेश उच्च न्यायालय के दिनांक 17.02.2023 के निर्णय/आदेश को एतद्वारा प्रकाशित करता है (डॉ. गोविन्द सुभान मुजाल्दा विरुद्ध गजेन्द्र उमराव सिंह 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 27th March, 2023 – 6 Chaitra, 1945 (Saka)

NOTIFICATION

No. 82/MP-HP/(45/2019)/2023 - In pursuance of Section 106 of the representation of the People Act, 1951 (43 of 1951), the Election Commission hereby publishes the Judgment order dated 17.02.2023 of the High Court of Madhya Pradesh in the Election Petition No. 45 of 2019 (Dr. Govind Subhan Mujalda Vs. Gajendra Umrao Singh Patel).

REGISTERED AD. TOP PRIORITY
HIGH COURT OF MADHYA PRADESH
BENCH AT INDORE

RECEIVED
 26/01/23
 CLERK/REG. NO.
 4760
 23.22

Endt. No. ./ Election Pet. No. 45/2019 Indore, Dt. 22/02/2023
 Process ID No. 32422 to 32431

In Compliance of Hon'ble Court order dt. 17/02/2023 passed in Election Petition No. 45/2019 (Dr. Govind Subhan Mujalda Vs. Gajendra Umrao Singh Patel) copies of Hon'ble Court's order dated 17/02/2023 is forwarded to :-

1. The Election Commission of India, New Delhi.
2. The Speaker, Lok Sabha, New Delhi
3. The Speaker, Madhya Pradesh State Legislative Assembly, Bhopal (M.P.)
4. The Chief Election Officer, Bhopal (M.P.)
5. The Returning Officer, House of People (Lok Sabha), Parliamentary Constituency No.27, Khargone Lok Sabha Constituency, Khargone (M.P.)
6. The District Election Officer, Collectorate, Khargone (M.P.)
7. The Chief Secretary Govt. of M.P., Bhopal (M.P.)
8. The Principal Registrar (Judl.) High Court of M.P., Jabalpur (M.P.)
9. The Principal Registrar, High Court of M.P. Bench at Gwalior (M.P.)
10. The Secretary, High Court Bar Association, High Court Premises, Indore (M.P.)

For information and necessary action in connection with Election of House of People (Lok Sabha), Parliamentary Constituency No.27, Khargone Lok Sabha Constituency (M.P.)

**IN THE HIGH COURT OF MADHYA
PRADESH
AT INDORE
BEFORE**

HON'BLE SHRI JUSTICE VIJAY KUMAR SHUKLA

ON THE 17th OF FEBRUARY, 2023

ELECTION PETITION No. 45 of 2019

BETWEEN:-

**DR. GOVIND SUBHAN MUJALDA S/O
SUBHAN MUJALDA, AGED ABOUT 55
YEARS, 11, VIVEKANAND COLONY,
TEHSIL KHARGONE (MADHYA PRADESH)**

.....PETITIONER

(BY SHRI ABHINAV DHANODKAR - ADVOCATE)

AND

**GAJENDRA UMRAO SINGH PATEL S/O
UMRAO SINGH PATEL, AGED ABOUT 43
YEARS, 13, HOUSING BOARD COLONY,
TEHSIL BARWANI (MADHYA PRADESH)**

.....RESPONDENT

(NONE FOR THE RESPONDENT)

*This appeal coming on for admission this day, the court
passed the following:*

ORDER

Counsel for the petitioner pleads no instruction and submits that the petition may be dismissed for want of prosecution.

Whether a election petition can be dismissed for non-

OF M. P.

appearance or on no instruction, has been settled in the case of *P. Nalla Thampy Thera Dr. V.B.L. Shanker*, 1984 Supp SCC 631 and in the case of AIR 2003 P& H 268 - *Gurmesh Bishnoi v. Bhajan Lal*. A coordinate Bench of this Court at Jabalpur has also held in the case of *Rakesh Dixit vs. Sadhvi Pragya Thakur* in Election Petition 49 of 2019, 2022 SCC OnLine MP 5170 that election petition can be dismissed for want of prosecution.

In view of the statement of the counsel for the petitioner that he has no instruction and keeping in view the law laid down in the aforesaid cases, the present election petition is dismissed for want of prosecution.

Sd./-
(VIJAY KUMAR SHUKLA)
Judge.

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