

High Court of Madhya Pradesh: Bench at Indore
Single Bench: Hon'ble Shri Justice Ved Prakash Sharma
Election Petition No.19/2014

Niranjan Dawar S/o Shri Madia Dawar

Versus

Smt. Ranjana Baghel & Ors.

Shri A.M. Mathur, learned Senior Counsel with Shri Abhinav Dhanodhkar, learned counsel for the petitioner.

Shri A.K. Sethi, learned Senior Counsel with Shri Harish Joshi, learned counsel for the respondents.

ORDER

(Passed on 23.01.2017)

This is a petition under Section 80 of The Representation of the People Act, 1951 (for short 'The Act') calling in question, the election of (Smt.) Ranjana Baghel, (Res.No.1) – a returned candidate from Manawar constituency (No.199 - reserved for S.T.), District Dhar, in the General Election-2013 of Madhya Pradesh Legislative Assembly.

02. In total, nine candidates, including petitioner Niranjan Dawar – the official candidate for Indian National Congress, and (Smt.) Ranjana Baghel (Res.No.1) - the official candidate of Bharatiya Janata Party, contested the election. Polling was held on 25th November, 2013.

Counting of votes took place on 8th December, 2013 and the result was also declared on the same day. Respondent No.1 – (Smt). Ranjana Baghel, who secured 55293 votes, as against her nearest rival, Niranjana Dawar, who secured 53654 votes, was declared returned candidate by a margin of 1639 votes.

03. As per averments made in the petition, the election of the Res. No.1 stood materially affected because of her indulgence in corrupt practices and suppression/non-disclosure of material facts by her in the nomination form and, therefore, the same is liable to be declared null and void under Section 100 of 'The Act'. A further prayer to declare the petitioner as the returned candidate in place of the respondent no.1 from the said constituency has also been made. The corrupt practices within the meaning of Section 123 of 'The Act', alleged against Res.No.1, as averred in the petition, are as under:

- (i) That on 24/11/2013, Res. No.1 extended illegal gratification by offering and distributing money to the voters at the temple of village '*Amlatha*' in order to influence them to vote in her favour; Mukesh (P.W.2), a resident of village '*Amlatha*' (Rajpura) and one Raju Patel, resident of village Ralamandal, had captured some photographs of this incident at the relevant point of time and that the matter was widely published in media. Allegedly, apart from this, a constable Gangaram (P.W.8) captured photographs of Res. No.1, through his mobile phone, while she was distributing/offering money to the

voters, whereupon the supporters and workers of Bharatiya Janata Party, scuffled with him and snatched his mobile, regarding which, he lodged a report on 25/11/2013 at 11.40 am., with police against Res. No.1 and 3-4 other party workers on the basis whereof, crime No.549/13 was registered by police for offence under Section 353 of IPC. On 06/12/2013; the petitioner had lodged a complaint (Annexure P/5) with the election observer of constituency No.199 in this regard. (para-10 of the petition)

- (ii) That Res. No.1, in order to influence the voters in her favour, distributed cement and iron bars from a firm "**Sanjay Kumar Manoj Kumar (Mithu Seth)**" and arranged 100 bags of cement and 10 quintals of iron bar from the said firm for a temple situated at village '**Badgaon**', regarding which a complaint (copy annexure P/6) was made on 24/11/2013, to the Election Observer. (para-13 of the petition)
- (iii) That Res. No.1, distributed utensils to the voters from a shop namely- "**Ajit Steel**", Manawar, regarding which a complaint was made by the petitioner on 24/11/2013, pursuant to which, Shri. Dinesh Patel (P.W.6), a government officer of education department posted at Umarban, and Shri C.S. Roy of B.R.C, Umarban, went to the spot and carried out audio-video recording and also prepared a '**Panchnama**' (memo) in that regard. Allegedly, a complaint, vide annexure-P/9, was also

made in this respect to the election observer (para-14 of the petition).

- (iv) That Mr. Rajkumar Jain, the authorized agent of Res. No.1 for the assembly election, indulged in corrupt practice at village '*Kuradhakhaal*' by publically assuring the voters about some amount, electronic items and other articles to vote in favour of the Res. No.1. Allegedly, this incident was recorded by one Kalyan, resident of '*Kuradhakhaal*', in presence of one Pappu Mukati. (para-15 of the petition)
- (v) That Res.No.1 got active support from Shri P.S. Meena, the then S.D.O.(Police), '*Barwani*', a place close to Manawar, who was present in the meetings held by respondent no.1 and worked to solicit support of the voters in her favour. (para-16 of the petition).
- (vi) That one Mr. Madhawa Acharya, the Chief Executive Officer of Janpat Panchayat, though under transfer to Betul vide order date 04/10/2013, was not relieved so that he could extend undue support to Res. No.1 (para-16 of the petition).
- (vii) That one Shri Ohriya, the then S.D.M, Manawar, who was very close to the Res.No.1, also supported her by influencing voters in her favour (para-16 of the petition).
- (viii) That Res. No.1 suppressed material information in her nomination form and gave incorrect information as to

the dues of the government, inasmuch as, in her nomination form, (Ex.P/8) she, in the column of government dues, had mentioned nil, whereas a sum of Rs.1517/- for each year from 2008 to 2013 was due against her, in respect of diversion charges of agricultural land bearing survey no.190/6.” (Para-17 of the petition)

04. The petitioner averred that the aforesaid acts and conduct on the part of Respondent No.1 amount to corrupt practices within the meaning of Section 123 of ‘The Act’ and that suppression of the material information by Res. No.1, in her nomination form amounts to violation of Section 100(1)(d)(i) and 100(1)(d)(iv) of ‘The Act’, therefore, her election is liable to be declared null and void.

05. Res. No.1, in her reply/written statement, specifically denied the allegations of corrupt practices with regard to distribution of money, cement, iron bars, utensils, electronic items etc., and submitted that the same are false, baseless and concocted. The averment with regard to suppression/non-disclosure of information with regard to diversion tax was also denied. Res. No.1, further denied that the S.D.O.P, S.D.M, or other officers had worked under her influence to win over the voters so as to cast their votes in her favour.

06. Res. No.1 further averred that the material particulars with regard to various allegations have not been stated in the petition, hence the same is liable to be

dismissed. Res. No.1 also raised objection with regard to limitation and non-joinder of Raj Kumar Jain and prayed for rejection of the petition with costs.

07. On the basis of the pleadings of the parties following issues have been framed in the matter:-

ISSUES	FINDINGS
1. Whether the Respondent No.1 with the object of inducing the voters for casting vote in her favour:-	
1(i) On 24/11/2013 at village - ' <i>Amlatha</i> ' distributed/offered the currency notes to voters.	Not proved
1(ii) Distributed/offered cement and iron bars for a temple situated at village Badgaon?	Not proved
1(iii) Distributed/offered utensils to voters?	Not proved
2. Whether Shri Rajkumar Jain, authorized election agent of the Res. No.1, at village ' <i>Kuradakhaal</i> ' offered the amount and articles to voters with the object of inducing the voters for casting vote in favour of the Res. No.1?	Not proved
3. Whether P.S. Meena S.D.O (P), Madhav Acharya, C.E.O and Ohriya S.D.M, actively worked to obtain	Not proved

support of voters in favour of the Res.

No.1?

4. Whether the Res. No.1, in her nomination form, given incorrect information as to the dues of the State Government? Not proved

5. Relief and cost. Dismissed

08. Respondent No.1 has raised preliminary objections regarding bar of limitation and non-joinder of parties. Issues have not been cast on these points, however, as both the objections pertain to maintainability, therefore, the same need to be considered before dealing with the aforesaid issues.

09. As regards objection about bar of limitation, it is noticeable that the result of the election was declared on 08.12.2013 and this petition was filed on 21.01.2014 i.e. on 45th day of the declaration of the result. Section 81 of 'The Act' prescribes a period of 45 days for preferring election petition from the date of election of the returned candidate. As the instant petition has been filed on 45th day, therefore, the same is found to be within limitation.

10. As regards plea with regard to non-joinder of parties, Section 82 of 'The Act' provides that where the petitioner, in addition to claiming declaration that the election of all or any of the returned candidates is void, claims a further declaration that he himself or any other candidate has been duly elected, all the contesting candidates other than the petitioner, and where no such further declaration is claimed,

all the returned candidates shall be joined as respondent. In the instant case all the candidates apart the petitioner, who contested the election (Respondent No.1 to 8) have been joined as respondents, therefore, the objection with regard to non-joinder of the parties is also not sustainable.

Issue No.1(i):

11. The averments with regard to issue no.1(i), as made in para-10 of the petition, are that on 24.11.2013, respondent No.1 in order to influence the voters in her favour extended illegal gratification by publicly offering and distributing money to them near the temple in Village-Amlatha. Allegedly, Mukesh Nayak (P.W.2) and one Raju Patel, who were present at the relevant time had captured photographs of this incident and that the matter was also published in newspapers.

12. 'Bribery', meaning thereby any gift, offer or promise by a candidate or his agent or by any other person with the consent of a candidate or his election agent of any gratification with the object, directly or indirectly of inducing an elector to vote or refrain from voting at an election amounts to 'corrupt practice' within the meaning of Section 123 (1) (A) (b) of 'The Act', which runs as under:

“123. Corrupt practices.-The following shall be deemed to be corrupt practices for the purposes of this Act:-

(1) “Bribery”, that is to say,-

(A) any gift, offer or promise by a candidate or his agent or by any other person with the consent of a candidate or his election agent of any gratification, to

any person whomsoever, with the object, directly or indirectly of inducing—

(a)

(b) an elector to vote or refrain from voting at an election, or as a reward to—

(i) a person for having so stood or not stood, or for 3 [having withdrawn or not having withdrawn] his candidature; or

(ii) an elector for having voted or refrained from voting;”

13. Obviously, petitioner Niranjan Dawar (P.W.1) does not claim to be an eyewitness of the alleged occurrence, as admitted by him in para-18 of his cross-examination. Allegedly, photographs of the occurrence were captured by Mukesh Nayak (P.W.2) and Raju Patel (para-10 of the petition). Raju Patel has not been examined before the Court. Thus, as regards ocular evidence, the petitioner's case in respect of issue No.1(i) solely depends on the testimony of Mukesh Nayak (P.W.2) who claims to be an eyewitness of the occurrence.

