

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

HON'BLE SMT. JUSTICE SUNITA YADAV

ELECTION PETITION No. 8 of 2019

BETWEEN:-

**LADDU RAM KORI S/O SHRI PHOOL CHAND,
AGED ABOUT 53 YEARS, OCCUPATION:
AGRICULTURE R/O NEAR BIJASEN MATA
TEMPLE ASHOK NAGAR DISTT. ASHOK NAGAR
M.P. (MADHYA PRADESH)**

.....PETITIONER

***(BY MR. R.D. JAIN – SENIOR ADVOCATE ASSISTED BY MR. SANGAM JAIN,
AJAY BHARGAVA AND MAYANK PATHAK - ADVOCATES)***

AND

**1. JAJPAL SINGH JAJII S/O NOT MENTION,
AGED ABOUT 57 YEARS, R/O WARD NO. 8, 6
SAHU COLONY TEH. ASHOK NAGAR DISTT.
GUNA M.P. (MADHYA PRADESH)**

**2. BAL KRISHAN MAHOBIYA S/O RAM LAL,
AGED ABOUT 53 YEARS, VILL. BAHERIYA
ALIAS ROOP NAGAR, POST TEH. ISAGAD,
(MADHYA PRADESH)**

**3. JAGDISH BHANDARI S/O AMAR AHIRWAR,
AGED ABOUT 32 YEARS, VILL. PIPNAODA,
POST NBARAYANPUR, THE. DIST. ASHOK
NAGAR (MADHYA PRADESH)**

**4. DAYALAU DAS SHAKYA S/O LAL DAS
SHAKYA WARD NO. 14, GALI NO. 2, DIST.
ASHOK NAGAR (MADHYA PRADESH)**

**5. DEVI LAL TAKEDAR S/O TEDI RAM, AGED
ABOUT 47 YEARS, OCCUPATION:
THAKEDAR BHAWAN, NIRMAN SHADORA
TEH. ASHOK NAGAR (MADHYA PRADESH)**

**6. RAJBAL W/O RAJKUMAR OCCUPATION:
KRASHI AND SMAJ SEWA ASHOK NAGAR
(MADHYA PRADESH)**

**7. LALLIRAM S/O DEVILAL, AGED ABOUT 47
YEARS, OCCUPATION: HOME WORK GRAM**

- AND TEH. SHADORA, (MADHYA PRADESH)
 SHYAM SHAKYA S/O RAMLAL SHAKYA,
 AGED ABOUT 26 YEARS, OCCUPATION:
 8. NOTHING HOUSE NO. 239/1 VILL. BHADORA
 THE. GUNA (MADHYA PRADESH)
 JEEVANDAS S/O AMARDAS, AGED ABOUT 27
 YEARS, OCCUPATION: LAGOUR WARD NO.
 9. 14 SHASHINDRA GALLI (MADHYA
 PRADESH)
 V P SINGH S/O ASHOK, AGED ABOUT 27
 YEARS, OCCUPATION: LABOUR VILL.
 10. MAROOP POST RATIKHEDA, TEH. ASHOK
 NAGAR (MADHYA PRADESH)
 NILESH SHARMA, SUB DIVISIONAL
 MAGISTRATE CUM RETURNING OFFICER
 11. ASHOK NAGAR LEGISLATIVE ASSEMBLY
 NO. 32 (SC) ASHOK NAGAR (MADHYA
 PRADESH)

.....RESPONDENTS

(MR. VINOD KUMAR BHARDWAJ – SENIOR ADVOCATE ASSISTED BY MR.
 S.S. GAUTAM – ADVOCATE FOR RESPONDENT NO. 1)

Reserved on : 26.10.2023

Delivered on : 08.11.2023

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

ORDER

This election petition has been filed by the petitioner, who contested election from constituency No. 32, in the elections which were conducted in the year 2018 so as to constitute the Madhya Pradesh Legislative Assembly. The petitioner was a candidate from Bhartiya Janata Party, whereas respondent no.1 was a candidate from Indian National Congress.

FACTS:

2. That, On 02.11.2018, the Election Commission of India issued notification for election to the Legislative Assembly in the State of Madhya Pradesh. As per the said notification, the election was scheduled to be held as under;

- | | |
|--|-------------|
| (i) Last date for making notification | :19.11.2018 |
| (ii) Date for scrutiny of nomination form | :12.11.2018 |
| (iii) Last date for withdrawal of candidature | :14.11.2018 |
| (iv) Date of Pooling | :28.11.2018 |
| (v) Date before which election was to be completed | :13.12.2018 |

3. The Petitioner is the resident of Dist. Ashok Nagar. He contested the M.P. Vidhan Sabha General Election, 2018 (hereinafter to be referred as "Election Of 2018") as a candidate of Bhartiya Janta Party (hereinafter referred as "BJP") from Dist. Ashok Nagar assembly Constituency No.32 (S.C.) namely Ashok Nagar (hereinafter to be referred as "Constituency"). The Respondent No.1 contested election as a candidate of Indian National Congress (hereinafter referred as "INC"). Other Respondents contested elections are narrated below:-

- (i). Respondent No.2 Balkrishna Mahobia contested election as Bahujan Samaj Party;

- (ii). Respondent No.3 Jagdish Bhandari contested election as Bahujan Sangarsh Dal;
- (iii). Respondent No.4 Dayalu Das contested election as a candidate of Bhartiya Panchayat Party;
- (iv). Respondent No.5 Devilal contested election as a candidate of Sapaks Party;
- (v). Respondent No.6 Raj Bai contested election as Mahanvadi Party;
- (vi). Respondent No.7 Lalliram contested election as Aam Aadmi Party;
- (vii). Respondent No. 8 Shyam Shakya contested election as a member of socialist Unity Center of India (Communist);
- (viii). Respondent No.9 Jeevandas contested election as independent candidate;
- (ix). Respondent No. 10 V.P. Singh contested election as independent candidate; and
- (x). Respondent No.11 is the returning officer Assembly Constituency No.32 (SC) namely Ashok Nagar.

4. Constituency No.32, Ashok Nagar, M.P. was reserved for Scheduled Caste (SC) candidates. That, the present Petitioner submitted his nomination as candidate for BJP on 5th and 6th November 2018 and after

scrutiny, the nomination was found proper and thus, Petitioner was declared as one of the candidates for election of 2018 from the constituency No. 32 (S.C.) as a BJP candidate. The Respondent No. 1 submitted his nomination paper from the constituency No. 32 as a candidate of INC.

