

High Court of Madhya Pradesh: Bench at Indore
Single Bench: Hon'ble Shri Justice Ved Prakash Sharma

Election Petition No.03/2014

Govind Sirvi S/o Rhukhdu Ji Sirvi

Versus

Smt. Ranjana Baghel

Shri C.L. Yadav, learned Senior Counsel with Shri O.P. Solanki, learned counsel for the petitioner.

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

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 (sole respondent) – a returned candidate from constituency No.199, Manawar (reserved for Scheduled Tribe), District-Dhar, in the general election for Madhya Pradesh Legislative Assembly held in year 2013.

02. It is not disputed that in the general election-2013 for Madhya Pradesh Legislative Assembly, nine candidates, including respondent Smt. Ranjana Baghel - the official candidate of Bharatiya Janta Party and Shri Niranjana Dabar – the official candidate of Indian National Congress, were in the fray. The polling was held on 25.11.2013. Counting of votes took place on 08/12/2013 and same day the result

was declared in which Respondent (Smt.) Ranjana Baghel, who secured 55293 valid votes, was declared a returned candidate. Her nearest contestant Shri Niranjana Dabar secured 53654 votes.

03. Petitioner Govind Sirvi, claiming to be an elector from constituency No.199, Manawar, has challenged the election of the respondent alleging that during her election campaign, she had indulged in corrupt practices within the meaning of Section 123(1)(A)(b) of 'the Act' which constitute a ground under Section 100(1)(b) of 'the Act' for declaring her election to be void.

04. As many as five incidents of corrupt practices have been alleged in para-15 of the petition which are summarised as under:-

(i) That, on 24.11.2013, at around 11 a.m., the respondent visited village '*Amlatha*' of Manawar constituency and by way of gratification distributed currency notes of Rs.1000/- to the villagers requesting them to cast their votes in her favour; photographs of this incident were taken by one Mukesh Nayak (P.W.2), resident of Village '*Amlatha*', on his mobile phone and he after developing the photographs distributed them to reporters of various newspapers; the incident was widely published along with photographs in daily newspapers of 25.11.2013 including 'Dabang Duniya' (copy Ex.P/6), 'Jan Jan Jagaran' (copy Ex.P/7), 'Hello Hindustan' (copy Ex.P/8) and 'Weekend Post' (copy Ex.P/9) published from Indore. It is further averred that

Gopal Kannoj (P.W.3) an independent contestant, had complained in writing (vide Ex.P/1-C) about this incident to the observer of the Election Commission. As per the petitioner, he came to know about this incident from news channel 'Sahara Samay', newspaper reports, Mukesh Nayak (P.W.2) and Gopal Kannoj (P.W.3).

(ii) That, on 25/11/2013 at around 11.40 a.m., the respondent visited Village-'*Kalikaray*' of Manawar constituency and by way of gratification distributed money to the electors to cast their votes in her favour; Gangaram Singh Chouhan (P.W.10) – a Constable of Police force, who was on official duty, took photographs of this incident on his mobile, however, the respondent and her supporters misbehaved with him and after snatching his mobile destroyed the photographs, regarding which same day he had lodged FIR (copy Ex.P/10-C) at Police Station Manawar, on the basis whereof Crime No.549/2013 was registered against the respondent. It is further averred that, vide Annexure P/11, Gopal Kannoj (P.W.3) also complained same day in writing about this incident to the returning officer of Manawar constituency; the incident was published in various newspapers including 'Nai Dunia', 'Dainik Bhaskar', 'Raj Express', 'Lok Swami' and 'News Today', dated 26.11.2013. As per the petitioner, he came to know about the incident from Gopal Kannoj (P.W.3) who had also supplied to him the copy of

complaint made by him to the returning officer as well as copy of FIR lodged by Gangaram Singh Chouhan (P.W.10) with police.

(iii) That, one Virendra Jain, a famous Businessman of utensils of Manawar locality and a strong supporter of the respondent, on the basis of slip issued by the respondent, by way of illegal gratification, distributed utensils from his shop to the electors to elicit their support for the respondent and that in this regard the respondent herself made promises to the voters to cast their vote in her favour, regarding which a complaint in writing by one Om Solanki (P.W.11), an election agent of Shri Niranjana Dabar, was made on 24.11.2013 at around 11.50 a.m. to the Election Commission, pursuant to which officials of the Election Commission, same day, had visited the shop of Virendra Jain and the incident was recorded by them as well as by some other persons from the media present over there. As per petitioner, he came to know about this incident from Om Solanki (P.W.11) and one Sohan Kaag S/o Shankar, resident of Village – Jagam Khedi, Tehsil-Manawar, who had provided Compact Disc (C.D.) of the incident to him.