14. Though, Mukesh Nayak (P.W.2) has testified in para-2 that on 24.11.2013 around 11 a.m. respondent (Smt.) Ranjana Baghel with her 5-6 supporters came to Village '*Rajpura*' for canvassing and asked the village people, who had assembled in front of Durga temple, to cast their vote in her favour and distributed currency notes of Rs.1000/- to all those present, however, his testimony in this regard is at sharp variance with the averments made in para 10 (supra) wherein it is stated that currency notes were distributed by the respondent near a temple in Village-'*Amlatha*'. There is

nothing in the pleading that village '*Amlatha*' and '*Rajpura*' are one and the same, instead, Mukesh Nayak (P.W.2) in para-4 of his cross-examination has deposed that village-'*Rajpura*' is 100-200 meters away from Village-'*Amlatha*' and that in Village-'*Amlatha*', there is no temple of '*Durgamata*'. Thus, Mukesh Nayak (P.W.2), as such does not say that Res. No.1 on 24.11.2013 distributed currency notes of Rs.1000/- to the voters near a temple in village-'*Amlatha*'. Further, The testimony of Mukesh Nayak (P.W.2) that currency notes were distributed in front of the temple of Village-'*Rajpura*', in absence of pleadings in that regard, carries no weight because the law is well settled that where the evidence is not in line with the pleadings and is at variance with it, the said evidence cannot be looked into or relied upon; [see: *Kashi Nath (Dead) through L.Rs. v. Jaganath, (2003) 8 SCC 740*]

15. Mukesh Nayak (P.W.2), as per pleadings, had captured photographs on 24.11.2013 in which respondent No.1 could be seen distributing currency notes to voters. The petitioner has filed Ex.P/21, an affidavit said to have been sworn by Mukesh Nayak (P.W.2), wherein it is stated that the photograph, captured by him on his mobile on 24.11.2013 with regard to distribution of currency notes of Rs.1000/- by respondent No.1 to the voters, after being processed by him on a computer, was provided to petitioner Niranjan Dawar, regarding which he (Mukesh Nayak) in compliance of Section 65-B of Evidence Act had issued certificate Ex.P/20. However, contrary to this, Mukesh Nayak (P.W.2) has deposed in para-3 that the photograph which he had captured was provided by

him to Press Reporters of '*Dabang Duniya*', '*Jan Jan Jagaran*' and '*Patrika*' and other newspapers via Bluetooth technology and that during this process the photographs stored in his mobile, somehow got deleted. On being further cross-examined on this issue, this witness in para-6 has disowned the contents of affidavit Ex.P/21, said to have been sworn by him. He has further stated that neither he was having a computer nor he had transferred the photographs from mobile to Computer. It is further deposed that the photographs were not prepared by him on Computer nor he has provided any photograph to petitioner Niranjan Dawar. On being contradicted on this point with Ex.P/21 - the affidavit, this witness has denied to have sworn the same further stating that he had put his signatures on the affidavit without even going through its contents. This witness has deposed that part-A to A of affidavit Ex.P/21 to the effect that the photograph captured by him on his mobile was processed through computer and provided by him to petitioner Niranjan Dabur is not correct. He further says that part B to B, C to C, D to D and E to E of certificate Ex. P/20 are false. The aforesaid serious contradictions in the testimony of Mukesh Nayak (P.W.2) and the affidavit (Ex.P/21) said to have been sworn by him as well as certificate (Ex.P/22), bearing his signatures, clearly demonstrate that this witness is not at all reliable and hence it cannot be safely concluded on the basis of his testimony that respondent No.1 distributed currency notes of Rs.1000/- to the electors of Village Amlatha on 24.11.2013 or that he captured any photograph of any such incident.

16. Petitioner Niranjan Dawar (P.W.1) has deposed in para-3 that Mukesh Nayak (P.W.2) had provided him the photograph regarding alleged occurrence of 24.11.2013 in which the respondent No.1 was seen distributing currency notes to voters. In para-18 this witness says that the photograph provided to him by Mukesh Nayak (P.W.2) has been produced by him before the Court, however, no such photograph has been marked in evidence. Apart this, Mukesh Nayak (P.W.2) in para-6 of his testimony has denied that he had provided the photograph to Niranjan Dawar though, in the same breath, he has further deposed that the photograph was provided by him to Niranjan Dawar via '*Bluetooth*', however, nothing of that sort has been averred in the petition. Therefore, the testimony of Niranjan Dawar (P.W.1) that he obtained a photograph of alleged occurrence of 24.11.2013 of Village-'*Amalatha*' from MukeshNayak (P.W.2) is again not inspiring and trustworthy.

17. Reliance has also been placed on Ex.P/1 - a newspaper clipping, said to have been published in daily newspaper '*Jan Jan Jagaran*', however, serious objection has been raised by learned Senior Counsel for respondent No.1 as to its evidential value, hence, it would be apposite to briefly consider the law pertaining to evidential value of newspaper reports.

18. The learned Senior Counsel for the respondent has cited *Quamarul Islam vs. S.K. Kanta & Ors.*, reported in *AIR 1994 SC 1733* and *Samant N. Balkrishna vs. Jeorge Fernandez & Ors.*, *AIR 1969 SC 1201* to fortify his contention

that a news item as such is no evidence in the eyes of law, unless evidence of the reporter, editor or publisher is brought before the Court to establish as to how, when, where and in what manner the material with regard to the news item was collected and in what manner it was edited and modified.

19. In *Quamarul Islam (supra)*, Hon'ble the apex Court dealing with the proof and evidential value of newspaper report has held as under:-

"Newspaper reports by themselves are not evidence of the contents thereof. ***Those reports are only hearsay evidence.*** These have to be proved and the manner of proving a newspaper report is well settled. Since, in this case, neither the reporter who heard the speech and sent the report was examined nor even his reports produced, the production of the newspaper by the Editor and publisher, PW4 by itself cannot amount to proving the contents of the newspaper reports. Newspaper, is at the best secondary evidence of its contents and is not admissible in evidence without proper proof of the contents under the Indian Evidence Act." (emphasis supplied)

20. In *Samant N. Balkrishna (supra)*, Hon'ble the apex Court has observed as under:

".....A news item without any further proof of what had actually happened through witnesses is of no value. ***It is at best a second-hand secondary evidence.*** It is well known that reporters collect information and pass it

on to the editor who edits the news item and then publishes it. In this process the truth might get perverted or garbled. Such news items cannot be said to prove themselves although they may be taken into account with other evidence if the other evidence is forcible..." (emphasis supplied)

21. It clearly emerges from the aforesaid enunciation of law that a newspaper report by itself is no evidence of its contents and that such report is only hearsay evidence. It further emerges from the aforesaid pronouncements that to prove the contents of the newspaper reports, the reporter, editor or publisher who can testify as to how, when, from where and in what manner the material published in the newspaper was collected, should be examined.

22. The petitioner has not examined before this Court the news reporter, correspondent, editor or publisher of newspaper *Jan Jan Jagaran* (Ex.P/1), therefore, in absence of such evidence the same by itself has no evidential value.

23. As regards allegation about distribution of currency notes by Res. No.1 to the electors, it is contended by Shri A.M. Mathur, learned Senior Counsel appearing for the petitioner that, apart from the incident dated 24/11/2013 of Village – '*Amlatha*', the respondent No.1 had also distributed currency notes to the voters on 25/11/2013 near village '*Kalaikaray*' and that this incident was captured by Constable Gangaram (P.W.8) on his mobile phone, while he was passing through Village- '*Kalaikaray*', however, respondent No.1 and

her supporters had snatched his mobile phone regarding which he made a report in writing (copy Ex.P/3-C) to the Police on the basis of which F.I.R (Ex.P/31-C) was registered by the Police. It is contended that averments in this regard have been made in para-10 of the election petition; a claim strongly contested and refuted by Shri A.K. Sethi, learned Senior Counsel for Res. No.1.

24. In view of the conflicting pleas raised by the learned Senior Counsel for rival parties, it would be apt to reproduce para-10 of the petition, which is relevant in this regard:

“10. That, (Smt.) Ranjana Baghel, the respondent No.1 to influence the voters in her favour extended illegal gratification by offering and distributing money publically. ***On 24.11.2013 at the temple of village 'Amlatha'*** she distributed money amongst voters to influence the voters to vote in her favour, some photographs were taken at the relevant point of time by Mukesh S/o Sohansingh, R/o village '***Amlatha***' (Rajpura) and one Raju Patel R/o Village '***Ralamandal***'. The petitioner is also filing herewith few photographs, wherein it is apparently visible that she is distributing/offering the currency notes to various persons at village Amlatha's temple as ***Annexure P/2***. The matter was widely published in the media. Newspaper cutting of few newspapers is Annexure P/3. ***Apart from this a constable Gangaram took photographs of Smt. Baghel through his***

mobile phone, while she was distributing/offering money to the voters. The supporters and workers of the Bharatiya Janta Party scuffled with Gangaram and snatched his mobile. Gangaram lodged a report against (Smt.) Ranjana Baghel and 3-4 other BJP workers on 25.11.2013 at 11.40 A.M. The police only registered an offence under Section 353 of the Indian Penal Code at Crime No.549/2013. In the report he very specifically alleged against (Smt.) Ranjana Baghel that she was distributing/offering notes of Rs.500/- each to the voters to cast vote in her favour.” *(Emphasis supplied)*

25. Before proceeding further, it is apposite to refer to the legal position as regards requirement of pleadings in election disputes. Section 83 of ‘The Act’ which deals with '*Contents of petition*', runs as under:

“83. Contents of petition:

(1) An election petition-

(a) shall contain a concise statement of the material facts on which the petitioner relies;

(b) shall set forth full particulars of any corrupt practice that the petitioner alleges including as full a statement as possible of the names of the parties alleged to have committed such corrupt practice and the date and place of the commission of each such practice; and

(c) shall be signed by the petitioner and verified in the manner laid down in the Code of Civil Procedure, 1908 (5 of 1908) for the verification of pleadings: [Provided that where the petitioner alleges any corrupt practice, the petition shall also be accompanied by an affidavit in the prescribed form in support of the allegation of such corrupt practice and the particulars thereof.]

(2) Any schedule or annexure to the petition shall also be signed by the petitioner and verified in the same manner as the petition]”

26. A plain reading of Section 83 of ‘The Act’ would reveal that as regards allegation of corrupt practice, the petitioner is required to set forth full particulars of such corrupt practice with as full a statement as possible including the date and place of the commission of *each such practice*. As regards pleadings and proof in election disputes, hon’ble the apex Court in *Laxminarayan Nayak v. Ramratan Chaturvedi, AIR 1991 SC 2001 (para-5)*, referring to a series of its earlier decisions on the point, has culled out the legal principles in this regard as under:

“1. The pleadings of the election petitioner in his petition should be absolutely precise and clear containing all necessary details and particulars as required by law vide Dhartipakar Madan Lal Agarwal v. Rajiv Gandhi, 1987 Supp SCC 93: (AIR 1987 SC 1577) and Kona Prabhakara Rao v. M. Seshagiri Rao (1982) 1 SCC 442: (AIR 1981 SC 658).

2. The allegations in the election petition should not be vague, general in nature or lacking of materials or frivolous or vexatious because the Court is empowered at any stage of the proceedings to strike down or delete pleadings which are suffering from such vices as not raising any triable issue vide *Manphul Singh v. Surinder Singh* (1974). 1 SCR 52 : (AIR 1973 SC 2158), *Kona Prabhakara Rao v. M. Seshagiri Rao* (1982) 1 SCC 442: (AIR 1981 SC 658) and *Dhartipakar Madan Lal Agarwal v. Rajiv Gandhi*, 1987 (Supp) SCC 93:(AIR 1987 SC 1577).