5. That, the Petitioner submitted his objection against nomination of Respondent No.1 as he was not the candidate belonging to the SC category and alleged that the Respondent No. 1 has submitted his nomination form as a S.C. Candidate 'NAT'. It was also submitted by Petitioner that the Respondent No.1 belonged to Sikh Community. His parents were also Sikh.

6. It is further submitted in the petition that prior to the present election, the Respondent No.1 obtained a certificate being "Keer" Caste on 02.12.1999 which is within "other backward class" (hereinafter to be referred as "O.B.C."). The Respondent No.1 also contested election on the post of Janpad Panchayat member in the year 1994 as a general candidate. In the year 1999, the Respondent No. 1 contested election as O.B.C. candidate. The seat was reserved for O.B.C. In the year 2009, Respondent no. 1 contested election on the post of President of Municipal Council, Ashok Nagar claiming to be of 'NAT' caste. In the year 2013 he contested

election on the post of M.L.A. and lost the election. The Respondent No.1 contested election as a 'Keer' in 1999 which falls in OBC category.

7. It is further submitted that the respondent No.1 also suppressed the information that a criminal case was registered against him on 30.1.2017 on FIR No.- 0017 at 11:43 about which the entry was made in general diary as entry No. 012. This FIR was lodged by Devendra Tamrakar. Respondent No.1 has knowledge about the FIR which was suppressed and not disclosed in the nomination form.

8. It is further submitted that against nomination form of Respondent No.1, Petitioner filed objection. The Respondent No.1 submitted his reply on 12.11.18 in which he stated that he was a candidate of 'NAT' caste which has been declared as Scheduled Caste in 'Gazette of India' and according to the Constitution (Scheduled Caste) Order 1950 he is Scheduled caste candidate. He also stated that the Respondent No.1 was certified to be a member of 'NAT' community. Copy of the reply of Respondent No.1 is Annexure- EP/6.

9. That, one objector namely Jeevan Das also submitted objection in which it was mentioned that the status of Respondent No.1 as Scheduled Caste has not been finally decided and matter is pending in High Court. His objection is Annexure EP/7 and reply is Annexure EP/8. It is also

stated that a writ petition No.7047/2013 was filed in which he prayed for stay order which was rejected and against the order dated 9.10.2013 of learned single Judge, a writ appeal was filed at No. WA-502/2013 which has been decided and the order dated 9.10.2013 has been cancelled. That stay order has been directed to remain in operation until the decision of WP No. 7047/2013. This objection was also replied by Respondent No.1.

10. That, the Respondent No.10 - V.P. Singh Jatav also filed objection against the nomination of Respondent No.1 in which the caste of Respondent No.1 was alleged to be other than Scheduled caste. It was also alleged that the Respondent No.1 was not the scheduled caste candidate and the Respondent No.1 has done fraud and FIR No.0017 has also been filed against him. The Respondent No.1 filed the reply of the objection and submitted that his nomination was not based on fraud. Shri. Dinesh Ahirwar S/o Devilal of Ashok Nagar also challenged the nomination form of Respondent No.1.

11. The returning officer heard the objection and decided the objections on 13.11.2018. The returning officer held that in view of order dated 25.10.2013 passed in WA No. 502/13 the stay order has been passed and the order of the scrutiny committee dated 25.9.13 has been stayed. On the basis of the pleading taken by the Respondent No.1, the Returning Officer

has rejected the objections.

12. It is further submitted that the respondent No.1 was not a candidate belonging to SC category and was, therefore, not qualified to submit his nomination form for the Constituency No.32, Ashok Nagar, which was reserved for SC category candidate. Thus, the Returning Officer has committed gross illegality in rejecting the objection against the nomination form submitted by the respondent No.1 and thereby illegally accepting it. Mere stay of the order dt.16.09.2013 passed by the High Power Caste Scrutiny Committee, whereby the Scheduled Caste Certificate of Shri Jaipal Singh was cancelled, does not have an effect of quashing/setting aside the order dt. 16.09.2013 passed by the Caste Scrutiny Committee and it cannot be construed that the order passed by the Caste Scrutiny Committee has been wiped out from existence. Therefore, the Returning Officer committed mistake in permitting the Respondent No.1 to contest the election as a Scheduled Caste candidate.

13. That, the Respondent No.1 has done fraud on several occasions. Firstly, the Respondent No.1 obtained a certificate from Tehsildar Ashok Nagar on 2.12.1999. In this certificate he claims himself to be person of 'Keer caste'. The order was passed by the Tehsildar on 2.12.1999 which is filed as Annexure EP/3. By this certificate he was claiming himself to be a

member of O.B.C. The fraud done by the Respondent No.1 was got examined by Superintendent of Police, Guna in which the claim of one Baijnath Sahu S/o Manu Singh was accepted and the certificate dated 2.5.1999 was set aside vide Annexure EP/15 dated 04.03.2004.

14. That, on 28.7.2008 the Respondent No.1 filed an application for grant of certificate as a member of Scheduled Caste claiming the caste of Respondent No.1 as 'NAT (Baazigar). This application was accepted by Tehsildar on 29.7.2008 and a certificate of Scheduled Caste was issued to Respondent No.1 in which it was clearly mentioned on 29.7.2008 that if different documents are found than the certificate may be rejected at any time. It was temporary caste certificate issued by Tehsildar Ashok Nagar. The matter was sent to S.D.O., Ashok Nagar for issuing permanent certificate. Copy of this order of Tehsildar is annexed herewith and marked as Annexure EP/16. Along with this file, Tehsildar also sent the application filed by Respondent No.1. In this application it was mentioned that the Collector Dist. Guna has certified the Respondent No.1 on 13.5.99 to be a person of 'NAT' (Baazigar) caste. It was also mentioned that in WP No. 1330/2002 on 12.8.2002 and in WP No.520/2004 dated 3.9.2004, the high level scrutiny committee passed an order on 25.9.2004 and 11.11.2004 respectively and the Respondent No.1 also filed an affidavit in which he has stated that he belongs to the caste 'NAT' (Baazigar). Thus, he claimed

himself to be a 'NAT' describing himself as Baazigar as per the memorandum issued describing castes as Scheduled caste in which at Serial No. 41 the description of Scheduled caste is given as under:-

“41-Nat, Kalbelia, Sapera, Navdigar, Kubutar”

In the above description Nat (Baazigar) has not been included and only NAT has been included. NAT is a person who shows items on the rope and the “baazigar” is the person who plays with small items to please the children.