(iv) That, on 11.11.2013, the respondent visited village '*Kali Bavdi*' of Manawar constituency and when one Hemraj (Hansraj) Chouhan (P.W.5) the then Village Sarpanch, and other villagers refused to support her complaining that no developmental work was done

in the village, she threatened them to face consequences for not supporting her in the election. It is further averred that at the instance of the respondent, same night, one Niraj Birthare, In-charge, Police Post - Bakaner, P.S. Dharampuri, visited Village – Kali Bavdi with police force and misbehaved with the villagers, including Guddu @ Sukhram (P.W.6), who were assaulted and arrested and that the police authorities threatened the voters to support the respondent in the election. It is further alleged that in this regard Hemraj (Hansraj) Chouhan (P.W.5) and Guddu @ Sukhram (P.W.6) next day i.e. on 12/11/2013 had made a complaint to I.G. Police, Indore, and that the incident was also published in newspapers – ‘Nai Dunia’, ‘Patrika’, ‘Dabang Dunia’, dated 13.11.2013; and the villagers of ‘*Kali Bavdi*’ also called a ‘*Bandh*’ on 12.11.2013 to protest against this incident. As per petitioner, he received information about this incident from newspapers as well as from Hemraj (Hansraj) Chouhan (P.W.5) and Guddu @ Sukhram (P.W.6).

(v) That, the respondent using her position as Cabinet Minister got Abhay Singh Ahoriya, her brother through custom of ‘*Rakhi Dhaga*’, posted at Manawar Constituency as S.D.O. in order to obtain and procure his assistance for furtherance of her prospects in the election. It is further pleaded that Abhay Singh Ahoriya directly and indirectly supported the respondent by refusing to accept complaints against her and by

overlooking illegal activities and corrupt practices on her part. It is also averred, that a photograph showing the respondent tying '*Rakhi Dhaga*' to Abhay Singh Ahoriya was published along with news items on 23/11/13 in daily newspaper 'Balwas Times' and 'City Blast' published from Indore, through which, the petitioner came to know about the same. Apart this, one Bharat Solanki, an independent contestant also informed him about this.

05. It is averred that the aforesaid acts on the part of the respondent amounted to 'Corrupt Practice' within the meaning of Section 123(1), 123(2) and 123(7) r/w Section 100(1)(b) of 'The Act' and, therefore, her election is liable to be declared void.

06. The respondent in her written statement denied that on 24.11.2013 she had distributed or offered money to the electors of villagers '*Amlatha*' in order to persuade them to cast their vote in her favour. It was also denied that Mukesh Nayak (P.W.2) had captured photographs of any such incident including photograph Ex.P/5-C. The respondent averred that photograph Ex.P/5-C is not an authentic document and that the same is of '*Vikas Yatra Rally*' held in February, 2013. The respondent denied that on 25.11.2013 she had distributed money to the villagers of Village – '*Kalikaray*' and that photographs of any such incident were taken by Gangaram Singh Chouhan (P.W.10). It was further denied that the respondent and her supporters had snatched the mobile from Gangaram Singh Chouhan (P.W.10). The respondent averred

that Gangaram Singh Chouhan (P.W.10) had lodged a false report with police and a closure report has been filed by the police in the matter before the Judicial Magistrate First Class, Manawar which has already been accepted.

07. The allegation with regard to distribution of utensils to the electors from the shop of Virendra Jain on the basis of slip allegedly, issued by the respondent was also denied. It was also denied that any video shooting was carried out by officers of the Election Commission or other persons. The respondent averred that the C.D., said to have been procured from Sohan Nayak (P.W.4) with regard to alleged incident of distribution of utensils, is false and concocted having no evidential value. Though, the respondent did not dispute that during election campaign, she had gone to Village '**Kali Bavdi**', however, it is averred that around 50 supporters of independent candidate Gopal Kannoj (P.W.3), who were under the influence of liquor, obstructed her vehicle and tried to damage it and further hurled abuses upon her shouting – '*Gopal Bhopal Jayega Aur Ranjana Dholiya Jayegi*'. The respondent further averred that one of her supporters Shri Kailash Rathore, came to her rescue and that in the meantime police arrived there to control the mob. It is averred that in this regard Kalash Rathore had lodged a report with the police regarding which, a case is still pending before the court against the supporters of Gopal Kannoj (P.W.3).

08. Denying the averments that Abhay Singh Ahoriya is her brother by customary relation of '**Rakhi Dhaga**', the respondent averred that she celebrates the festival of '**Raksha**

Bandhan’ on a large scale tying ‘***Rakhi***’ to various persons and in the process, she had also tied ‘***Rakhi***’ to Abhay Singh Ahoriya. It was denied that any support was solicited by the respondent from Shri Abhay Singh Ahoriya or that he himself helped or assisted the respondent in an unlawful manner during the election.

09. The respondent also disputed that petitioner is an elector of Manawar Constituency. Apart this, the respondent averred that material facts with regard to the alleged ‘Corrupt Practices’ have not been stated in the petition along with full particulars and that there is a defect of non-joinder of parties in as much as remaining contestants, who were in the election fray, the Election Commission and Virendra Jain, against whom, allegations have been made with regard to distribution of utensils, have not been made party, though they happen to be necessary party, therefore, there is a defect of non-joinder of parties. The respondents further averred that newspaper reports have no evidential value and that the alleged photographs/video recordings are prone to manipulation, editing and super-imposition etc., and, therefore, have no evidential value. With the aforesaid, the respondent prayed for dismissal of the petition with costs.

10. The Objection with regard to lack of material facts and full particulars in the petition as well as non-joinder of parties were also raised by way of *I.A. No. 232/2014*, which was disposed of by this Court, vide order dated 16/03/15, holding that necessary particulars with regard to alleged

‘Corrupt Practices’ have been given in para-15 and that Virendra Jain is not a necessary party.