3. The evidence adduced in support of the pleadings should be of such nature leading to an irresistible conclusion or unimpeachable result that the allegations made have been committed rendering the election void under S. 100 vide *Jamuna Prasad Mukhariya v. Lachhi Ram* (1955) 1 SCR 608: (AIR 1954 SC 686) and *Rahim Khan v. Khurshid Ahmed* (1974) 2 SCC 660 : (AIR 1975 SC. 290)

4. The evidence produced before the Court in support of the pleadings must be clear, cogent, satisfactory, credible and positive and also should stand the test of strict and scrupulous scrutiny vide *Ram Sharan Yadav v. Thakur Muneshwar Nath Singh* (1984) 4 SCC 649: (AIR 1985 SC 24).

5. It is unsafe in an election case to accept oral evidence at its face value without looking for assurances for some surer circumstances or unimpeachable documents vide *Rahim Khan v. Khurshid Ahmed* (1975) 1 SCR 643: (AIR 1975 SC 290), *M. Narayana Rao G.*

VenkataReddy, (1977) 1 SCR490: (AIR 1917) SC 208), Lakshmi Raman Acharya v. Chandan Singh (19 77) 2 SCR 412: (AIR 1977 SC 587), and Ramji Prasad Singh v. Ram Bilas Jha (1977) 1 SCC 260: (AIR 1976 SC 2573).

6. The onus of proof of the allegations made in the election petition is undoubtedly on the person who assails an election which has been concluded vide *Rahim Khan v. Khurshid Ahmed* (1975) 1 SCR 643 . (AIR 1975 SC 290), *Mohan Singh v. Bhanwar Lal* (1964) 5 SCR. 12 : (AIR 1964 SC 1366) and *Ramji Prasad Singh v. Ram Bilas Jha* (1977) 1SCC,260: AIR 1976 SC 2573).”

27. Dealing with the issue of need and importance of disclosure of grounds or sources of information in *Virendra Kumar Saklecha vs. Jagjiwan and others, AIR 1974 SC 1957*, it has been held as under:

“14. The *non-disclosure of grounds* or sources of information in an election petition which is to be filed within 45 days from the date of election of the returned candidate, will have to be scrutinised from two points of view. The non-disclosure of the grounds did not come forward with the sources of information at the first opportunity. The real importance of setting out the sources of information at the time of the presentation of the petition is to give the other side notice of the contemporaneous evidence on which the election petition is based. That *will give an opportunity to the other side to test the genuineness and veracity of the sources of information.* The other point of view is

that *the election petitioner will not be able to make any departure from the sources or grounds*. If there is any embellishment of the case it will be discovered.”(Emphasis supplied)

28. From the aforesaid, it clearly emerges that material facts along with full particulars of alleged corrupt practice including date, time, place, manner of occurrence and the sources of information with precision, as far as possible, are required to be averred in the election petition so that the opposite party may have full and fair opportunity to rebut the case put forth by the petitioner. As held in *Jitu Patnayak v. Sanathan Mohukud and Ors., (2012) 4 SCC 194*, bare allegations can never be treated as material facts and whether the averments in the election petition constitute material facts or not depends upon the facts of each case.

29. In para-10 of the petition (quoted supra), nothing is averred regarding any incident of distribution of money/currency notes by Res. No.1 on 25/11/2013 near village '*Kalikaray*'. In para-10 of the petition the alleged incident dt. 24/11/2013 is said to have occurred at village '*Amlatha*'. A reference in para-10 of the petition that - '*apart from this, a constable Gangaram (P.W.8) took photographs of Res.No.1 through his mobile phone, while she was distributing/offering money to the voters*'; by no canon of reasoning or stretch of imagination can be said to be comprising of full particulars with regard to alleged incident, dated 25/11/2013, of money distribution at village '*Kalikaray*'.

30. Further, the averment in para-10 that - '**Gangaram (P.W.8) lodged a report against Res. No.1 and 3-4 other B.J.P., workers on 25/11/2013, at 11.40 a.m., in which he very specifically alleged against Res. No.1 regarding distribution/offering of currency notes of Rs.500/- each to the voters to cast vote in her favour**', cannot by any process of reasoning be construed as full statement in terms of Section 83(1)(b) of 'The Act' in respect of alleged incident of village – '**Kalikaray**'. Therefore, this Court is not inclined to accept the plea put forth by learned Senior counsel for the petitioner that para-10 of the petition includes averments with regard to alleged occurrence dated 28/11/2013 of village '**Kalaikaray**'. The law is well settled that no amount of evidence in respect of something which has not been pleaded can be looked into; [see: **Kashi Nath (Dead) through L.Rs. v. Jaganath, (2003) 8 SCC 740**]. Therefore, in absence of necessary pleadings the evidence led in this regard needs no further consideration and deserves to be excluded.

31. As a fall-out of the above discussion, it is not found proved that Res. No.1 had distributed currency notes to the voters on 24.11.2013 in Village '**Amlatha**', so as to influence them to cast their vote in her favour.

32. Issue No.1(i) is decided accordingly.

Issue No.1(ii):

33. Para-13 of the petition comprising averments regarding issue No. 1(ii), runs as under:

“13. That, apart from the above incident the respondent No.1 to influence the voters in her favour has also distributed cement and iron bars (sariya) from a firm namely ‘Sanjay Kumar Manoj Kumar (Mitthu Seth)’ she had also arranged 100 bags of cement and 10 quintal of iron bars for a temple situated at village Badgaon from the above firm. A complaint was also made to this effect on 24.11.2013 to Election Observer of constituency No.199. True copy of the complaint is Annexure P/6. The petitioner has made an application under the provisions of RTI to the returning officer for supplying the particulars of the action taken on the complaint made by the petitioner in this regard. A true copy of the application is Annexure P/7. (The petitioner reserves his right to produce the certified copy of the same after its receipt).”

34. The aforesaid averments are silent about the date and time of the alleged incident. Further, there is no pleading as to where the shop of ‘Sanjay Kumar Manoj Kumar (Mitthu Seth)’, from which cement and iron bars were, allegedly, distributed, is situated. Names and other particulars of person(s) or elector(s) to whom the cement and iron bars were supplied have also not been pleaded. It is also not clear from the pleadings as to whether the supply/distribution of cement and iron bars was made for cash, credit or in any other manner. The complaint (Ex.P/26-C) which, allegedly, was made to Election Observer by Om Solanki (P.W.9), the election agent of the petitioner, runs as under:

“ श्रीमान पर्यवेक्षक महोदय
विधानसभा क्षेत्र क्रं. 199
मनावर

विषय:— भाजपा द्वारा सीमेंट एवं सरिया देने बाबद ।

सेवा में,

उपरोक्त विषयान्तर्गत निवेदन है कि भाजपा उम्मीदवार श्रीमति रंजना बघेल द्वारा मतदाताओं को प्रभावित करने के लिए सीमेंट एवं सरिया प्रलोभन देते हुए दिया जा रहा है । प्रतिष्ठान का नाम ;संजय कुमार मनोज कुमार जैनद्व ;मिठठू सेठद्व की दुकान सिघांना रोड पर स्थित है । इनके यहां से मनावर एवं ग्रामीण क्षेत्र के लोगों को बुलाकर सरिया सीमेंट देकर अपने पक्ष में मतदान करने के लिए दिया जा रहा है । इसी प्रकार दो रोज पूर्व ग्राम बड़गांव में मन्दिर के लिए दिया गया है । 100 बोरी सीमेंट 10 क्विंटल दिया गया है । इस संबंध में तत्काल कार्यवाही कर संजय कुमार मनोज कुमार जैन की दुकान पर अभी भी सरिया एवं सीमेंट दिया जा रहा है इस कार्यवाही में बिल एवं दस्तावेज भी जप्त करे ।

24 / 11 / 13

चुनाव संचालक
भा.रा.कांग्रेस उम्मीदवार
निरंजन डावर
199 अ.ज.जा. विधानसभा
क्षेत्र मनावर"

35. Ex.P/26-C (supra) also does not disclose the date and time of the alleged incident. It has been stated in Ex.P/26-C that two days prior to the complaint, 100 bags of cement and 10 quintals of iron bars were given for temple of village – Badgaon, however, no such averment has been made in the main petition itself. Further, neither the petition nor Ex.P/26-C disclose the source of information with regard to alleged distribution of cement and iron bars. Considering the fact that pleadings are lacking in respect of date, time and place of

distribution and the names etc., of the electors to whom distribution was made, it cannot be said that full particulars as required under Section 83(1) of 'The Act' with regard to alleged corrupt practice have been made in the pleadings.

36. Petitioner Niranjan Dawar (P.W.1) in support of his averments in this regard has deposed as under in para-8:

“8—दिनांक 24/11/13 को ग्राम बडगांव में श्रीमती रंजना बघेल कार्यकर्ताओं के साथ दिन में 11:30 बजे पहुंची उन्होंने ग्राम बडगांव के गांववालों को इकट्ठा किया था । उन्होंने यह कहा था कि वे 10 क्विंटल लोहे के सरिये, और सौ बेग सीमेंट मन्दिर के निर्माण के लिए देंगी। उन्होंने कहा था कि सभी गांव वाले उनके लिए मतदान करें । घटना के बारे में मुझे फोन से छोटू नाम के एक लड़के ने जो बडगांव का निवासी है, ने सूचना दी थी सूचना मिलने के तत्काल बाद मैंने अपने चुनाव एजेंट ओम सोलंकी को फोन लगाया कि, वे इस बात को देखे कि क्या कोई व्यक्ति श्रीमती रंजना बघेल की लिखी पर्ची लेकर जैन की दुकान पर सरिया लेने आया है और यदि कोई आया है तो उसकी शिकायत चुनाव आयोग को करें ।”

37. Petitioner – Niranjan Dawar (P.W.1) in para-22 of cross-examination has stated that distribution of cement and iron bars had not taken place in his presence. He has deposed in para-8 that Chotu (P.W.4) a resident of village – ‘*Badgaon*’, had informed him on mobile phone that on 24.11.2013, at around 11.30 a.m. respondent No.1 visited village ‘*Badgaon*’ and promised the villagers, who had assembled there to provide 10 quintals of iron bars and 100 bags of cement for construction of temple on the condition that they will cast their vote in her favour. Though, Chotu (P.W.4) has also deposed in a similar manner in para-2 of his statement, however, curiously enough there is not even a whisper in the pleadings that on 24.11.2013, respondent No.1 had visited village –

‘Badgaon’ at around 11.30 a.m. and had promised to a group of villagers to provide cement and iron bars for construction of temple to solicit their support. Therefore, the evidence to the effect that on 24.11.2013 (Smt). Ranjana Baghel visited **‘Badgaon’** and promised the villagers to provide 100 bags of cement and 10 quintals of iron bars in order to solicit their support, being totally beyond the pleadings, deserves to be totally ignored.