15. That, the Sub-Divisional Officer Ashok Nagar has sent the matter to Collector, Ashok Nagar on 9.4.12 in which it has been stated that the Respondent No.1 has been recorded in village papers as a Sikh on Survey No.6 of Village Hinnod. In the educational record of Government Primary School Sighada Development Division, Mungaoli at Entry No.145 on 1.8.1969 when the Respondent No.1 took admission in class 1 where he stated that his caste was 'Sikh'. According to the school record, the Respondent No.1 is a member of general category. According to the record of Government Senior Boys Middle School he has been shown as a person of 'Sikh' community. As per the record his date of birth is 5.7.1960. He got admission on 22.7.74 and left the school on a TC No.366 on 25.7.1975. Block Education Officer has written the Letter No.198/2011 dated

3.11.2011 whereby according to the educational record of Government Primary School Singhada of Mungaoli his admission is No.145 and his caste is recorded as 'Sikh' on 1.8.1969. That, the State Government issued an order bearing No.23/76 XXV/5/88 dated 12.12.88 where the 'Sikh' community was treated in general category caste. On this ground, the Respondent No.1 did not get the benefit of student scholarship.

16. That, the Respondent No.1 is resident of Hinnoda, Tehsil Mungaoli from 1.8.1969. It has not been proved that under the Constitution (Scheduled Castes) order 1950 the caste to which he belonged is notified in the presidential order.

17. That, as per the letter No.107/R-1/2011 Mungaoli dated 26.9.2011 in which the grand father of Respondent No.1 is Bood Singh S/o Natha Singh or Nathan Singh whose son is Gurmej Singh and his sons are Rampal Singh, Jajpal Singh (Jajji), Sheetal Singh and Bittu Singh have been shown of 'Sikh' community. Prior to 1.8.1969, the Respondent No.1 was not the resident of Ashok Nagar. A Rifle License was issued to Respondent No.1 where his caste is recorded as Sikh (General Category).

18. That, according to the certificate of Tehsildar, Ashok Nagar the Respondent No. 1 is recorded as a member of 'Keer' caste which is O.B.C. and accordingly the certificate was issued bearing No.143-B-121/99- 2000

dated 2.12.99. This certificate was found to be false. On the basis of this order, the Collector, Ashok Nagar sent an information to Commissioner, Scheduled caste department on 24.4.2012 in which the Collector recommended criminal proceeding against the Respondent No.1.

19. That, as per the Scrutiny committee known as State Level. Doubtful Schedule Caste certificate Scrutiny committee the Respondent No.1, was found to have practiced fraud. The said order was challenged in WP No.7047/2013 and in that matter the stay order was refused on 9.10.2013 against which a Writ Appeal was filed bearing No. WA No. 502/2013 in which the order dated 16.09.2013 was stayed.

20. That, on the basis of the fraudulent act committed by Respondent No.1, FIR was submitted by Devendra Tamrakar and a case was registered under Sections 13(1)d, 13(2) of Prevention of Corruption Act, 1988 and under Sections 420, 468, 471 and 120B of IPC.

21. That, it was also mentioned that the Respondent No.1 has committed financial irregularities due to which the Municipal Council suffered a loss of Rs.58.76 Lakhs. On this ground the case was registered. That, in the above case the investigation was started and this information was widely published in Ashok Nagar. The information was published in the newspaper 'Ashok Nagar Ki Dhadkan'. Similarly, in the newspaper

"Ashok Nagar Ki Dhadkan" issued for the week 29 June to 5 July this fraud was disclosed. Information was published. These newspapers are widely read in Dist. Ashok Nagar and the Respondent No.1 had information about the case registered against him. That the above newspaper was published by Shri. Devendra Tamrakar which had published the material and whose address is Purana Bazaar, Ashok Nagar. He is also Editor and the paper is edited from Sahastra Prakashan AshokNagar. The respondent no.-1 had knowledge that this case has been registered but he did not disclose about the FIR case and thus the affidavit filed by the Petitioner with nomination is false.

22. Thus by concealing the material information regarding pendency of criminal case for commission of offence under Sections 13(1)(d) & 13(2) of the Prevention of Corruption Act, 1988 read with Sections 420, 468, 471 & 120-B of IPC vide FIR dated.30/2017, the nomination paper submitted by the respondent No.1 was not in conformity with the provisions contained under Section 33 of the Representation of People Act, 1951.

23. The nomination form submitted by the respondent No.1 thus deserves to be rejected at the threshold on the ground of concealment of the material information as stated above and at the same time, the respondent No.1 is also guilty of commission of election offence under

Section 125-A of the Representation of People Act, 1951

24. That, the Respondent No.1 contested the election as a candidate of INC. That, the Petitioner was contesting the elections as a candidate of Bhartiya Janta Party. In the earlier election held in the year 2008, the Petitioner won the election by a margin of more than 21,000 votes. In present election, the Petitioner and other candidates obtained votes as under:-

Respondent No. 1 obtained 65750 votes

Bal Krishna Mahobia obtained 9559 votes

Petitioner obtained 56020 votes

Jagdish Bhandari obtained 1090 votes

Dayalu Das obtained 287 votes

Devilal obtained 1462 votes

Raj Bai obtained 345 votes

Lalli Ram obtained 259 votes

Shyam Shakya obtained 520votes

Jeevan das obtained 613votes

V. P. Singh obtained 558 votes

In view of above, it is clear that the Petitioner would have won the seat if the votes which fell to the Respondent No.1 would not have been secured by him. People had notice that he was a general candidate and he was fighting from Scheduled caste seat. Therefore, people who had knowledge about the Respondent No.1 being a general candidate voted to the Respondent No.1. In case the Respondent No.1 would not have contested the election, petitioner would have been elected. This was informed by Gajendra Singh S/o Narayan Singh Ward No.2 Ashok Nagar and Lalit Kori S/o Shri. Surendra Kori Ward No.10 AshokNagar.

25. That, the Respondent No.1 was never accepted as a member of Scheduled caste. The community also did not consider him to be a member of the scheduled caste. Persons of 'NAT' community also did not accept him to be a 'NAT'. Respondent No.1 also calls himself 'NAT' (Baazigar) and he does not fall in Entry No.41 mentioned above.

26. That, the Respondent No.1 has not disclosed that his family was living prior to the year 1950 at Punjab. Shri Sita Ram Raghuvanshi S/o Lalji Ram Raghuvanshi Ashok Nagar Road, Sadora and Rajendra Singh Raghuvanshi S/o Amar Singh R/o Durga Colony, AshokNagar and Respondent No.1 and the people living in that constituency No.32, all knew that the family came to Guna after 1950, the Respondent No.1 was

migrated in Ashok Nagar much after 1950.

27. By filing the written statement vide document no. 6216/2019, the respondent no.-1 denied the allegations made in the petition and submitted as below :-

(I). That, election petition filed by the petitioner is in pre-mature stage because no cause of action arises to the petitioner. At the time of filing the nomination form and also at the time of filing the instant election petition the 'NAT' schedule caste certificate of R-1 was in existence.