11. Following issues were framed on 08/05/2015 in the matter on the basis of pleadings of the parties:-

ISSUES	FINDINGS
1. Whether Respondent with the object of inducing the voters for casting vote in her favour:-	
1(i) On 24/11/2013 at Village ‘ <i>Amalatha</i> ’ of Manawar constituency distributed / offered the currency notes to the voters as gratification?	Not proved
1(ii) On 25/11/2013 at Village ‘ <i>Kalikaray</i> ’ of Manawar constituency distributed / offered the currency notes to the voters as gratification?	Not proved
1(iii) With the assistance of Virendra Jain distributed/offered utensils to the voters as gratification?	Not proved
2) Whether on 11/11/2013 respondent with the help of Police Officer Neeraj Birthare and other police officers has directly or indirectly threatened the voters of Village ‘ <i>Kali Bavdi</i> ’ of Manawar constituency for casting votes in her favour?	Not proved
3) Whether at the instance of respondent on 02/01/2013 Abhay Singh Ahoriya was posted as S.D.O. (Police) Manawar to obtain and procure assistance for the furtherance of the prospects of respondent’s election and Shri	Not proved

Ahoriya directly or indirectly supported the respondent in her election?

4) Relief and cost.

Dismissed

Maintainability of petition:

12. Though no formal issue has been framed with regard to the respondent's plea that the petitioner is not an elector from Manawar constituency, hence, this petition, preferred under Section 81 of 'the Act', is not maintainable; however, considering that the objection pertains to maintainability of petition, the same requires to be decided first.

13. The aforesaid plea has been made on the ground that the right to prefer an Election Petition under Section 81 of 'the Act' has been conferred only on a candidate contesting the election or an elector and allegedly, as the petitioner is not an elector from Manawar constituency, the petition is not maintainable,

14. In the instant case, the petitioner has specifically averred in para-1 of the petition that he is an elector from constituency No.199, Manawar, Distt. Dhar and that his name in the voter list of the constituency is reflected at Sl. No.115, '**Bhag**' No.97, Village-'**Nigrani**' with voter I.D. No.MTD0605956. The petitioner in support of his averments has filed Ex.P/11-C, a certified copy of the electoral roll of Village Nigarni of Manawar constituency for year 2013. Nirmal Sharma (P.W.15), Naib Tehsildar – Manawar, has deposed in this regard that in the electoral role of '**Bhag**'

No.97, Village-Nigrani, the name of Govind S/o Rukhdu, aged 35 is recorded at Serial No.115 and that Ex.P/11-C is the certified copy of the electoral roll. It is not the case of the respondent that Ex.P/11-C is a false or fabricated document.

15. Learned Senior Counsel Shri A.K. Sethi, appearing on behalf of the respondent, has invited the attention of this Court to cause title of the petition, wherein age of the petitioner – Govind has been shown as 50 years. Further attention is drawn to Ex.P/11-C in which at serial No.115, the age of the elector Govind S/o Rukhdu is recorded as 35 years. It is submitted by Shri Sethi that a wide gap of 15 years as regards age of the petitioner, between the age mentioned in the petition and recorded in the entry at serial No.115 in Ex.P/11-C creates a serious doubt about veracity of Ex.P/11-C, therefore, on the basis of Ex.P/11-C, it cannot be held that the petitioner is an elector from Village- '*Nigarni*' of Manawar constituency.

16. The aforesaid argument carries no force because the entries in the electoral roll with regard to age etc, are not updated on year to year basis. Of-course, revision of electoral roll is carried out regularly, but then usually it is not with regard to age of the electors. Suffice to say that entry at serial No.115 in Ex.P/11-C, which is a certified copy of public record and, therefore, admissible under Section 76 of the Indian Evidence Act, clearly shows that petitioner Govind S/o Rukhdu, r/o Village- '*Nigrani*' with voter I.D. No.MTD0605956 is an elector from constituency No.199, Manawar and, therefore, the objection raised in this regard

deserves to be rejected. Accordingly, it is held that in 2013 the petitioner was an elector from village '*Nigrani*' falling in Manawar constituency and, therefore, it cannot be said that the petition has not been preferred by a competent person.

Issue No.1(i):

17. It is alleged that on 24.11.2013, at around 11 a.m., the petitioner visited Village '*Amlatha*' and in a meeting of electors held near a temple, by way of gratification, distributed currency notes in the denomination of Rs.1000/- to electors in order to solicit votes in her favour which amounts to "corrupt practice" within Section 123(1) of 'the Act'.

18. The petitioner in order to prove his case as regards issue No.1(i) has adduced following evidence:

- i) Newspaper reports – Ex.P/6, Ex.P/7, Ex.P/8 & Ex.P/9.
- ii) Ocular Evidence.
- iii) Photograph Ex.P/5-C.

The evidence adduced in this regard needs to be examined and appreciated.

EVIDENTIAL VALUE OF NEWSPAER REPORTS

19. Ex.P/6, Ex.P/7, Ex.P/8 & Ex.P/9 are newspaper cuttings comprising of news items with regard to alleged distribution of currency notes by the respondent. A serious objection has been raised as to the evidential value of these documents, hence, it becomes necessary to examine the legal position with regard to the evidential value of newspaper reports.