38. Niranjan Dawar (P.W.1) has deposed in para-8 that on receipt of telephonic information from Chotu (P.W.4), he instructed Om Solanki (P.W.9) to verify as to whether someone has come to the shop of ‘Sanjay Kumar Manoj Kumar (Mitthu Seth)’ with a **‘slip’** issued by respondent No.1 to collect cement and iron bars. Om Solanki (P.W.9) in this respect has deposed in para-10 that on 24.11.2013 at around 2 p.m., he received a phone call from Niranjan Dawar (P.W.1) to go to the shop of ‘Sanjay Kumar Manoj Kumar (Mitthu Seth)’ at Singhana road, Manawar, to verify as to whether villagers of village - Badgaon have come to collect 100 bag of cements and iron bars from the shop of “Sanjay Kumar Manoj Kumar (Mitthu Seth)”, to be provided at the instance of respondent No.1 for construction of temple. This witness has further testified in para-11 that, thereafter, on reaching the shop, he found 6-7 people of Village-Badgaon loading cement and iron bars in a tractor. As per this witness, on interrogation they told him that 2 days prior two workers of Bhartiya Janta Party had come to their village; they got the village people assembled and promised that 100 bags of cement and 10 quintals of iron

bars can be arranged for construction of temple provided they agree to cast their votes to (Smt.) Ranjana Baghel for which the village people had agreed.

39. Here it is noteworthy that the petitioner has not averred that 2 days prior to 24.11.2013, two Bhartiya Janta Party workers had visited village-Badgaon and had promised to the village people to provide cement and iron bars on the condition that they will cast their vote in favour of respondent No.1. Therefore, the testimony of this witness in this regard is nothing but an improvement. Further, nothing on this point has been deposed by Niranjan Dawar (P.W.1). Even Chotu (P.W.4), who claims to be a resident of village-‘*Badgaon*’, has not stated that 2 days prior to 24.11.2013, party workers of Bhartiya Janta Party came to his village and solicited support of electors by making a promise to supply cement and iron bars. Hence, the testimony of Om Solanki (P.W.9) on this point does not carry weight.

40. As regards alleged distribution of cement and iron bars, it is noticeable that the petitioner has nowhere averred that respondent No.1 had issued a ‘*slip*’ or an authority letter and on the basis of such slip/authority letter, cement and iron bars were collected from the shop of “Sanjay Kumar Manoj Kumar (Mitthu Seth)”. However, a new story in this regard has been developed by petitioner Niranjan Dawar (P.W.1), Chotu (P.W.4) and Om Solanki (P.W.9).

41. Chotu (P.W.4) has deposed in para-3 that respondent No.1 on 24.11.2013 around 11.30 a.m. had

prepared a letter in his presence and asked the villagers to collect iron bars and cements from the shop of 'Sanjay Kumar Manoj Kumar (Mitthu Seth)'. However, in para-7 of his cross-examination, he denies to have seen the contents of the letter and further denies that cement and iron bar were brought in his presence to the village. Om Solanki (P.W.9) in para-11 has also deposed about issuance of '*slip*' and has further stated that he informed about this to petitioner Niranjan Dawar while Niranjan Dawar (P.W.1) says that he had informed Om Solanki (P.W.9) about the incident. Thus, the evidence, as to who informed regarding issuance of '*slip*' and who was informed, is quite anomalous. Further, in absence of any pleading in that behalf, the same cannot be accepted.

42. Niranjan Dawar (P.W.1) claims in para-20 that he after coming to know about the distribution of cement and iron bars, went to village-'**Badgaon**' and found cement and iron bars lying there and that the persons present over there told him that the iron bars and cement were brought 'today' for construction of temple and were sent by respondent No.1. However, on being asked to disclose the names of the persons, who provided the information, this witness says that he does not know the name of any of those persons. Likewise, Chotu (P.W.4) has also expressed inability in para-5 & 6 of his testimony to state the names of the persons who, allegedly, had assembled on 24/11/13 and were promised regarding distribution of cement and iron bars by Res. No.1. On being further asked as to who had brought the cement and iron bars, this witness says that he does not remember names of those

persons. In similar fashion though Om Solanki (P.W.9) in para 10 & 11 has deposed that he saw 6-7 persons in the shop of 'Sanjay Manoj Kumar Jain' loading cement and iron bars in the tractor, however, in para – 34, he says that he has no knowledge about their names etc.

43. Here, it is further noticeable that in complaint Ex.P/26-C, which has been reproduced herein above in para-34, no specific details have been given regarding any of the aforesaid assertions. Rather, the testimony of Om Solanki (P.W.9), with regard to contents of the Ex.P/26-C is quite anomalous, because it has nowhere been averred by him that two days' prior to 24/11/2013, cement and iron bars were given for construction of temple in village - Badgaon, though this assertion has been made in part B-B of Ex.P/26-C.

44. Ex. P/30-C is the report submitted by In-Charge of the flying squad in respect of complaint Ex.P/26-C. As per this report, the shopkeeper had stated that none of the items are sold without bill/receipt. Apart this, the person bearing name 'Madiya' said to be a resident of Badgaon referred in the complaint, was not found in the village and it was revealed that no person of this name is residing in village Badgaon.

45. From the aforesaid analysis, it can well be said that the petitioner has miserably failed to prove his allegations that iron bars and cements were distributed, by way of gratification, by respondent No.1 to the electors of village – '**Badgaon**' so as to influence them to cast their votes in her favour.

46. Issue No.1(ii) is decided accordingly.

47. As regards issue No.1(iii), the allegation is that at the instance of Res. No.1, utensils were distributed from shop namely, 'Ajit Steels', Manavar, to the voters, regarding which, pursuant to complaint dated 24/11/2013 (Ex.P/29-C) made by the petitioner, Dinesh Patel (P.W.6) – In-Charge of the Flying Squad, along with one C.S. Roy went to the shop and prepared a memorandum and also officially carried out videography. Allegedly, audio recording was also carried out by one Ashok Patidar (P.W.3), present over there. The averments made in this regard are not specific as regards date, timing and distribution of utensils and the name of persons to whom the utensils were distributed. Further, the source of the information has also not been averred in the petition. Thus, it cannot be said that the averments made in this regard in para-14 of the petition satisfy the requirements of Section 83(1) of 'The Act'.

48. So far as the evidence with regard to aforesaid allegation is concerned, reference can be made to the testimony of the petitioner Niranjan Dawar (P.W.1), his election agent – Om Solanki (P.W.9), Ashok Patidar (P.W.3) - said to be a photographer and Dinesh Patel (P.W.6) – In-Charge of the flying squad, who allegedly, on 24/11/2013, visited the utensils' shop to enquire about the complaint made in that regard.

49. Nirajan Dawar (P.W.1) and Om Solanki (P.W.9) have deposed that they had also gone to the shop and saw that

utensils' were being distributed on the basis of '*slip*' issued by Res. No.1. Here it is noticeable that no averment has been made in the petition that the utensils were distributed on the basis of the '*slip*' issued by Res. No.1. Thus, in absence of pleadings in that behalf, the story of distribution of utensils on the basis of '*slip*', said to have been issued by Res. No.1, clearly appears to be an improvement.

50. Further, though Om Solanki (P.W.9) has deposed in para-30 that some four to five persons were having '*slips*' and that officials of the flying squad had seized the '*slip*' and had also prepared a memorandum in this regard, however, Dinesh Patel (P.W.6) – In-Charge of the flying squad of election commission, has not deposed anything to the effect that the persons present in the shop were holding '*slips*' and that such slips were seized by him; which belies the testimony of Om Solanki (P.W.9) on this point. Here it is pertinent to state that petitioner Niranjana Dawar (P.W.1) who also claims to have visited the shop has not deposed in examination-in-chief that any '*slip*' issued by respondent No.1 or bearing her signature was seized by representatives of Election Commission while they visited the utensil shop on 24.11.2013, though, in para-23 he has deposed that the proceedings were being recorded by the team of the Election Commission when he reached the spot.

51. From the testimony of Dinesh Patel (P.W.6), it clearly emerges that on 24.11.2013 he visited the utensils' shop to look into the complaint made on behalf of the petitioner. Though Om Solanki (P.W.9) has deposed in para-6

that 15-20 persons were present in the shop when officials of the election team reached there, however, his evidence on this point stands contradicted by testimony of Dinesh Patel (P.W.6)-In-Charge of flying squad, who in para-2 has deposed that he found two male and two female customers in the shop. As deposed by Dinesh Patel (P.W.6), the female customers were purchasing bowls for cash, while the two male customers were negotiating with the shopkeeper, but they did not purchase any utensil. In para-5 of his cross-examination, this witness has further deposed that he had interrogated one customer present in the shop who referred about 'Madam', however, he did not state the name of respondent No.1.

52. Next comes the testimony of Ashok Patidar (P.W.3) who claims that, at the relevant time, he was working as Videographer/Photographer of TV channel 'Sahara Samay' and that at the time of inspection of the shop by the team of Election Commission, he had also videographed the incident. In this connection, firstly, it is noticeable that the averment in para-14 of the petition is that Ashok Patidar (P.W.3) carried out '*audio recording*' of the incident and provided a C.D. of such recording to the petitioner. Thus, there is no averment that Ashok Patidar (P.W.3) had carried out videography of the incident. Need not say, audio recording and video recording are two different things.

53. A C.D. of the recording, said to have been made by Ashok Patidar (P.W.3), has been marked in evidence as Ex.P/24. Ashok Patidar(P.W.3) has deposed that certificate (Ex.P/22) regarding preparation of C.D. as required under

Section 65B. of the Evidence Act supported with affidavit (Ex.P/23) bears his signature.

54. The learned Senior Counsel for the respondent No.1 has contended that C.D. (Ex.P/24), which amounts to electronic record, has not been duly proved in accordance with the provisions of Section 65B of the Evidence Act.

55. Per contra, it is submitted by learned Senior Counsel for the petitioner that certificate as Ex.P/22, as required under Section 65B of the Evidence Act has been given by Ashok Patidar (P.W.3) which is further supported by his affidavit (Ex.P/23), hence, it cannot be said that C.D. (Ex.P/24) has not been proved in accordance with the provisions of the Evidence Act and, therefore, has no evidential value.

56. In view of the aforesaid submissions, before proceeding further, it is desirable to have a look at the relevant provisions of Evidence Act including Section 65B as well as the law laid down by the apex Court in this regard.