(II). That the Election Petitioner has raised an imaginary controversy. The petitioner is a Member of 'NAT' Community. It is submitted just as the colour of the skin is inherited and it is always constant, similar is the case of caste. A caste is inherited and the answering respondent is Member of the 'NAT' Community. The fact that more than 60,000 voters voted in favour of the petitioner shows that the voters knew about the status of the Answering Respondent. The Election Petitioner cannot claim that he is entitled to count the votes polled in favour of Answering Respondent. This assertion is based on imaginative facts. The fact as to whether a particular person is a member of a particular Caste or Community has to be determined as a fact. Every Election furnishes a fresh cause of action and this has to be adjudicated upon every

time. What was said in an earlier litigation cannot be conclusive. An earlier decision or an earlier plea taken by a person would not operate as res judicata and any decision given is not a judgment in rem. Earlier decision would not operate as judicial precedent. Thus the issue has to be decided on merits. Every election furnishes a fresh cause of action. Earlier decisions cannot be treated as judgment in rem.

(III). That the contention of the answering respondent is that he is Member of 'NAT' Community which is covered by Constitution (Schedule Caste) Order 1950. This issue has to be determined as a fact. The answering respondent is claiming that he belongs to Punjab where there is official record to the effect that the Members of his family have been treated as Scheduled Castes. The Answering Respondent would be leading evidence on this aspect of the matter and a determination has to be made in the judicial process. It is, however, submitted that the answering respondent is the Member of the 'NAT' community.

(IV). That the description given by the answering respondent that he is a 'NAT', the category of "Bazigar" is only illustrative. 'NAT' Bazigar is not a separate Caste. When a person describes himself as 'NAT' Bazigar, he assumes that he is 'NAT'. In any case, this issue has to be determined as a fact. It cannot be decided on the basis of oral statements made by the

parties. The official records which the Answering Respondent believes is present in Punjab, from where his family migrated to Madhya Pradesh, and is clear and categorical. The answering respondent is a Member of the Scheduled Category.

(V). That merely because the answering respondent has described himself as a Sikh, does not take away his status as Scheduled Caste. Among the Sikhs there are persons belonging to Scheduled Castes and Backward Classes. Merely because a person is a 'Sikh' it cannot be said that he cannot be a Scheduled Caste. The fact that the petitioner contested election as General candidate would not mean that he has ceased to be Scheduled Caste. Under the Election Law as well as Service Jurisprudence, a candidate belonging to Scheduled Caste can claim benefits of General category.

(a). That, the High Level Caste Scrutiny Committee as per the direction of W.P. No. 7047/2013 dated 01-05-2019 issued the notices to all concerned persons and considering the oral & documentary evidence and came to conclusion that the respondent No. 1's ancestor has migrated from Punjab to Madhya Pradesh. In Punjab as well as in Madhya Pradesh, Nut caste is a scheduled caste as per the Gazette of India

extraordinarily published on 11-08-1950. The High Level Caste Scrutiny Committee ultimately came to conclusion that the certificate No. 31/B-121/08-09 dated 06-11-2008 is valid certificate. The copy of the order dated 18-12-2019 passed by the High Level Caste Scrutiny Committee is annexed herewith and marked as Annexure R-1 and as such the present petition is not maintainable.

(b). That, the High Level Caste Scrutiny Committee after appreciating the evidence of either parties, revenue record, documents and the report of the Vigilance Officer came to the conclusion that 'NAT' Schedule Caste Certificate No.- 31/B-121-0809 issued by the competent authority SDO (Revenue) Ashok Nagar dated 06-11-2008 to respondent no.-01 is valid and genuine certificate and vide its order dated 18-12-2019 has validated 'NAT' Schedule Caste status/Certificate of the respondent No.1 (Return - Candidate). Said order was assailed/challenged by the Election Petitioner by way of filing the Writ Petition No.- 4794/2020. The Writ Petition was allowed by the Learned Single Bench vide order dated 12-12-2022. The respondent No.1 (Return-candidate) had challenged the Single Bench order dated 12-12-2022 by the

way of filing the Writ Appeal No.- 1668/2022 before the Hon'ble Division Bench. The Hon'ble Division Bench after hearing both the parties at length pronounced Final Judgement/order on 09-08-2023, in which the Hon'ble Division Bench quashed the order dated 12-12-2022 passed in W.P. No.-4794/2020. Copy of order dated 09-08-2023 is being annexed herewith and marked as Annexure – R-1/2.

(c). That, the main allegation levelled against the respondent No.1 (Return-Candidate) in the Election Petition is that the return candidate does not belong to the Schedule Caste category. That, as per the direction of the Hon'ble Apex Court, the caste status of the candidate shall be verified by the State Level Caste Scrutiny Committee. The Committee has verified and validated the 'NAT' S.C. status of the respondent No.1 and the same has been affirmed by the Hon'ble Division Bench vide its order/judgment dated 09-08-2023 passed in Writ Appeal No.- 1668/2022.

(d). That, in the light of the judgment Annexure R-1/2, no issue remains in respect of 'NAT' Schedule Caste status of the respondent No.1 (Return-candidate). Hence, the Election

Petition has been rendered infructuous and is liable to be dismissed at this stage.

(e). That, in the Election Petition and in Court statement recorded on behalf of the Election Petitioner and his witnesses, it is stated that the respondent No.1 has suppressed the material information about the pendency of F.I.R. Crime No. - 0017/2017 registered at the Police Station Lokayuta at the relevant point of filing of nomination form/paper. It has also come on record, that there is nothing on record to show that at the time of filing of nomination form up to till date the charge sheet had been filed or cognizance has been taken by the competent Court of Jurisdiction. That, at the time of filing the nomination form, the respondent No.1 (return-candidate) had no knowledge about the pendency/registration of the F.I.R. by the Police Station Lokayuta and no notice had been served. If the respondent No.1 had any knowledge about the F.I.R. registered by the Lokayuta Police then he certainly had mentioned it in the nomination form. On this ground also, the Election Petition is redundant/infructuous and in the light of the judgment passed by the Hon'ble Apex Court, same deserves to be dismissed.