20. 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 Fernadez & Ors.*, *AIR 1969 SC 1201* in support of his contention that a news item as such has no evidence in the eyes of law, unless evidence of the reporter, editor or publisher is brought before the Court who can testify as to how, when, where and in what manner the material with regard to the news item was collected and then in what manner it was edited and modified.

21. In *Quamarul Islam (supra)*, Hon'ble the apex Court dealing with the issue of 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."

22. In *Samant N. Balkrishna (supra)*, Hon'ble the apex Court has observed thus:

".....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..."

23. 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 .

24. In the instant case, though newspaper reports (Ex.P/6 to Ex.P/9) have been filed in support of the averments that the respondent had distributed currency notes to electors on 24.11.2013 in Village- '*Amlatha*', however, in view of the aforesaid legal position, considering the fact that no reporter, editor or publisher in connection with any of the news items has been examined before this Court by the petitioner, the evidence in the shape of newspaper reports, being hearsay in character, deserves to be and is, therefore, excluded from consideration.

25. Next, we look at the testimony of Mukesh Nayak (P.W.2) and his father Sohan Nayak (P.W.4), both residents of

village ‘*Amlatha*’. Their testimony assumes significance because they claim to be the eye witnesses of the alleged incident of distribution of currency notes by the respondent to electors on 24/11/2013 in front of the temple at village ‘*Amlatha*’. Mukesh Nayak (P.W.2) has deposed in para-2 that on 24/11/2013, respondent – (Smt.) Ranjana Baghel came to village ‘*Amlatha*’ and that the electors from the village had assembled there nearby a temple and that the respondent distributed currency notes in the denomination of 1000/- to “*all those persons*”. To quote, this witness has stated that –

“श्रीमती रंजना बघेल चुनाव का प्रचार करने ग्राम अमलाडा में आई थी। उन्होंने वहां सारे गांव वालों को मंदिर में इकट्ठा किया था। इस मंदिर को दुर्गा जी माता का मंदिर कहते हैं। उन्होंने **सभी लोगों को** हजार-हजार रुपये के नोट दिये थे। उन्होंने कहा था कि उन्हें वे वोट दे और उसके लिए उन्होंने एक-एक हजार के नोट दिये थे जिस समय यह घटना हुई उस समय मैं मंदिर में उपस्थित था।”

26. The testimony of Mukesh Nayak (P.W.2) that the respondent distributed currency notes of Rs.1,000/- to ‘**all those persons**’, who had assembled near the temple, does not find support from Sohan Nayak (P.W.4), who, in para-2 of his cross-examination has deposed that though, apart himself, 40 to 50 persons including Dadhu s/o Mittu, Omkar s/o Rama, Rajaram s/o Bavu, Madiya s/o Chatriya, Hariom s/o Naharsingh were present on the spot, but these persons (named) had not received the money and that he only saw one Raju s/o Mittu accepting money. The relevant part of the testimony of Sohan Nayak (P.W.4) runs as under:

“घटना के समय गांव के ४०-५० लोग थे जिनमें एक ददू पिता मिट्टू था, ओंकार पिता रामा, राजाराम पिता बाउ, मडिया पिता चतरिया, हरिओम पिता नाहरसिंह आदि थे। इन

लोगों ने भी पैसे नहीं लिये। पैसे लेने वाले में में एक राजू पिता मिट्टू था मैंने उसी को पैसे देते देखा था।”

27. Thus, there is material discrepancy in the testimony of Mukesh Nayak (P.W.2) and Sohan Nayak (P.W.4) as regards the persons to whom currency notes were distributed by the respondent on 24/11/2013 in village '*Amlatha*'. Noticeably, as per Sohan Nayak (P.W.4) – (para-2), he was not offered money by the respondent. It is further noticeable that Mukesh Nayak (P.W.2) has not stated name of even a single person to whom currency note was given in his presence by the respondent on 24/11/2013, therefore, his bald and general statement that the respondent distributed currency notes to many persons, bereft of specific details, carries no credibility, particularly in the background of the testimony of Sohan Nayak (P.W.4), who names only one person - Raju s/o Mittu, as recipient of currency note. The petitioner has produced neither Raju s/o Mittu, nor any other person, who can testify that he was offered or given currency notes of Rs.1000/- by the respondent on 24/11/2013, in village '*Amlatha*'.

28. The law is well settled that the allegation with regard to corrupt practice is a serious allegation and the standard of proof is akin to criminal charge where allegations are required to be proved beyond reasonable doubt. The observations made by the apex Court in *P.C. Thomas vs Adv. P.M. Ismail, (2009) 10 SCC 239*, can usefully be referred in this respect which are 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.”

29. Thus, the allegations of corrupt practice are required to be proved beyond reasonable doubt and that the evidence should further exclude possibility of any other interpretation. In the instant case, the testimony of Mukesh Nayak (P.W.2) and his father Sohan Nayak (P.W.4), claimed to be eye witnesses, is not at all inspiring, because it suffers from a number of improbabilities, infirmities and anomalies, therefore, the same cannot be relied upon.

30. Next, we need to consider Ex.P/5-C, the photograph said to have been captured at village '*Amlatha*' by Mukesh Nayak (P.W.2) on 24/11/2013, while the respondent, allegedly, was distributing money to the electors. As regards Ex.P/5-C, the petitioner was required to prove that this photograph was taken on 24/11/2013, as averred in the petition, by Mukesh Nayak (P.W.2) and thereafter, he had developed it and handed over its copy to the reporters of newspapers. However, the testimony of Mukesh Nayak (P.W.2) and petitioner Govind Sirvi (P.W.1) on this point does not clearly establish that it happened in that very manner for the reasons discussed herein after.