57. Section 59 of the Evidence Act dealing with proof of facts by oral evidence says that all facts, except the contents of documents or '*electronic records*' may be proved by oral evidence. Section 65A of the Evidence Act further provides that contents of '*electronic records*' may be proved in accordance with the provisions of Section 65B. For the sake of convenience Section 65B is reproduced hereunder:

“65B. Admissibility of electronic records:

(1) Notwithstanding anything contained in this Act, any information contained in an electronic record which is printed on a paper, stored, recorded or copied in optical or magnetic media produced by a computer (hereinafter referred to as the computer output) shall be deemed to be also a document, if the conditions mentioned in this section are satisfied in relation to the information and computer in question and shall be admissible in any proceedings, without further proof or production of the original, as evidence of any contents of the original or of any fact stated therein of which direct evidence would be admissible.

(2) The conditions referred to in subsection (1) in respect of a computer output shall be the following, namely: -

(a) the computer output containing the information was produced by the computer during the period over which the computer was used regularly to store or process information for the purposes of any activities regularly carried on over that period by the person having lawful control over the use of the computer;

(b) during the said period, information of the kind contained in the electronic record or of the kind from which the information so contained is derived was regularly fed into the computer in the ordinary course of the said activities;

(c) throughout the material part of the said period, the computer was operating properly or, if not, then in respect of any period in which it was not operating properly or was out of operation during that part of the period, was not such as to affect the electronic record or the accuracy of its contents; and

(d) the information contained in the electronic record reproduces or is derived from such information fed into the computer in the ordinary course of the said activities.

(3) Where over any period, the function of storing or processing information for the purposes of any activities regularly carried on over that period as mentioned in clause (a) of subsection (2) was regularly performed by computers, whether –

(a) by a combination of computers operating over that period; or

(b) by different computers operating in succession over that period; or

(c) by different combinations of computers operating in succession over that period; or

(d) in any other manner involving the successive operation over that period, in whatever order, of one or more computers and one or more combinations of computers, all the computers used for that purpose during that period shall be treated for the purposes of this section as constituting a single computer; and references in this section to a computer shall be construed accordingly.

(4) In any proceedings where it is desired to give a statement in evidence by virtue of this section, a certificate doing any of the following things, that is to say,

(a) identifying the electronic record containing the statement and describing the manner in which it was produced;

(b) giving such particulars of any device involved in the production of that electronic record as may be appropriate for the purpose of showing that the electronic record was produced by a computer;

(c) dealing with any of the matters to which the conditions mentioned in sub-section (2) relate, and purporting to be signed by a person occupying a responsible official position in relation to the operation of the relevant device or the management of the relevant activities (whichever is appropriate) shall be evidence of any matter stated in the certificate; and for the purposes of this sub-section it shall be sufficient for a matter to be stated to the best of the knowledge and belief of the person stating it.

(5) For the purposes of this section, -

(a) information shall be taken to be supplied to a computer if it is supplied thereto in any appropriate form and whether it is so supplied directly or (with or without human intervention) by means of any appropriate equipment;

(b) whether in the course of activities carried on by any official, information is supplied with a view to its being stored or processed for the purposes of those activities by a computer operated otherwise than in the course of those activities, that information, if duly supplied to that computer, shall be taken to be supplied to it in the course of those activities;

(c) a computer output shall be taken to have been produced by a computer whether it was produced by it directly or (with or without human intervention) by means of any appropriate equipment.

Explanation: For the purposes of this section any reference to information being derived from other information shall be a reference to its being derived therefrom by calculation, comparison or any other process.”

58. A reading of Section 65A will make it clear that the secondary evidence with regard to electronic document can be admitted only in accordance with provisions of Section 65B of the Evidence Act. Hon'ble the apex Court dealing with the applicability of Section 65A and 65B of the Evidence Act, in the case of *Anvar P.V. vs. P.K. Basheer and others*, **2014 AIR(SCW) 5695**, has observed as under:

“13. Any documentary evidence by way of an electronic record under the Evidence Act, in view of Sections 59 and 65A, can be proved only in accordance with the procedure prescribed under Section 65B. Section 65B deals with the admissibility of the electronic record. The purpose of these provisions is to sanctify secondary evidence in electronic form, generated by a computer. It may be noted that the Section starts with a non obstante clause. Thus, notwithstanding anything contained in the Evidence Act, any information contained in an electronic record which is printed on a paper, stored, recorded or copied in optical or magnetic media produced by a computer shall be deemed to be a document only if the conditions mentioned under sub- Section (2) are satisfied, without further proof or production of the original. ***The very admissibility of such a document, i.e., electronic record which is called as computer output, depends on the satisfaction of the four conditions under Section 65B(2).*** Following are the

specified conditions under Section 65B(2) of the Evidence Act:

(i) The electronic record containing the information should have been produced by the computer during the period over which the same was regularly used to store or process information for the purpose of any activity regularly carried on over that period by the person having lawful control over the use of that computer;

(ii) The information of the kind contained in electronic record or of the kind from which the information is derived was regularly fed into the computer in the ordinary course of the said activity;

(iii) During the material part of the said period, the computer was operating properly and that even if it was not operating properly for some time, the break or breaks had not affected either the record or the accuracy of its contents; and

(iv) The information contained in the record should be a reproduction or derivation from the information fed into the computer in the ordinary course of the said activity.

14. Under Section 65B(4) of the Evidence Act, if it is desired to give a statement in any proceedings pertaining to an electronic record, it is permissible provided the following conditions are satisfied:

(a) There must be a certificate which identifies the electronic record containing the statement;

(b) The certificate must describe the manner in which the electronic record was produced;

(c) The certificate must furnish the particulars of the device involved in the production of that record;

(d) ***The certificate must deal with the applicable conditions mentioned under Section 65B(2) of the Evidence Act;*** and

(e) The certificate must be signed by a person occupying a responsible official position in relation to the operation of the relevant device.

15. It is further clarified that the person need only to state in the certificate that the same is to the best of his knowledge and belief. Most importantly, such a certificate must accompany the electronic record like computer printout, Compact Disc (CD), Video Compact Disc (VCD), pen drive, etc., pertaining to which a statement is sought to be given in evidence, when the same is produced in evidence. All these safeguards are taken to ensure the source and authenticity, which are the two hallmarks pertaining to electronic record sought to be used as evidence. Electronic records being more susceptible to tampering, alteration, transposition, excision, etc. without such safeguards, the whole trial based on proof of electronic records can lead to travesty of justice.

16. Only if the electronic record is duly produced in terms of Section 65B of the Evidence Act, the question would arise as to the genuineness thereof and in that situation, resort can be made to Section

45A - opinion of examiner of electronic evidence.

17. The Evidence Act does not contemplate or permit the proof of an electronic record by oral evidence if requirements under Section 65B of the Evidence Act are not complied with, as the law now stands in India.” (emphasis supplied)

59. From the aforesaid, it is clear that though information contained in an electronic record including a copy in optical or electronic media, like Compact Disc, produced by a computer can be proved by secondary evidence without calling the primary evidence, however, the certificate required to be issued under Section 65B must fulfil all the conditions laid down therein.

60. Considered in the light of the above legal position, it is found that certificate (Ex.P/22) does not disclose the particulars of video camera by which the incident was videographed by Ashok Patidar (P.W.3), something which was required to be given as per Clause 4(c) of Section 65(B). Further no details of the computer, said to have been used for preparing the C.D., have been given and further it has not been stated that the Computer was being officially used regularly to store or process videographic information on behalf of ‘Sahara Samay’ news channel over that period by the person having lawful control over the use of the computer. Further, there is no certification that during the said period, information of the said nature was regularly being fed into the computer in the ordinary course of the activities. Indeed

Ex.P/22 is quite vague as regards description, mode of use and control of the camera and the computer, which, allegedly, were used for preparing C.D. (Ex.P/24). Apart this, except oral testimony of Ashok Patidar (P.W.3), that he at the relevant time was working as the camera-man for 'Sahara Samay', no documentary evidence including appointment letter, which could have been the best piece of evidence in the matter, has been produced to prove that Ashok Patidar (P.W.3) at the relevant time was officially working as an employee / photographer for T.V. channel – 'Sahara Samay'.

61. Apart this, the testimony of Ashok Patidar (P.W.3) with regard to preparation of C.D. (Ex.P/24) is also quite anomalous. In para-4, he has deposed that for videography a cassette was used in the camera which was handed over by him to reporter Mohammad Ansar and that he himself has not prepared the C.D. On being contradicted, with his statement made in para-1, deposing that he had prepared the C.D. (Ex.P/24) from computer, this witness further says that he had provided C.D. as well as cassette to Mohammed Ansar, who was reporter of 'Sahara Samay' and had appointed him as photographer on behalf of 'Sahara Samay' T.V. channel. In these premises, Mohammed Ansar would have been the best person to testify as to exactly what happened after the cassette was handed over to him by Ashok Patidar (P.W.3), however, he has not been examined in that regard. Further, though it is claimed by the petitioner that audio was provided to him by Ashok Patidar(P.W.3), however, Ashok Patidar (P.W.3) in para-6 has denied that he provided the audio C.D. to the

petitioner, rather, he says that he had provided video C.D. to him in the evening of 24/11/2013 itself.

62. The aforesaid serious anomalies in the testimony of Ashok Patidar (P.W.3) coupled with the fact that certificate (Ex.P/22) does not satisfy the necessary requirements of Section 65B of Evidence Act and further the fact that Ashok Patidar (P.W.3) has himself denied that he prepared C.D. of the videography, creates serious doubt about the authenticity and reliability of Ex.P/24, particularly, in the background that evidence of digital/electronic media is prone to be easily manipulated, modified and edited in different manners and that even voice and certain parts can be deleted and certain other parts can be added, as admitted by Ashok Patidar (P.W.3) in para-9 of his testimony. In this connection, it is apt to refer to the following observations made by the apex Court in ***Tukaram Dighole v. Manikrao Shivaji Kokate, AIR 2010 SC 965:***

“.....There is also no doubt that the new techniques and devices are the order of the day. Audio and video tape technology has emerged as a powerful medium through which a first hand information about an event can be gathered and in a given situation may prove to be a crucial piece of evidence. At the same time, with fast development in the electronic techniques, the tapes/cassettes are more susceptible to tampering and alterations by transposition, excision, etc. which may be difficult to detect and, therefore, such evidence has to be received with caution. Though it would neither be feasible nor advisable to lay down any exhaustive set

of rules by which the admissibility of such evidence may be judged but it needs to be emphasised that to rule out the possibility of any kind of tampering with the tape, the standard of proof about its authenticity and accuracy has to be more stringent as compared to other documentary evidence....”

63. This Court, despite the fact that Ex.P/22 does not satisfy the requirement of Section 65B and that the testimony of Ashok Patidar (P.W.3) is quite anomalous with regard to preparation of C.D.(Ex.P/24) has viewed the same which contains a video clip of 5minutes 36 seconds’ duration. The recording from 1 min. 35 seconds to 1 min. 45 seconds, indicates that one person present in the shop, on being interrogated and asked by the official of the election team, as to who has sent him to the shop; says ‘*madam*’. Thereafter, on being further asked which madam, this person little vaguely says ‘*Ranjana madam*’.