(f). That, the Election Petitioner has challenged the Legislative Assembly Election of the year 2018. Later in the changed circumstances, the humble respondent No.1 (return-candidate) has resigned from the post of M.L.A. of constituency no.-32 Ashok Nagar and the same was accepted by the authority. The notification was issued on 19-03-2020 to give effect to the said resignation since 10-03-2020. The Election Commission has conducted the By-Election on the vacant seat of constituency no.-32 Ashok Nagar (Reserved for SC). In the By-Election the respondent No.1 again contested/participated on the mandate of BJP and again won the election with heavy margin of votes. In the By-election, the present Election Petitioner and other respondents didn't contest/took participation, however, neither present Election Petitioner or anyone else raised any objection on the nomination form of the respondent No.1 (return-candidate) nor the By-election/subsequent election has been challenged by the Election Petitioner and others by way of filing fresh election petition. Every fresh election has fresh cause of action. Looking to the present circumstances, the Election Petition as well as the relief claimed by the Election

Petitioner has been redundant/infructuous because no cause of action survives with the petitioner and no relief can be granted to the Election Petitioner in the changed circumstances. Hence, the election petition should be dismissed at this stage.

(g). That, there is no allegation levelled in the entire Election Petition about committing any corrupt practice by the respondent No.1 (return-candidate). An Election Petition must contain a concise statement of material facts. This Election Petition not only lacks in material facts, it also lacks in material particulars, effective verification and the affidavit filed was not in the Prescribed Form No.-25 under Rule 94-A of the rules 1961. The existence of material facts, material particular, correct verification and the affidavit in the Prescribed Form, all are relevant when the petition is based on the allegation of corrupt practice and in the absence of these, the Court has the jurisdiction to dismiss the Petition. On that count also, the Election Petition deserves to be dismissed.

(h). That, apparently the Petitioner filed the Election Petition

knowing that the facts stated therein are false and as such the instant Election Petition is meritless, vexatious and bogus, same deserves to be dismissed. It is further stated that action must be taken under Chapter 11 of IPC and heavy cost under section 35 A of CPC may also be imposed against the present petitioner as he consumed enormous and precious judicial time.

(VI). That the verification to the petition regarding paragraph 1, 3, 7, 17, 19, 20, 21, 22, 31, 33, 34, 35, 36 are true to the personal knowledge and belief disclose is a vague affirmation. He has to disclose the source on the basis of which this information is based. The statement made that averments made in paragraph 2, 4, 5, 6, 8, 9, 10, 11, 12, 13, 14, 18, 23, 24, 25, 28, 29, 30, 32 are based on documents and that statement is believed to be true does not satisfy the test of affirmation. Similar is the position with regard to paras 15, 16, 26, 27 and ground "A" to "G". The verification at the end of the petition is again not in accordance with law. The Election Petitioner has not verified the documents appended with the petition and therefore these cannot be made part of the Election Petition. The assertion in the verification of Annexures that what is contained therein is true to his personal knowledge is not sufficient verification. The Election Petitioner cannot vouch for the contents of the Annexures. The Election Petitioner

has not verified all Annexures. By denying the allegations made in the election petition, it is, therefore, prayed that looking to the facts and circumstances of the case the election petition filed on behalf of the Election Petitioner may kindly be dismissed with cost in the interest of justice.

28. By filing the written statement by document no. 4460/2022, the respondent no.-3 filed his written statement and submitted that :-

I. That, the present written statement is filed by the Defendant no. 03, here the defendant no. 03 has also participated in the constituency no.32 (SC) in Vidhan Sabha Election 2018, of State of Madhya Pradesh and contested the election from the banner of the party Bahujan Sangarsh Dal, and secured 1091 votes,

II. That, the role of the defendant no.03 is very limited in this election petition and his written statement is limited to the facts involving and touching the defendant no.03.

III. That, the present election petition is filed in material mainly raising the two grounds, firstly: That, at the time of filing the nomination, the defendant no. 01 was not actually belonging to the schedule caste 'NAT'.

IV. Secondly: the Defendant no. 01 has not disclosed the fact of

pendency of FIR in EOW at the time of filing his nomination form.

V. That, except this the whole election petition is based on the facts which does not go into the root of the present election petition.

VI. It is relevant to mention that, the ground raised in the present election petition against the defendant no.01 does not comes under the corrupt practice under the relevant provision of Representation of the Peoples, Act,

VII. That, the ground raised that the defendant no.01 is not belonging to Schedule Caste "NAT" is a issue which cannot be decided in the scope of Election Petition, for it the separate forum is available and in respect of the present defendant no. 01 such forum has given its verdict which is on record and same is in favor of the defendant no.01, therefore this ground raised is not of any avail for the election petitioner.

VIII. Secondly the ground of pendency of the criminal case against the defendant no. 01 and suppression of this fact, at the time of filling the nomination ST constituency no. 32 (SC) in Vidhan Sabha Election 2018, of State of Madhya Pradesh, such objection made by the election petitioner before the returning officer has been considered and rejected, therefore against the such order separate forum is available to challenge the same, and such issue cannot be the subject matter of the election petition under

the flag of corrupt practice.

IX. That, the defendant no. 03 is made party as a formal party/defendant, therefore written statement of the defendant no. 03 is limited to the extent of plaint which effect the defendant no. 03. In his written he has submitted that the facts narrated in the petition needs to be proved by leading evidence and proving of the copies of relevant records. The petitioner has not any case and the petition be dismissed with heavy cost.

29. Based on the averments in the petition as well as in the written statements, following issues were framed by the Court on 11.12.2019 as well as additional issue framed on 29.9.2022. The answers to the issues are being mentioned before it and the reasons for the answers/conclusion are being discussed thereafter as below:-

Issues	conclusions/answers
(i). Whether the present election petition is not maintainable for want of cause of action?	Yes
(ii). Whether the caste certificate submitted by respondent no.1 in support of his nomination form was a valid document ?	Yes
(iii). Whether respondent no.1, who contested	Yes

election from Assembly Constituency No.32 namely Ashok Nagar in M.P. Vidhan Sabha General Elections, 2018 is a member of Scheduled Caste namely “Nat” ?	
(iv). Whether the election, in so far it concerns respondent no.1, has been materially affected by improper acceptance of his nomination ?	No
(v). Whether the election of respondent no.1 is vitiated on account of violation of sections 33 or 125A of the Representation of People Act ?	No
(vi). Since the respondent No. 1 originally hails from Punjab, whether he could be treated as member of Scheduled Caste in the State of Madhya Pradesh ?	Yes
(vii). Whether the validity of caste certificate can be adjudicated in election petition ?	No
(viii). Whether the petition is liable to be dismissed for want of non compliance with mandatory provisions of the Act ?	No, but is liable to be dismissed on merits.
(ix). Whether election of returned candidate/respondent no.1 is void and	No

petitioner is entitled to be declared elected having secured highest votes ?	
(x). Relief and Costs ?	Election petition is dismissed with cost of Rs 50,000/-
(xi). Whether the Returning Officer was right in rejecting the objection raised by the petitioner with regard to the caste of the respondent No. 1 ?	Yes

30. Reasons for the conclusions

Election Petitioner has sought the following relief in the instant election petition-

(i) That entire record of the election of the respondent no.-01 for constituency no.-32 including the objection filed against the nomination of respondent no.-01 may be called.