31. In this connection, it is noticeable that though petitioner Govind Sirvi (P.W.1) has averred in para-15(1) of

his petition that he received photographs from Mukesh Nayak (P.W.2), however, Mukesh Nayak (P.W.2), in para-7 of his deposition, has denied that he provided photographs to Govind Sirvi. In this connection, it is further noticeable that though, it has been averred in para-15(1) of the petition that photographs of the incident of village '*Amlatha*' were developed by Mukesh Nayak (P.W.2), however, Mukesh Nayak (P.W.2), does not say that he had developed the photograph; rather he has deposed that nether he has a photography shop, nor he is involved in the profession of photography and that the photographs captured by him were provided to the newspapers through blue-tooth technology. Obviously, the mobile, by which the alleged photographs were taken, along with its memory card would have been the best evidence in the matter, however, the same has not been produced. The reason for non-production, as assigned by Mukesh Nayak (P.W.2), is that he had thrown away the mobile phone because the same had turned out of order. It appears quite improbable that the mobile phone, having such a vital piece of evidence, like the photograph of distribution of currency notes by the respondent, will be thrown away by Mukesh Nayak (P.W.2), that too after the filing of the petition, simply because it had turned defective,. Therefore, the reason assigned for non-production of mobile phone is not credible.

32. The reporters, who allegedly, were provided with the soft copy of photograph of alleged incident of 24/11/2013, by Mukesh Nayak (P.W.2), could have been brought before the Court to prove that not only the photographs were

captured by Mukesh Nayak (P.W.2), but that the same were also provided by him to the newspaper reporters, however, no witness in this regard has been examined before the Court.

33. Shri C.L. Yadav, learned Senior counsel, appearing on behalf of the petitioner, inviting the attention of this Court to para-7 of the reply filed by the respondent, has submitted that the respondent has not disputed photograph – Ex.P/5-C, which was filed as annexure-P/3 with the petition, therefore, the onus to prove that the same did not pertain to the alleged incident dated 24/11/2013, but pertained to '*Vikas Yatra Rally*', February 2013, was upon her, which has not been discharged in this case, therefore, it must be taken as proved that the respondent in a meeting held on 24/11/2013, has distributed currency notes to the electors in village '*Amlatha*'.

34. Per contra, Shri A.K. Sethi, learned Senior counsel appearing on behalf of the respondent, has contended that the facts are to be proved in a positive manner and that negative burden of proof that photograph-Ex.P/5-C did not pertain to alleged incident dated 24/11/2013, but, was of '*Vikas Yatra Rally*', February 2013, cannot be put on the respondent. It is further submitted that the photograph Ex.P/5-C by itself does not establish that the respondent had distributed currency notes of Rs.1,000/- to electors by way of gratification for casting their votes in her favour.

35. The law relating to burden of proof is well settled. In the instant case, as regards Ex.P/5-C, the question is whether it is photograph of the meeting allegedly, held by the respondent on 24/11/2013 in village '*Amlatha*' near the

temple. The burden to prove a fact is always on the person who has averred about such fact. If the initial burden is discharged, then the onus is shifted to the opposite party to prove the contrary. Unless the initial burden is discharged, the question of shifting of onus will not arise. Further, the facts are to be proved in a positive manner and not in a negative manner. The petitioner has not been able to prove the averment made in this regard in his petition; therefore, the question of shifting of onus does not arise. Apart this, the contention raised by the learned Senior counsel for the respondent that the facts are to be proved in a positive manner carries much weight. Obviously, the petitioner was required to prove that Ex.P/5-C is of the incident which, allegedly, occurred on 24/11/2013 in village '*Amlatha*' near the temple. The petitioner was required to prove the positive fact and, therefore, the respondent cannot be expected to prove that the photograph is not of the incident, which, allegedly, occurred on 24/11/2013 in village '*Amlatha*' near the temple. Thus, the contention made on behalf of the petitioner cannot be accepted.

36. From Ex.P/5-C, it can be gathered that the respondent is sitting in a chair holding currency notes in her hand and one person is standing on the right side, while two persons are standing on the left side. The respondent in para 12 of her cross-examination has not disputed that in Ex.P/5-C, she figures in front of the temple of '*Amlatha*' having currency notes in her hand, however, she has denied that she was distributing notes to the voters. This photograph at best

goes to show that the respondent was holding currency notes in her hand and one person on her right side and two persons on her left side were standing, but then the photograph does not further show that the currency notes are being given to any person .

37. The persons who allegedly, were given currency notes could have been the best witness to testify about the allegation that currency notes were distributed by the respondent to solicit their votes. However, not a single person of village '*Amlatha*' has been examined who can say that he was given or offered currency notes by the respondent by way of gratification to cast vote in her favour. As discussed in earlier part of this judgment, the charge with regard to corrupt practice has to be proved beyond reasonable doubt. Ex.P/5-C, by itself, does not show that the persons who figure in the photograph on the right and left flank of the respondent are electors of village '*Amlatha*'. It further, does not show that the respondent, who figures in the picture sitting on a chair, is offering or distributing money to solicit votes in her favour. Therefore, on the basis of Ex.P/5-C, it cannot be said that the respondent offered or distributed currency notes of Rs.1000/- to electors of village '*Amlatha*' in a meeting held on 24/11/2013.