64. The contents of the aforesaid C.D., even if taken into consideration for the sake of argument, assuming that the same has been duly proved under Section 65B of the Evidence Act, do not indicate in reasonably clear terms that Res. No.1 had solicited vote by extending illegal gratification to electors because the maximum that can be gathered from the contents of the C.D., particularly, the part falling between 1.35 to 1.45 seconds, is that the person, who was interrogated, had stated that he was sent by ‘*madam Ranjana*’ to the shop to collect the utensils. However, there is no further evidence that it was by way of gratification or bribery to persuade him to

cast his vote in favour of Res.No.1. Further the voice as regards - '*Ranjana madam*', is not quite clear so as to affirmatively say that it was a specific reference to Res. No.1-Ranjana Baghel.

65. Further, even if it is accepted that the person, seen in the video being interrogated by the official of the Election Commission, said that he came to procure the utensils at the instance of "madam Ranjana", will that indicate, exclusively, that there was a nexus between respondent no.1 and such person? At any rate, the probability cannot be ruled out that he played this drama at the instance of someone else, or out of his own volition for reasons best known to him. Of-course, one of the probability may also be that he came to procure the utensils at the instance of the respondent no. 1, however, a finding with regard to indulgence in corrupt practice cannot be recorded on a mere probability, because the standard of proof required in such matters as ordained in *P.C.Thomas vs. Adv. P.M. Ismail, (2009) 10 SCC 239*, is that of proof beyond reasonable doubt. Relevant observation made in this behalf run as under:

“Before we proceed to examine the facts of the case to consider the question as to whether charges of corrupt practices were established against the appellant, we deem it necessary to reiterate that a charge of corrupt practice envisaged by the Act is to be equated with a criminal charge and the standard of proof thereof would not be preponderance of probabilities as in a civil action but proof

beyond reasonable doubt as in a criminal trial.”

66. Thus, whatever is recorded in the C.D. (Ex.P/24), at the best can give rise to a reasonable suspicion that the person, who is being interrogated, is speaking about Res. No.1-Ranjana Baghel, however, as per the settled legal position suspicion howsoever strong cannot take the place of proof, particularly, when the issue pertains to allegations of corrupt practice under Section 123 of ‘The Act’.

67. Resultantly, it is not found proved that respondent No.1 in order to influence the electors offered or distributed utensils so as to persuade them to cast their vote in her favour.

68. Issue no.1(iii) is decided accordingly.

Issue No.2:

69. The petitioner has averred that one Rajkumar Jain, the authorised agent of respondent No.1 in the election, had indulged in corrupt practice at Village-‘*Kuradakh*’ by publicly gratifying the voters so as to influence them to cast their vote in favour of the respondent. It is alleged that he assured a group of voters that they shall be provided with money, electronic and other articles for favouring Res. No.1. This incident, allegedly, was recorded by one Kalyan s/o Amit, resident of Village-‘*Kuradakh*’, in presence of one Pappu Mukati. As averred by petitioner, Niranjan Dawar (P.W.1), he came to know about this incident from Kalyan and thereafter, he had called Pappu Mukati and Kalyan who provided him with an ‘audio’ of the incident.

70. Obviously, Niranjana Dawar (P.W.1) does not claim to be an eye-witness of this incident, Kalyan and Pappu Mukati, who are said to be the eye-witnesses of the incident, have not been examined by the petitioner nor the 'audio' of the incident, said to have been provided to him by Pappu Mukati and Kalyan, has been adduced in evidence. Apart this, no other witness claims to have seen this incident. Indeed, there is not even an iota of evidence to establish the allegations made in this regard in the election petition.

71. Thus, the petitioner has failed to prove that Rajkumar Jain had offered or promised to provide money, electronic items and other articles to the electors of village - '*Kuradakhhal*' in order to gratify them and to elicit their supports in the election in favour of the respondent.

72. Issue No.2 is decided, accordingly.

Issue No.3:

73. The averments in this regard have been made in para-16 of the petition. Though it is alleged that one P.S. Meena, S.D.O. (Police) was transferred to Barwani, a place close to Manawar, at the instance of the Res. No.1, who at that time was a Cabinet Minister in M.P. Government, and that Shri Meena, actively worked to solicit support of the voters for Res.No.1 so as to further her prospects in the election, however, petitioner Niranjana Dawar (P.W.1) in para 27 of his statement has admitted that he himself had never seen Shri Meena sharing dice with Res. No.1. This witness has further not been able to state as to on which date and at which place

Shri Meena shared dice with the Res. No.1. No other witness has deposed that Shri Meena was seen sharing dice with the Res. No.1 during her election campaign or that he directly or indirectly extended benefit to support her so as to further her prospects in the election. Therefore, a bald assertion in para-13 that Shri Meena used to go with Res. No.1 for canvassing and further used to share dice with her and also used to extend benefit to the supporters of Res. No.1, being bereft of details, is totally inconsequential. Thus, it is not found proved that Shri Meena had worked for Res. No.1.

74. The next allegation is that one Shri Madhav Acharya, Chief Executive Officer of Janpad Panchayat, under transfer to Betul, was not relieved under the influence of the Res. No.1, so that he can extend undue benefit to her. In this regard, this Court can take judicial notice of the fact that during election process, the transfer and posting of officials, who have a role to play in the election, is under the control and supervision of the election authorities. Apart this, it has come in the testimony of Shri Niranjana Dawar (P.W.1) (para-21) that the Collector, who is also the Returning Officer, only has the authority to relieve or not to relieve the Chief Executive Officer. Indeed, the petitioner has not led any plausible evidence to demonstrate that Shri Madhav Acharya was not relieved because of the influence of the respondent No.1, the then Cabinet Minister, therefore, in absence of specific evidence to indicate that respondent No.1 exercised undue influence in preventing Shri Madhav Acharya from being

relieved, it cannot be concluded that he was not allowed to be relieved because of the respondent No.1.

75. The petitioner has also averred that Shri Ohriya the then S.D.M., who was very close to respondent No.1, had also supported her in influencing the voters in her favour (para-16 of the petition). Petitioner Niranjan Dawar (P.W.1) in support of this averment has made a bald statement in para-12 that pamphlet Ex.P/16, P/16-C, and P/17-C were got printed at the instance of Abhay Ohriya, the then S.D.M., Manawar, and that he was also involved in the distribution of these pamphlets which he did at the instance of respondent No.1 to help her in an illegal manner. However, the petitioner has not led any clear, cogent and specific evidence to establish that Ex.P/16 and Ex.P/17 were got printed by the then S.D.M, Shri Abhay Ohriya or that he was involved in the distribution of these pamphlets.

76. Satyendra Singh (P.W.7), who was working as Tehsildar, Manavar, during election period, has deposed in para-9,10 and 11 regarding printing and publication of the pamphlets Ex.P/16 and Ex.P/17 however, that by itself does not indicate that the pamphlets were got printed and distributed at the instance of or with the direct and indirect involvement of Shri Abhay Ohriya, the then S.D.M., Manavar. The testimony of Niranjan Dawar (P.W.1) to the effect that the Res. No.1 and Abhay Ohriya are brother and sister by customary relationship of '*Rakhi Dora*' is also of hearsay nature because this witness in para-26 of the cross-examination has clearly stated that he came to know about

alleged relationship only through the photograph circulated at '*whatsapp*', but he does not know as to who had captured the photograph and how he himself procured the photographs in that regard.

77. From the aforesaid analysis of the evidence available on record, it emerges that the petitioner has not been able to prove that Shri Meena, Shri Madhav Acharya and Shri Ohriya had worked in a manner so as to further prospects of the Res. No.1 in her election.

78. Issue No.3 is decided accordingly.

Issue No.4 :

79. The averments with regard to this issue have been made in para-17 of the petition which are as under:

“That, apart from the aforesaid the respondent No.1 also suppressed material information in her nomination form and even gave incorrect information as to the dues of the Government. In the nomination form, in the column of Government dues she has mentioned NIL, whereas in fact as per the certified copies of “Kishtabandi Khatauni” obtained by the petitioner in respect of land of Survey No.190/6 show that she is in arrears since 2008 to 2013 towards diversion charges of Rs.1557/- for each year. True photocopies of the nomination form and the Kishtabandi Kahtauni are ***Annexure P/16 and P/17.***”

80. Section 100 of 'The Act' stipulates grounds for declaring an election to be void. Sub-section (1) of Sec 100 comprises of clause (a), (b),(c) and (d).

Clause (b), clause (d)(i) and d(iv) which are relevant for our purpose run as under:-

“(a)

(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)

(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)

(iii)

(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.”

81. It is submitted by the learned Senior counsel for the petitioner that a candidate filing the nomination paper under Section 33(1) of ‘The Act’ is required to submit, under rule 4A of the Conduct of Election Rules, 1961 (for short ‘*The rules*’), an affidavit in the prescribed Form-26. It is further submitted that Form-26, apart from other things, requires disclosure about immovable assets held by the

candidate or his/her spouse, or other dependents, as well as the information with regard to government dues.

82. Inviting the attention of this Court to Section 100 (1) (d) (iv), it is submitted that non-compliance of the provisions of the Constitution or 'The Act' or any rules or orders made under 'The Act' is also a ground to declare the election of the returned candidate to be void. Placing reliance on *Kisan Shankar Kathore v. Arun Dattatray Sawant and others*, (2014) 14 SCC 162, and *Sri Mairembam Prithviraj @ Prithviraj Singh v. Shri Pukhrem Sharatchandra Singh*, 2016(10) SCALE, it is contended that where it has been established that a returned candidate has suppressed material information or has furnished incorrect information, then the Court shall declare his/her election to be void, without further demanding proof that the result of the election has been '*materially affected*' by improper acceptance of nomination or by non-compliance of the provisions of 'The Act' or rules or orders made under the 'The Act'. The contention is that if the material information has been suppressed in the affidavit required to be submitted in proforma-26 prescribed by Rule 4A of '*The Rules*', then in such a case, acceptance of the nomination would be deemed to be an improper acceptance as the returned candidate would not have been able to contest the election if his/her nomination was not accepted for non-furnishing of required information, which would amount to suppression or non-disclosure of such information.

83. Particular stress has been laid on para-16, 20 & 22 of the pronouncement in *Sri Mairembam's case (Supra)*, relevant parts whereof run as under:

“16. In *Resurgence India v. Election Commission of India and Anr. (supra)* this Court held that every candidate is obligated to file an affidavit with relevant information with regard to their criminal antecedents, assets and liabilities and educational qualification. The fundamental right under Article 19 (1) (a) of the voter was reiterated in the said judgment and it was held that filing of affidavit with blank particulars would render the affidavit as nugatory. In *Kisan Shankar Kathore v. Arun Dattatray Sawant* reported in 2014 (14) SCC page 162 this Court considered the question as to whether it was incumbent upon the Appellant to have disclose the information sought for in the nomination form and whether the non-disclosure thereof render the nomination invalid and void. It was held that non-furnishing of the required information would amount to suppression/non-disclosure.