(ii) It may be held that the election of the respondent no.-01 for constituency no.-32 in the election of the year 2018 is void.

(iii) It may be further declared that the petitioner is elected to the constituency no.32 as per Section 88 of the R.P. Act 1952.

(iv) Any other relief which this Court deems fit and proper in the facts and circumstances of the case in favour of the petitioner may be granted.

Election petitioner examined himself as E.P.W. No. 1 and also examined Devendra Tamrakar as E.P.W. No. 2 and Roshan Raj Yadav as E.P.W. No. 3.

31. ISSUES No. (ii) and (iii)

ISSUE -(ii)

"Whether the caste certificate submitted by respondent no.-01 in support of his nomination form was a valid document?"

ISSUE - (iii)

"Whether respondent no.-01, who contested election from Assembly Constituency No.-32 namely Ashok Nagar in M.P. Vidhan Sabha General Elections 2018 is a member of Schedule Caste namely "NAT"?"

32. These two issues are related to the genuineness of caste certificate of respondent No. 1; therefore, they are being considered together.

33. As per the case and argument of learned counsel for the election petitioner, respondent No. 1 was not a member of scheduled caste namely 'NAT', however, he contested the Assembly Election from Constituency No. 32 Ashok Nagar (M.P.) as a member of scheduled caste. Election petitioner Laddu Ram Kori (E.P.W. No. 1) in his court-statement has also

deposed in the same line.

34. It is not disputed that this Court vide order dated 01-05-2019 passed in W.P. No.-7047/2013) set aside the ex-parte order of the Caste Scrutiny Committee dated 16-09-2013 and remanded the matter back to Caste Scrutiny Committee for deciding it afresh. In compliance of the order of this Court, the Caste Scrutiny Committee passed the order providing full opportunities to either parties and has finalised and validated the 'NAT' Schedule Caste social status of the respondent no.-01 (return candidate) vide order dated 18-12-2019. It is also not disputed that during the pendency of the instant election petition the election petitioner had filed the W.P. No.- 4794/2020 and had challenged the order of Caste Scrutiny Committee dated 18-12-2019. The Co-ordinate Bench of this Court allowed the writ petition by order dated 12-12-2022 and quashed the order of Caste Scrutiny Committee. The respondent No.-1 filed Writ Appeal, W.A. No.-1668/2022 challenging the said order dated 12-12-2022 passed by the single bench. The Division Bench of this court by its order dated 09-08-2023 set aside the order of Single Bench dated 12-12-2022 and affirmed the order of the Caste Scrutiny Committee dated 18-12-2019 by which the Caste Scrutiny Committee has validated the 'Nat' Schedule Caste status of the respondent no.-01/return candidate. The Hon'ble Apex Court has also by order dated 16-10-2023, dismissed the SLP (C) No.-

22762/2023 filed by the election petitioner against the order of Division Bench dated 09-08-2023 passed in Writ Appeal No. - 1668/2022.

35. Thus, after dismissal of S.L.P. No.22762/2023 by the Apex Court against the judgment dated 09.8.2023 passed in the Writ Appeal No.1668/2022, the issue of genuineness of caste certificate of respondent No. 1 has finally been decided now, and the findings of Caste Scrutiny Committee dated 18.12.2019 have become absolute according to which respondent No. 1 belongs to the caste 'NAT' Baazigar under the category of scheduled caste.

36. The Apex Court in the case of **Madhuri Patil V/s Additional Commissioner Tribal Welfare; (1994) 6 SCC 241** has laid down that if there is any dispute regarding caste status of any person the only authority is vested in the State Level High Power Caste Scrutiny Committee who verify, scrutinize and approve the caste claim/status of any person. The Caste Scrutiny Committee is the "administrative authority" vested the quasi-judicial function. It is further held that the order passed by the committee shall be final and conclusive only subject to the proceedings under Article 226 of the Constitution. Thus any challenge regarding the caste status of a person, the only remedy is Under Article 226 of the Constitution of India.

In this Election Petition, the order of Caste Scrutiny Committee is challenged. However, in the light of case of **Madhuri Patil (supra)**, petitioner has no cause of action to dispute over the order of the Caste Scrutiny Committee in this election petition.

37. Accordingly, in respect to issue Nos. (ii) and (iii), it is found that caste certificate submitted by respondent No.1 in support of his nomination was a valid document because respondent No. 1 was a member of scheduled caste namely 'NAT' and he can be treated as member of scheduled caste in the State of Madhya Pradesh.

Consequently, issue Nos. (ii) and (iii) are answered in the affirmative.

38. ISSUES No.-(iv) and (xi)

ISSUE No.-(iv)

"Whether the election, in so far it concerns respondent no.-01 has been materially effected by the improper acceptance of his nomination"?

ISSUE No.-(xi)

"Whether the Returning Officer was right in rejecting the objection raised by the petitioner with regard to the caste of respondent no.-01"?

39. These two issues are related to alleged improper acceptance of nomination of respondent no.-1. The Returning Officer has accepted the nomination of the respondent no.-1 vide order dated 13-11-2018 Annexure - EP/14 (Page No.-104- 106).

40. The material available on record reveal that the election petitioner and other respondents filed their written objections before the Returning Officer for rejecting the nomination paper/form of the return candidate/respondent no.-1. vide page no.- 60 to 61 (Ladduram Kori) reply of return candidate vide page no.-63 to 65, objections of Jeevanlal at page 67 to 69, replied by the return-candidate at page no.-71 to 73, objection of B.P. Singh Jatav at page no.-89 to 91, replied by the return candidate at page no.-93 to 96, objection filed by Dinesh Ahirwar at page no.-98 to 99, reply by the return candidate at page no.-100 to 103.

41. The Returning Officer had rejected the objections of the Election Petitioner and other respondents and had accepted the nomination of the return candidate on the grounds that -

(i) On the perusal of the certificate, it is found that certificate no.- 31/B-121/08-09 dated 03-11-2008 is rightly issued by the competent authority Sub-Divisional Officer, Ashok Nagar, on the basis of the Constitution (Schedule Caste) order 1950 (SL. No - 41).

(ii) Scrutiny Committee order dated 16-09-2013 is stayed by the Hon'ble Division Bench vide order dated 25-09-2013 passed in W.A. No.- 502/2013, up to the final decision of the W.P. No.- 7047/2013. Hon'ble Division Bench order is in existence/effective till date matter is sub-judice.