38. Thus from the evidence on record it is not proved that on 24.11.2013, at around 11 a.m., the petitioner in a meeting of electors at village '*Amlatha*' held near a temple, by way of gratification, distributed currency notes in the

denomination of Rs.1000/- to electors in order to solicit votes in her favour.

39. Issue No.1(i) is decided, accordingly.

Issue No.1(ii):

40. This issue pertains to the incident which, allegedly, occurred on 25.11.2013 near '*Lony Fatta*', village Kalikarai at around 11-40 a.m. As per petitioner's averments, Constable Gangaram Singh Chouhan (P.W.10), who was on official duty, reached at the spot and took photograph of petitioner distributing currency notes to voters, however, the respondent and her supporters snatched his mobile phone and destroyed the photograph regarding which, same day he had lodged a report with police station Manawar, pursuant to which Crime No.549/13 was registered. As per petitioner, the information regarding this incident came to his notice through daily newspaper reports of 26.11.2013 and also from Gopal Kanoj (P.W.3), an independent candidate, who told that he had also lodged a complaint with the Election Authorities and had also supplied a copy of the report and the copy of FIR to the petitioner (para 15.2 of the petition).

41. Obviously, the petitioner is not an eyewitness of the alleged incident nor it is his claim that Gopal Kanoj (P.W.3) had witnessed the same. As regards pleadings, the petitioner has not stated that except Gangaram Singh Chouhan (P.W.10) who, allegedly, took photographs on the spot, any other person had witnessed the incident. Gangaram (P.W.10), who is said to be an eyewitness of the alleged incident, has not deposed

anything to the effect that on 25.11.2013 at around 11.30 a.m. or so he saw the respondent distributing currency notes to voters. This witness has deposed that on 25.11.2013, while going on his motorcycle to collect information, near '**Lony Fatta**', village '**Kalikarai**', he saw 2-4 persons standing near a vehicle holding currency notes of Rs.500 denomination in their hand, therefore, he took their photographs on his mobile, however, those persons had snatched away his mobile, regarding which report (Ex.P/10) was lodged by him same day at Police Station Manawar. In para-4 of his cross-examination, this witness has stated that neither he knows those persons who were standing near the vehicle nor he knows the name of the persons who were holding currency notes of Rs.500 denomination in their hand. This witness has deposed in a contradictory manner as regards presence of the respondent on the spot. While in para-5 he has deposed that the respondent was sitting in the vehicle, hence he had assumed that the persons present over there were party workers of respondent (Smt.) Ranjana Baghel; on the contrary, in para-9 of his cross-examination this witness has stated that he did not see (Smt.) Ranjana Baghel on the spot nor he knew the names of the persons regarding whom he had earlier stated that they were the workers of Ranjana Baghel.

42. It is argued by Shri Champalal Yadav, learned Senior Counsel for the petitioner that at the relevant time the respondent was a Cabinet Minister in the Madhya Pradesh Government, therefore, it is not unusual that Gangaram Singh Chouhan (P.W.10), who is an employee of the M.P.Police

Force, had deposed in a contradictory manner and on the adjourned date, retracting his previous statement, had come with a new version that he did not see (Smt.) Ranjana Baghel (respondent) on the spot.

43. Per contra, it is contended by Shri A.K. Sethi, learned Senior Counsel appearing for the respondent, that on 29.10.2015, when Gangaram Singh Chouhan (P.W.10) was examined for the first time, and subsequently on 18.10.2016 when he was further cross-examined, the respondent was not holding the post of Cabinet Minister, therefore, it cannot be said that Gangaram Singh Chouhan (P.W.10) changed the version under duress. It is further contended that as per police manual, police officers are required to make entry while leaving and coming back to the police station. Gangaram Singh Chouhan (P.W.10) in para-2 of the cross-examination has admitted that a register was being maintained in the Special Branch for recording despatch and return and that on 25.11.2013 after his return around 7-30 to 8.00 pm, he recorded '*Amad*' in the register with regard to the incidents of the day, however, the incident narrated by him with regard to village '*Kalikarai*' was not recorded by him in the '*Amad*' report. It is contended that the conduct of this witness in this regard is sufficient to hold that he is not at all reliable.

44. On careful examination of the testimony of Gangaram Singh Chouhan (P.W.10), it emerges that this witness has deposed inconsistently on very vital points. His failure to record the incident in daily diary further creates serious doubt regarding truthfulness of the version put forth by

him with regard to the incident said to have occurred near '*Loni Fata*', village '*Kalikarai*'.

45. As regards First Information Report Ex.P/10, Ranjit Singh Baghel (P.W.9) the Station House Officer, Police Station Manawar, has stated that report Ex.P/10 was lodged by Gangaram Singh Chouhan (P.W.10) on 25.11.2013 at 12.15 noon in the Police Station Manawar, on the basis whereof Crime No.549/13 was registered. As deposed by Ranjit Singh Baghel (P.W.9), the police had filed a closure report in the matter because the persons interrogated in that regard had not supported the alleged incident.