20. There is no dispute that an election cannot be set aside on the ground of improper acceptance of any nomination without a pleading and proof that the result of the returned candidate was materially affected. The point to be considered is whether the law as laid down by this Court relating to the *pleading and proof* of the fact of the

result of the returned candidate ***being materially affected*** applies to a case where the nomination of the returned candidate is declared to have been improperly accepted.”

22. It is clear from the above judgment 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.” (Emphasis supplied)

84. Further reference has been made to para-43 of judgment in ***Kisan Shankar Kathore’s case (Supra)*** which runs as under:

“When the information is given by a candidate in the affidavit filed along with the nomination paper and objections are

raised thereto *questioning the correctness of the information or alleging that there is non-disclosure of certain important information*, it may not be possible for the returning officer at that time to conduct a detailed examination. Summary enquiry may not suffice. Present case is itself an example which loudly demonstrates this. At the same time, it would not be possible for the Returning Officer to reject the nomination for want of verification about the allegations made by the objector. In such a case, when ultimately it is proved that it was a case of non-disclosure and either the affidavit was false or it did not contain complete information leading to suppression, it can be held at that stage that the nomination was improperly accepted.”

85. Precisely put, the argument on behalf of the petitioner is that in the instant case, the respondent No.1, a returned candidate, had suppressed material information which was required to be furnished by her with regard to govt. dues and the immovable property held by her and has further supplied incorrect information in that regard, therefore, her nomination paper was liable to be rejected at the initial stage, however, it was accepted as the deficiency could not be detected at the relevant time, hence, this is a case of improper acceptance of nomination paper and, therefore, in the light of the aforesaid pronouncements of the apex Court, the election of respondent No.1 is liable to be

declared void, without further demanding pleading and proof of the fact that it has '*materially affected*' the result of the election.

86. Per contra, the learned senior counsel for the respondent no.1 has submitted that mere finding of improper acceptance of nomination is not sufficient to declare the election void under Section 100 (1) (d) of 'The Act' and that there should be further proof that the result of the election of the returned candidate was materially affected. It is submitted that where only two contestants are there in the election, it may not be necessary to plead and prove, that the election was materially affected for furnishing incorrect information, however, if the contestants are more than two then pleading and proof that the election was materially affected is necessary. It is submitted that in the present case, there were as many as nine contestants, therefore, the ratio laid down in *Kisan Shankar Kathore's case (Supra)* is not applicable. Particular reliance is placed on para-23 of the decision of *Sri Mairembam's case (Supra)*, which runs as under:

“Mere finding that there has been an improper acceptance of the nomination is not sufficient for a declaration that the election is void under Section 100 (1) (d). There has to be further pleading and proof that the result of the election of the returned candidate was materially affected. But, there would be no necessity of any proof in the event of the nomination of a returned candidate being declared as having been improperly accepted,

especially in a case where there are only two candidates in the fray. If the returned candidate's nomination is declared to have been improperly accepted it would mean that he could not have contested the election and that the result of the election of the returned candidate was materially affected need not be proved further." (Emphasis supplied)

87. The Hon'ble apex Court in *Kisan Shankar Kathore's case (Supra)* and *Sri Mairembam's case (Supra)*, has dealt with the issue with regard to improper acceptance or rejection of nomination of a candidate and further the effect of suppressing material information or furnishing incorrect information in the affidavit to be submitted in proforma-26 as prescribed under Rule 4A of 'The Rules'. A careful reading of the aforesaid decisions reveals that when the election of the returned candidate is challenged on the ground of non-disclosure of material information and it is established that the returned candidate had either suppressed the material information or did not furnish the required information or furnished in-correct information, then the question of rejection of nomination of such candidate is simply a case where the decision is only deferred to later date and that when the Court comes to such a finding, it would have resulted in rejection, the effect would be that such a candidate was not entitled to contest and the election is void. In such a situation, it is no more required to prove that the result of the election of the returned candidate was materially affected. In this connection observations made in para-43 of *Kisan Shankar Kathore's case (Supra)* and para-23 of *Sri Mairembam's case (Supra)*,

reproduced hereinabove, lay down the law in very clear and specific terms.

88. The proposition of law flowing from the aforesaid two judicial pronouncements of the apex Court is that in a case covered under Section 100(1)(d)(i) and 100(1)(d)(iv) of 'The Act', once it is proved that the nomination paper of the returned candidate was liable for rejection because suppression or non-disclosure of material information required to be furnished in the affidavit in Form-26 prescribed under Rule 4A of 'The Rules', however, the same could not be rejected because it was not possible to carry out a full fledged enquiry at that time, the Court will further not insist on pleading and proof that the result of the election was materially affected because of non-furnishing / suppression of necessary information. Here it is apt to state that on the basis of this legal proposition, a petitioner cannot claim exemption from pleading material facts and necessary particulars with regard to allegations under Section 100(1)(d)(i) and 100(1)(d)(iv) and, therefore, the petitioner will have to first plead and proved that there was suppression or non-disclosure of material information leading to non-compliance of relevant rules or legal provisions rendering the nomination of returned candidate liable for rejection.

89. In the instant case, though, in the light of the aforesaid legal position, the petitioner's claim that he was not required to plead and prove that alleged suppression of information by Res. No.1 'materially affected' the result of the election, is sustainable, however, he was required to plead and

prove that the material information was suppressed or was not disclosed.

90. In the aforesaid premises firstly, it is to be seen whether necessary averments have been made with regard to alleged suppression/non-disclosure of the material information about government dues and immovable property. If this query is answered in affirmative then of-course, in view of legal position extracted herein above, it will further not be required to enquire into whether further averments have been made that suppression or non-disclosure of material information in the affidavit in Form 26 had in fact materially affected the result of the election vis-à-vis Res. No.1.

91. Necessary averments, as regards allegation that the Res. No.1 had suppressed material information in her nomination form and had given incorrect information in respect of the dues of the government, are found in para 17 of the petition. Attention of this Court is invited to Ex.P/9 – certified copy of affidavit, said to have been submitted by Res. No.1 in ‘Form No.26’ prescribed under Rule 4A of “*The Rules*”. Further attention is invited to column 8, which requires a candidate to furnish ‘the details of liabilities/dues to public financial institutions and government’. Such information is required to be provided in the given proforma with regard to loan or dues to bank/financial institution(s) or other individuals/entity, government dues including dues to departments dealing with government accommodation, supply of water, supply of electricity, supply of telephones/mobiles, government transport, income tax, wealth tax, service tax,

municipal/property tax, sales tax and “*any other dues*” and a grand total of all such dues. Inviting attention of this Court to Ex.P/10-C – certified copy of ‘*khasra*’ Register for 2013-2014, village Kukshi, Tehsil Kukshi concerning ‘*khasra*’ No.190/6 and Ex. P/11-C certified copy of ‘*khatoni-B-1*’ for 2013-2014 of village and Tehsil Kukshi, concerning ‘*khata*’ No.1350, it is submitted by Shri A.M. Mathur, learned Senior counsel appearing for the petitioner, that diversion tax, due against Res. No.1 in respect of Survey No.190/6, from year 2008-09 to 2012-13 @ Rs.1557/- per year was not disclosed by her in column No.8 of affidavit Ex.P/9. Being certified copies of ‘*khasra*’ and ‘*khatoni*’-public record, Ex.P/10-C and Ex.P/11-C, are admissible in evidence under Section 76 of the Evidence Act, which permits proof of public documents by production of certified copy thereof. It is contended on behalf of the petitioner that Res. No.1 has furnished false information that she owed ‘no dues’ towards government. Referring to Section 100(1)(d)(i) and Section 100(1)(d) (iv) of ‘The Act’, it is submitted that by not disclosing the information about dues with regard to diversion charges in respect of land mentioned in Ex.P/11, the Res. No.1 has violated Rule 4A of ‘*The Rules*’, which amounts to infraction of Section 33A of ‘The Act’, inserted in ‘The Act’ by Amending Act No. 72 of 2002, pursuant to the pronouncement of the apex Court in *Union of India v. Association for democratic reforms & another, AIR 2002 SC 2112*. It is further contended that in view of suppression of material information with regard to

government dues, the nomination paper filed by Res. No.1 was liable to be rejected.

92. Per contra, Shri A.K. Sethi, learned Senior counsel for Res.No.1 has submitted that entries made in Ex.P/10-C and Ex.P/11-C do not clearly indicate that on the date of filing of nomination paper, diversion tax was due against Res. No.1. It is submitted that column no. 3 in Ex.P/10-C is with regard to land revenue payable or assessed on the land and in this column Rs.1557/- is mentioned as the land revenue payable. It is contended that this entry does not by itself indicate that the land revenue was as such due against the respondent because there is a difference between term 'payable' 'देय' and 'due' 'बकाया' . It is further submitted that in Ex.P/11-C, in column No.5 (falling under major head 'current and existing dues') pertaining to 'details of instalments', 'किश्तों के ब्यौरे', entry 'due' is there, however, further entry has been made in column no.9, falling under the major head – 'Recoveries' 'वसूलियां'- comprising of column 9 to column 13, for five successive years, which is nothing but an entry about recovery of diversion tax. It is further contended that no certificate showing dues, or a demand notice issued by the revenue officials demanding dues, has been brought in evidence in order to prove that any revenue was due against Res. No.1. Therefore, it is submitted, on the basis of Ex.P/10 and Ex.P/11, it cannot be held that on the date of filing of nomination paper any diversion tax was due against the Res. No.1.

93. A careful perusal of Ex.P/10-C reveals that the land revenue assessed with regard to '*khasra*' No.190/6 is Rs.1557/-. Column No.5 of Ex.P/11-C is with regard to 'details of instalments', 'किस्तों के ब्यौरे' instead, the entry- 'dues' – 'बकाया' has been made in the same. Column No.6,7 & 8 respectively, pertaining to due 'land revenue', 'tax' and 'total' have been left blank. Column No.9 to 13 are with regard to recoveries falling under major head 'Recoveries' 'वसूलियां' and in column 9, successive entries for 5 years with regard to diversion tax Rs.1557/- have been made. Entries in the recovery column can, obviously, be with regard to the recovery and not with regard to the dues. Ex.P/11-C indicates towards the fact of recovery of diversion tax for 5 successive years, hence, the contention that land revenue or diversion tax was due against Res. No.1 and that this information was suppressed by her at the time of submission of affidavit in Form 26, cannot be sustained. Though, petitioner Nirajan Dawar (P.W.1) in para-11 has deposed that land revenue was due against Res. No.1 and this fact was suppressed by her in the nomination form, however, entries made in column 9 of Ex.P/11-C do not substantiate his assertion in this regard.

94. Thus, from the evidence available on record, it is not established that on 06/11/2013, the date on which, Res. No.1 filed nomination paper along with affidavit in 'Form No.26' to contest election, any land revenue / diversion tax was due against her.