(iii) Stamps paid by the return candidate is proper according to Indian Stamp Act, 1899.

(iv) Non-disclosure of pendency of FIR crime no. 17/30-01-2017.

Returning officer in his order dated 13-11-2008 had held that "According to hand book of returning officer 2018, page no.-116, point no.04 *“yadi vihit shapathpatra dakhil kiya gaya hai kintu yeh kathith taur par ya trutipurna ya mithya soochna wala paya ya mana jata hai to namankan ko iss aadhar par aswikrit nahi kiya jana chahiya.”* and has rejected the fourth objection raised by the election petitioner and other respondents.

(v) Rest of objections have also been rejected by the returning officer on the ground that according to returning officer handbook 2018, page no. - 115, point no.- 6-10 and section 36(2) of the R.P. Act, 1951, ground of Objections were not found place in both hand book and R.P. Act, hence rejected the other objections.

42. The Returning Officer had competence and authority to accept or

reject the nomination paper of the candidate. In view of the reasons assigned by the Returning Officer for rejection of the objections as mentioned above, Returning Officer has rightly accepted the nomination paper of the return candidate respondent no.-1. Jajpal Singh after appreciating the legal position and instructions of the election commission of India.

43. In view of the above, issue No.-(iv) is answered in negative and issue no.-(xi) is answered in affirmative.

44. ISSUE NO. -(v)

"Whether the election of respondent no.-01 is vitiated on account of violation of sections 33 or 125A of the Representation of People Act?

45. To decide this issue, Section 33(A) Representation of People Act (hereinafter referred to as the "Act") are relevant which are provided as below:-

"(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.”

In violation of Section - 35 (1) (A) (i) the penalty is prescribed under Section 125 (A) of the Act, sentenced with imprisonment for a term which may extend to six months or with fine or with both.

46. In the case in hand, there is no evidence that at the relevant point of time of filing the nomination paper/form on behalf of the return candidate, any case punishable with imprisonment for two years or more was pending in which a charge has been framed by the court of competent jurisdiction. Even in their evidence, the election petitioner and his witnesses have failed to show that the the cognizance in any criminal case has been taken by the competent court against respondent no.-1. EPW-2 Devendra Tamrakar who is the author of the FIR crime no.-17/2017 has stated in his Court statement that he has no knowledge whether order of cognizance has been filed or not in the present election petition. Since election petitioner has failed to prove that till date of his evidence any charge-sheet has been filed or

cognizance has been taken, therefore, it is not proved that the election of respondent no.-01 is vitiated on account of violation of sections 33 or 125A of the Representation of People Act.

47. As per the law laid down in the case of *Krishna Murthy vs. Shiv Kumar & Ors.; (2015) 3 SCC 467*, the cognizance of offence/crime should be taken by the competent Court and mere registration of FIR is not sufficient to disqualify the candidate to contest the election. In this case, neither there is pleading nor any evidence that competent court has taken cognizance on the FIR registered against respondent No.1. Therefore, it cannot be said that election of respondent No. 1 is vitiated on account of violation of Section 33 A of Representation of Peoples Act. In view of above, the defence of the the respondent no.-1/return candidate can not be disbelieved that he did not suppress the material information about the pendency of the FIR crime no.-0017/2017 of Police Station Lokayukta because there is no evidence that the Police Lokayukt had issued any kind of notice to the return candidate or he was summoned by the court.

48. As discussed above, since provision of Section 33 A of the Act would not be attracted in the matter; therefore, question of punishment under Section 125-A would be frustrated.

49. Consequently, issue No.-(v) is answered in negative.

50. ISSUE NO.-(vi)

"Since the respondent no.-01 originally hails from Punjab, whether he could be treated as member of Schedule Caste in the state of Madhya Pradesh"?

51. As discussed above the issue of caste of the respondent no.1 has finally been decided up to the Apex Court and as per the caste certificate, he belongs to 'NAT' Caste /Scheduled Caste. It is also crystal clear that in the light of case of *Madhuri Patil (supra)* the question of genuineness of the caste certificate can not be decided in this election petition. Therefore, on the basis of order of the Caste Scrutiny Committee, it is found to be proved that the respondent No.-1 could be treated as member of Schedule Caste in the state of Madhya Pradesh.

52. In view of the above, issue No.-(vi) is answered in affirmative.

53. ISSUE NO.-(vii) -

"Whether the validity of caste certificate can be adjudicated in the election petition" ?

54. In the judgment of the *Madhuri Patil (supra)*, the Apex court held that verification, scrutiny and approval of any caste certificate can be adjudicated by the quasi-judicial authority State Level High Power Caste Scrutiny Committee and had prescribed the procedure. Para 15 of the said

judgment deals with scope, dimension, limit and extent of jurisdiction of the High Court under Article 226 of the Constitution while addressing a challenge made to report and recommendations of High Power Caste Scrutiny Committee. The same is also relevant for the purpose of this petition and is reproduced as under:-

“15. The question then is whether the approach adopted by the High Court in not elaborately considering the case is vitiated by an error of law. High Court is not a court of appeal to appreciate the evidence. The Committee which is empowered to evaluate the evidence placed before it when records a finding of fact, it ought to prevail unless found vitiated by judicial review of any High Court subject to limitations of interference with findings of fact. The Committee when considers all the material facts and records a finding, though another view, as a court of appeal may be possible, it is not a ground to reverse the findings. The court has to see whether the Committee considered all the relevant material placed before it or has not applied its mind to relevant facts which have led the Committee ultimately record the finding. Each case must be considered in the backdrop of its own facts.”

(Emphasis supplied)

In view of the above law laid down in the case of **Ku. Madhuri Patil (supra)**, it is crystal clear that validity of caste certificate cannot be adjudicated in the election petition (trial) and verification, scrutiny and approval of any caste certificate can be adjudicated by the quasi judicial authority i.e. State Level High Power Caste Scrutiny Committee.

55. Consequently, issue no.(vii) is answered in negative.

56. ISSUE NO.-(ix)

"Whether election of the return candidate/respondent no.-01 is void and petitioner is entitled to be declared elected having secured highest votes?"

57. It is not is dispute between the parties that the election petitioner has challenged the Legislative Assembly Election 2018 for reserved constituency No. -032 Ashok Nagar, which was reserved for the Schedule Caste candidate.

58. It is also not disputed that the respondent No.-01/return candidate has resigned and by-election has been taken place in the year 2020 in which the return candidate participated in the election fray and has won the by-election. In the by-election the election petitioner and other respondents neither participated nor anyone has challenged the by-election. Therefore, question to declare election petitioner as elected in place of return candidate does not arise and therefore, in the present situation the election petitioner's recrimination claimed would not be survived and no relief can be granted to the petitioner.