46. Though it has been contended on behalf of the petitioner that FIR (Ex.P/10C) was lodged by Gangaram Singh Chouhan (P.W.10) against the respondent, however, column No.7 of this report shows that report was lodged against 3-4 unknown workers of Bharatiya Janta Party candidate Smt. Ranjana Baghel. As per the contents of para-12 of Ex.P/10-C, Gangaram Singh Chouhan (P.W.10) had informed that 5-7 persons and '**the candidate**' were distributing money near village '*Kalikarai*', which was photographed by him, however, 3-4 workers snatched his mobile phone after scuffle. Here it is noticeable that in the written report made by Gangaram Singh Chouhan (P.W.10), which has been reproduced in Ex.P/10-C, it is stated that he found 5-7 persons standing near a vehicle who were talking about 10-15 persons being taken to cast their vote and he further saw these persons distributing currency notes of Rs.500 denomination and that when he took a photograph,

(Smt.) Ranjana Baghel and 2-3 other persons came to him and snatched his mobile phone. Obviously, material contradictions are there in the first and second part of the narration of column -12. While in the first part, it is stated that currency notes were distributed by "**the candidate**", in the later part it is stated that 5-7 persons were distributing the notes. In the first part, there is no mention that the mobile phone was snatched by Smt. Ranjana Baghel, in the second part the allegation is that the mobile was snatched by respondent (Smt.) Ranjana Baghel and her 2-3 party workers. Gangaram Singh Chouhan (P.W.10) has deposed that only 2-4 persons were present on the spot which again is contradictory to what has been stated in Ex.P/10-C, therefore, the testimony of Gangaram Singh Chouhan (P.W.10), being full of anomalies, cannot be considered as reliable.

47. Om Solanki (P.W.11) ,who also claims to be an eye-witness, has deposed that on 25.11.2013 around 11.30 a.m. near village '*Kalikarai*' he saw the respondent distributing currency notes in the denomination of Rs.500 to some persons and that when a person tried to capture photograph of this incident, the workers of (Smt.) Ranjana Baghel scuffled with him and that the respondent herself alighted from the vehicle and had snatched mobile phone of that person. Om Solanki (P.W.11) has further deposed that later on he had spoken to Gangaram Singh Chouhan (P.W.10) who told him that he is a police constable and will report the matter to the police. As per this witness, he also informed about this incident to election observer Shri Solbade.

48. Noticeably, there is no reference in the election petition regarding presence of Om Solanki (P.W.11) at the time of alleged incident of village '*Kalikaray*'. Secondly, Gangaram Singh Chouhan (P.W.10) had not stated that Om Solanki (P.W.11) had spoken to him about the incident. No question has been put to Gangaram Singh Chouhan (P.W.10) regarding presence of Om Solanki (P.W.11) at the time of alleged incident. While Om Solanki (P.W.11) says that mobile phone was snatched by the respondent, Gangaram Singh Chouhan (P.W.10) says that 3-4 other persons have snatched his mobile phone. Again, despite the fact that this witness was election agent of (Shri) Niranjana Dabar, a candidate sponsored by congress party, he did not made a complaint either to the election commission or to the election observer or to the police regarding this incident, which appears to be quite unusual, particularly, for a person who was working as election agent of a candidate of the election. Therefore, considered in totality, it cannot reasonable be said that Om Solanki (P.W.11) was present on the spot and that he had witnessed the alleged incident, in the manner as stated by him in para-2 and 3 of his deposition.

49. Here we can also have a look at the testimony of Gopal Kanoj (P.W.3) who contested as an independent candidate and had lodged written complaint (Ex.P/1) with the election commission with regard to alleged incident of 25.11.2013 near village '*Kalikarai*'. Gopal Kanoj (P.W.3) has deposed in para-3 that, as per information received by him, respondent Smt. Ranjana Baghel had scuffled with Constable

Gangaram Singh Chouhan (P.W.10) and also slapped him regarding which he had made complaint (Ex.P/1) to Chief Election Commissioner. Obviously, Gopal Kannoj (P.W.3) is not an eyewitness of the alleged incident, as admitted by him in para-9 of cross-examination. He says that information regarding the incident was derived by him from Ramesh Akhade, meaning thereby Ramesh Akhade had witnessed the incident, however, he was not examined before the Court. Therefore, the testimony of Gopal Kannoj (P.W.3), being of hearsay character, has no evidential value.

50. In the aforesaid premises, the evidence adduced by the petitioner does not establish that on 25.11.2013 around 11.40 a.m., the Respondent had distributed currency notes to the villagers of village '*Kalikarai*', so as to persuade them to cast their votes in her favour.

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

Issue No.1(iii) :

52. Pleadings as regards issue No.1(iii) have been made in para-15(3) of the petition. As per the pleadings, the petitioner himself had not witnessed the alleged incident of distribution of utensils to the electors. The information in this regard is said to have been derived from Om Solanki (P.W.11) and Sohan s/o Shankar Kaag, resident of village Jajam Khedi. The petitioner has averred that Om Solanki (P.W.11) made a detailed complaint (copy Ex.D/2), in this regard to the observer of the Election Commission, whereupon, officers of Election Commission inspected the

shop of Virendra Jain and caught him red handed distributing utensils to the voters along with slip issued by the respondent.