95. Issue No.4 is decided accordingly.

96. The learned Senior counsel for the petitioner, inviting the attention of this Court to Ex.P/12-C, Ex.P/13-C, Ex.P/14-C and Ex.P/15-C, has submitted that from Ex.P/12-C, a certified copy of '*khatoni*' B-1 for year 2013-14, village Manavar, it is reflected that Res. No.1 was '*Bhumiswami*' of '*khasra*' No.219/1/1/kha/31, measuring 0.028 hectare and that from Ex.P/14-C, '*khatoni*' B-1 for year 2013-14, village Manavar, Tehsil Manavar, it is further reflected that Res. No.1 was '*Bhumiswami*' of '*khasra*' No.456/1/3/12 & 457 measuring 0.121 hectare. Further, inviting attention to Ex.P/9, copy of affidavit filed by Res. No.1 in proforma-26, particularly, column-7(B) thereof pertaining to details of immovable properties, it is submitted that Res. No.1 has not supplied information in her affidavit with regard to the aforesaid agricultural land which amounts of suppression of material information and that on this count, her nomination form was liable to be rejected.

97. Per contra, referring to averments made in the election petition, particularly, para-17, it is submitted by learned senior counsel for the respondent that the petitioner, as such, has not pleaded that respondent No.1 had suppressed material information with regard to agricultural land. It is contended that averments made in para-17 of the petition are only with regard to suppression of material information and giving incorrect information in respect of govt. dues. It is further contended that due to absence of specific pleadings with regard to material fact pertaining to suppression of information about agricultural land, allegedly, held by Res.

No.1, this Court has not framed any issue on the point, as to whether material information with regard to agricultural land was suppressed by Res. No.1. Referring to various authorities it is contended that the law is well settled that in absence of pleading any amount of evidence cannot be looked into and made basis of determination, particularly, in an election petition.

98. In response, the learned Senior Counsel appearing for the petitioner, relying upon decision of the apex Court in *Nagubai Ammal & Ors. Vs. B. Shama Rao and others, AIR 1956 SC 593*, and further referring to pronouncement of the apex Court in *Kalyan Singh Chouhan vs. CP Joshi, AIR 2011 SC 1127* and decision of this Court in *Ganpat Rao vs. Ashok Rao and Ors. 2004(3) MPLJ 571*, has contended that where parties had gone to trial with full knowledge of the disputed question and had ample opportunity to adduce their evidence on such issue and also avail themselves of such opportunity, absence of specific pleading on such question will be treated as a mere irregularity not resulting in prejudice to the parties. It is submitted that in the case in hand, the petitioner and respondent No.1 have gone to the trial with full knowledge on their behalf as regards question relating to suppression of material information about agricultural land, allegedly, held by Res. No.1, therefore, the plea about absence of pleadings is not sustainable.

99. In *Nagubai Ammal's case (supra)* a contention was raised that findings of the Courts below that the sale deed in question was hit by Section 52 of the Transfer of Property

Act is bad because the question of '*lis pendens*' (Section 52 of the Transfer of Property Act) was not raised in the pleadings. The apex Court repelling this contention observed that though parties have not averred about the same and issue was not directed on the question, however, allegations in para-4 of the plaint and para-5 of the written statement are sufficiently wide to embrace the question of '*lis pendens*'. It was further held that the question of '*lis pendens*' was raised by the plaintiff at the very commencement of the trial. In concluding part of para-11, the apex Court observed as under:-

“We are satisfied that the defendants went to trial with full knowledge that the question of *lis pendens* was in issue, had ample opportunity to adduce their evidence thereon, and fully availed themselves of the same, and that in the circumstances, the absence of a specific pleading on the question was a mere irregularity, which resulted in no prejudice to them.”

100. This Court in ***Ganpat Rao's case*** (supra) relying on the aforesaid dicta of law laid down in ***Nagubai Ammal's case*** (supra) took the view that once the parties have understood each other's case and had led evidence and contested the matter on particular issue then the trial will not be vitiated only on the ground that specific issue on such question is not framed.

101. In ***Kalyan Singh Chouhan's case*** (supra), a matter relating to election dispute, the apex Court dealing with the contention that the Court can travel beyond the pleadings, referring to various authorities including its own

pronouncement in *Nagubai Ammal's case* (supra), observed as under:-

“23. There may be an exceptional case wherein the parties proceed to trial fully knowing the rival case and lead all the evidence not only in support of their contentions but in refutation thereof by the other side. In such an eventuality, absence of an issue would not be fatal and it would not be permissible for a party to submit that there has been a mis-trial and the proceedings stood vitiated. (vide: *Nagubai Ammal & Ors. v. B. Shama Rao & Ors.*, AIR 1956 SC 593; *Nedunuri Kameswaramma v. Sampati Subba Rao*, AIR 1963 SC 884; *Kunju Kesavan v. M.M. Philip & Ors.*, AIR 1964 SC 164; *Kali Prasad Agarwalla (dead) by L.Rs. & Ors. v. M/s. Bharat Coking Coal Ltd. & Ors.*, AIR 1989 SC 1530; *Sayed Akhtar v. Abdul Ahad*, (2003) (7) SCC 52; and *Bhuwan Singh v. Oriental Insurance Co. Ltd.*, AIR 2009 SC 2177).

“24. Therefore, in view of the above, it is evident that the party to the election petition must plead the material fact and substantiate its averment by adducing sufficient evidence. The court cannot travel beyond the pleadings and the issue cannot be framed unless there are pleadings to raise the controversy on a particular fact or law. It is, therefore, not permissible for the court to allow the party to lead evidence which is not in the line of the pleadings. Even if the evidence is led that is just to be ignored as the same cannot be taken into consideration.”

102. In *Kalyan Singh Chouhan's case (supra)*, reference was also made to the observations made in *Harcharan Singh vs. S. Mohinder Singh & Ors., AIR 1968 SC 1500*, which are as under:

"The statutory requirements of election law must be strictly observed. An election dispute is a statutory proceeding unknown to the common law; it is not an action at law or in equity. The primary purpose of the diverse provisions of the election law which may appear to be technical is to safeguard the purity of the election process, and the Courts will not ordinarily minimise their operation."

103. The apex Court further referred to its own decision in *Jyoti Basu & Ors. v. Debi Ghosal & Ors., AIR 1982 SC 983*, and quoted with approval the following observations:

"A right to elect, fundamental though it is to democracy, is, anomalously enough, neither a fundamental right nor a Common Law Right. It is pure and simple, a statutory right. So is the right to be elected. So is the right to dispute an election. Outside of statute, there is no right to elect, no right to be elected and no right to dispute an election. Statutory creations they are, and therefore, subject to statutory limitation. An election petition is not an action at Common Law, nor in equity. It is a statutory proceeding to which neither the common law nor the principles of equity apply but only those rules which the statute makes and applies. It is a special jurisdiction and a special jurisdiction has always to be exercised in

accordance with the statute creating it. Concepts familiar to Common Law and Equity must remain strangers to Election Law unless statutorily embodied. A Court has no right to resort to them on considerations of alleged policy because policy in such matters, as those, relating to the trial of election disputes, is what the statute lays down. In the trial of election disputes, Court is put in a straight jacket.We have noticed the necessity to rid ourselves of notions based on Common Law or Equity. We see that we must seek an answer to the question within the four corners of the statute."

104. The aforesaid pronouncements abundantly make it clear that the considerations in an election petition as regards pleadings and proof are different from those in a civil trial because while in the later case, the decision affects only parties to the *lis* in an election petition, the decision goes to the very route of the democracy. Here it would be apposite to refer to *Jagan Nath vs. Jaswant Singh, AIR 1954 SC 210*, wherein the apex Court observed as under;-

"It is a sound principle of natural justice that the success of a candidate who has won at an election should not be lightly interfered with and any petition seeking such interference must strictly conform to the requirements of the law."

105. In *Azhar Hussain vs. Rajiv Gandhi, AIR 1986 1253*, it was held as under:

"And also notwithstanding the fact that election involve considerable expenditure of public revenue (not to

speaking of private funds) and result in loss of public time, and accordingly there would be good reason for not setting at naught the election which reflects the true will of the people lightly. In matters of election the Will of the people must prevail and Courts would be understandably extremely slow to set at naught the will of the people truly and freely exercised. If Courts were to do otherwise, the Courts would be pitting their will against the Will of the people, or countermanding the choice of the people without any object, aim or purpose. But where corrupt practices are established the result of the election does not echo the true voice of the people. The Courts would not then be deterred by the aforesaid considerations which in the corruption scenario lose relevance. Such would be the approach of the Court in an election matter where corrupt practice is established. But what should happen when the material facts and particulars of the alleged corrupt practices are not furnished and the petition does not disclose a cause of action which the returned candidate can under law be called upon to answer? High Court has given the answer that it must be summarily dismissed....."

106. A careful perusal of the election petition including para-17 thereof leaves no manner of doubt that material facts with regard to suppression of information in respect of agricultural land said to have been held by respondent No.1 have not been averred, therefore, in absence of pleadings, the evidence led in that behalf by the petitioner by way of

Ex.P/12-C, P/13-C, P/14-C & P/15-C, in the light of aforesaid legal position, cannot be considered.

107. Learned counsel for the petitioner has further submitted that Ex.P/12-C, P/13-C, P/14-C & P/15-C have been duly admitted in evidence and, therefore, being part of the election petition it can well be said that necessary pleadings with regard to suppression of information pertaining to agricultural land were made by the petitioner. In this regard, attention of this Court has also been drawn to order dated 11.09.2015 passed by this Court whereby the petitioner was allowed to bring on record, Ex.P/12-C to Ex.P/15-C. It is submitted that as the Court has allowed the petitioner to bring the documents on record, which were later on marked in evidence, the same can be taken into consideration.

108. The aforesaid plea cannot be accepted primarily for the reason that as regards election petition the material facts should be pleaded within the period of limitation. In *Mahendra Pal vs. Ram Dass Malanger and Others*, AIR 2000 SC 16, it has been held that no material fact unless already pleaded can be permitted to be introduced after expiry of limitation. In the instant case, the election petition was filed on 21.01.2014, the documents were allowed to be taken on record, vide order dated 11.09.2015, meaning thereby well beyond the limitation period of 45 days as prescribed by Section 81 of 'The Act' for preferring an election petition, therefore, a bare permission granted by this Court to produce these documents will not make any difference in the situation.

Issue No.5- Relief and cost:

109. In view of the findings (Supra) recorded by this Court with regard to issue No.1(i), 1(ii), 1(iii), 2, 3 & 4, it is clear that the petitioner has not been able to prove his case, therefore, the petition deserves to be dismissed.

110. Accordingly, this petition is hereby **dismissed**. The parties to bear their own costs.

111. The Registry is directed to send an authenticated copy of this judgment to the Election Commission of India and the Speaker of Madhya Pradesh Legislative Assembly under Section 103 of the Representation of the People Act, 1951, at the earliest.

Certified copy as per rules.

(VED PRAKASH SHARMA)
JUDGE

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