59. Therefore, issue No.(ix) is answered in negative.

60. ISSUE NO.-(i)

"Whether the present election petition is not maintainable for

want of cause of action"?

61. As discussed above, at the time of filling the nomination form and at the time of declaration of result in favour of Respondent No.-1 the stay order dated 25.10.2013 was in existence by which the D.B. of this court had stayed impugned order dated 16.09.2013 passed by the High Level Caste Scrutiny Committee, and the order was stayed until the final decision of the writ petition No.-7047/2013. In the light of said stay order the Returning Officer had rejected the objection no.- 2 raised by the petitioner vide order date 13.11.2018. Aggrieved by, the election petitioner has filed an instant election petition.

62. The election petitioner has questioned the caste of the respondent No.-1 in this case and challenged the election of respondent No.-1 on the basis of his not being a member of scheduled caste. The issue of caste of respondent no.-1 has now finally been decided up to the Apex Court and therefore, due to change in circumstances, no cause of action survives with the election petitioner.

63. Consequently, issue No. (i) is answered in affirmative.

64. ISSUE NO.-(viii)

"Whether the petition is liable to be dismissed for want of compliance of the mandatory provision of the Act"?

65. The respondent no.-01 has submitted that the petition is liable to be dismissed for want of compliance of the mandatory provision of the Act. An election petition must contain a concise statement of material facts. Provision of Section-83 of the R.P. Act is mandatory in nature and also requires the filing of the affidavit in the prescribed form where there are allegations of the corrupt practice. It is lacking on the part of the petitioner that he has not filed the affidavit in the prescribed format form no.-25 under rule 94-A of 1961 rules. The election petition not only lacks in the material facts, it also lacks in material particulars, effective verification and the affidavit filed was not in the form prescribed. The existence of material facts, material particulars, correct verification and the affidavit are relevant and important when the petition is based on the allegations of corrupt practice and in the absence of these, the Court has the Jurisdiction to dismiss the petition. However, as discussed above the present petition is filed on two grounds first the respondent No.1 was not a candidate belonging to SC category and was, therefore, not qualified to submit his nomination form for the Constituency No.32, Ashok Nagar, which was reserved for SC category candidate and secondly non discloser of pendency of criminal case. On these two grounds all material facts have been disclosed by the petitioner. The affidavit has also been filed in support of the petition. **Therefore, the petition is not liable to be**

dismissed for non compliance of mandatory provisions. However, the petition lacks merits as discussed above and is liable to be dismissed on merits.

66. ISSUE NO.-(x)

"RELIEF & COSTS"

67. In view of the aforesaid discussions, the petition sans merits and therefore, instant **Election Petition No.- 08/2019 Ladduram Kori V/s Jajpal Singh "Jajji" & others is hereby dismissed.**

68. Learned counsel for the respondent No.1 argued that the allegations by the election petitioner in the entire election petition are unnecessary, scandalous and noxious which are tantamount to abuse of process of law and wasting the valuable time of the Court. The election petitioner filed the instant Election petition with malafide intention, on the basis of facts which are false. Therefore, action must be taken under chapter 11 of Code of Civil Procedure 1908 and heavy cost under Section 35 (A) of the CPC may also be imposed against the present petitioner while dismissing the petition. Learned counsel for respondent No.-1 has drawn the attention of this court on the court statements of election petitioner and his witnesses and earlier orders of this court to show that the election petitioner is the political opponent of the respondent No.-1 and also having rivalry.

69. The statement recorded during the cross examination of EPW-1 Ladduram Kori at para 12, 22,24,25, 26 he has admitted that in the year 2013 also respondent No.-1 contested the election from Ashok Nagar which was reserved for SC candidates, but he did not raise any objection. In his cross-examination he expressed his ignorance about his filing the application in Writ Petition No.-7047/2013 and the order passed in it dated 01/05/2019 (Exhibit D-2).

70. The evidence recorded in this petition indicates that the election petitioner in his statements made allegation against the Advocate Shri Gautam about his being given a legal opinion about the caste of respondent No.-1 to illegally benefit him but neither he pleaded about this fact nor filed the copy of said order.

71. The election petitioner examined Devendra Tamrakar as EPW-2. This witness in his cross examination specifically stated that he has not raised any objection against respondent No.-1 while he contested the elections in the year 2021 and 2013 in the seat reserved for SC candidate. This witness has also said that the Senior counsel of petitioner has called him for evidence. The witness further said that on the basis of information of petitioner he is saying that Shri Gautam Advocate has wrongly opined about the caste of the respondent No.-1.

72. The EPW-3 Roshan Raj Yadav has also admitted that he has not raised any objection against respondent No.-1 while he contested the elections in the year 2021 and 2013 in the seat reserved for SC candidate. The evidence of this witness is mostly *hearsay* without having seen the relevant documents and without having personal knowledge. At para 13 of his evidence this witness has said that his Advocate Shri Jain (Senior Counsel) has informed Devendra Tamrakar (EPW-2) and him about the recording of evidence.

73. The aforesaid evidence of election petitioner and his witnesses clearly indicate that the present petition is filed only when the election petitioner lost the election in the year 2018 objecting that the respondent No.-1 does not belong to Scheduled Caste whereas he (respondent No.-1) contested the earlier elections in the year 2013 and also election in the year 2021 under the same category but no objection was raised his not being the member of SC community. The conduct of the election petitioner along with the evidence adduced by him indicate that present petition is filed only on account of political rivalry after defeat in election of 2018 against respondent No.-1 and for which he (respondent No.-1) has to suffer enormous amount of mental agony. The evidence of witnesses of election petitioner indicate that the allegations without pleadings and supporting documents were made.

74. It is also pertinent to mention that in Division Bench of this court in R.P. No.1721/2018 has held that the respondent No.1 Ladduram Kori (Election Petitioner in this case) not being an aggrieved person and is a “**busy body**” as he had failed to establish that which fundamental, constitutional Rights of the election petitioner has been infringed by issuing of the 'Nat' scheduled Caste Certificate to the respondent No.1/return candidate.

75. In view of the above reasons, it is apparent that because of this petition in which the issue of caste of the respondent No.1 has been raised only after the defeat in the election held in 2018 on account of political rivalry, for which the respondent No.1 had to suffer mental agony, under Section 35 (A) of the CPC, a cost of Rs. 50,000/- is imposed upon the election petitioner to be paid to the respondent No.1.

The election petitioner shall bear his own cost.

(SUNITA YADAV)
JUDGE

AKS