53. Sohan s/o Shankar Kaag, who allegedly, was present on the spot and prepared a C.D. of the incident has not been examined before the Court, nor the compact disc said to have been prepared in respect of the alleged incident has been brought in evidence, therefore, the testimony of Om Solanki (P.W.11), who, allegedly, complained in writing regarding distribution of utensils and the testimony of Dinesh Patel (P.W.13), a government official, who is said to have inspected the shop of Virendra Jain, in order to enquire about the complaint, is required to be looked into.

54. As per Om Solanki (P.W.11), who claims to be an eye witness, the slip, allegedly, issued by the respondent was seized by the officials, who inspected the shop to enquire about the complaint. Neither any slip has been produced by way of evidence, nor Dinesh Patel (P.W.13), who allegedly, inspected the shop of Virendra Jain on 24/11/2013, to enquire into the complaint, has deposed that he had seized or recovered any slip from persons found present in the shop of Virendra Jain.

55. The evidence with regard to contents of the slip is also anomalous. As per Om Solanki (P.W.11) – (para-7), he had looked into the slip on which it was written – ‘*Virendra Bai has given utensils worth Rs.5-6000*’; ‘*Usme likha tha ki Virendra Bhai ne 5-6000 hazaar ke bartan diye the*’. Contrary to this, in para-6, this witness says that the slip bore

the description that – ‘*Virendra Bhai delivered utensils of Rs.5-6000/- to them*’. Thus, the evidence, as to what was written on the slip, being anomalous, the same cannot be considered as reliable.

56. Here is noticeable that the petitioner has not pleaded that Om Solanki (P.W.11) was present at the time of inspection. Further, the testimony of Om Solanki (P.W.11), who says that he was present at the time of inspection of the shop and the testimony of Dinesh Patel (P.W.13), who, allegedly, inspected the shop, is quite conflicting as regards number of persons found present in the shop. While Dinesh Patel (P.W.13) has deposed that he found only two male and two female persons in the shop; Om Solanki (P.W.11) says that as many as 20 persons were present in the shop (para 20-25). Further, Dinesh Patel (P.W.13), deposes that when he reached the shop on 24/11/2013 to verify the complaint received with regard to distribution of utensils to voters, he found that the two female persons had purchased 13 bowls for cash, while the two male persons told him that they had come to fetch articles worth Rs.5000/- to 6000/- and that they have been sent to procure the articles by ‘madam’. This witness has further stated in para-7 that Virendra Jain was the shop keeper and that though he cannot say as to whether the two male persons had come to the shop to purchase the utensils, however, it was revealed that they had come from village ‘*Thangaon*’ and ‘*Kankadpura*’. This witness further says that he did not find any worker of Bharatiya Janata Party in the shop, something contrary to the testimony of Om

Solanki (P.W.11), who has deposed in para-11 that Bharatiya Janata Party worker Narayan Singh Soni and one other party worker were present in the utensil's shop.

57. The aforesaid evidence simply reveals that a complaint was made by Om Solanki (P.W.11) regarding distribution of utensils by Virendra Jain on the basis of written slip, allegedly, issued by the respondent, however, no slip was recovered. The evidence with regard to the contents of the slip is also anomalous. The evidence with regard to persons, who were present on the shop, at the time of inspection by Dinesh Patel (P.W.13) is also anomalous. Though it is stated that at the time of inspection, the proceedings were video-graphed, however, no evidence in this regard has been produced before the Court. Even the memorandum, said to have been prepared by Dinesh Patel (P.W.13), has not been brought in evidence. On the basis of the evidence so adduced, it cannot be said to be proved that on the alleged date, utensils were distributed to the voters by Virendra Jain from his shop on the basis of the slip issued by the respondent, so as to gratify them to cast their vote in her favour.

58. Issue No.1(iii) is, accordingly, decided.

Issue No.2:

59. The allegation is that on 11/11/2013, the respondent with the help of a Police Officer Neeraj Birthare and other police officers has directly or indirectly threatened the voters of Village Kali Bavdi of Manawar constituency to

cast their votes in her favour. The testimony of Hansraj Chouhan (P.W.5), Guddu @ Sukhram (P.W.6) and Rakesh Suryavanshi (P.W.7), who are said to be eye witness of the alleged incident is relevant in this regard. It is noteworthy that the respondent, denying the averments of the petitioner in this regard, has averred that she was not only obstructed by supporters of Gopal Kannoj (P.W.3) from entering village Kali Bavdi but they had also hurled abuses upon her and further tried to damage her vehicle, regarding which Kailash Rathor, her supporter, had lodged an FIR with the police. Noticeably, Hansraj Chouhan (P.W.5) in para-15 has admitted that pursuant to the report lodged by Kailash Rathor, District General Secretary of Bharatiya Janta Party, a First Information Report against him and 50 other persons was registered by police and after investigation a charge-sheet has also been filed against them, regarding which a case is still pending in the Court.

60. The ocular testimony of Hansraj Chouhan (P.W.5), Guddu @ Sukhram (P.W.6) and Rakesh Suryavanshi (P.W.7) is required to be examined particularly on the point whether the respondent had threatened the villagers of village '**Kali Bavdi**' to face consequences for not supporting her in the election and further as to whether at her instance some police officers from Bakaner-Police Post, including Police Post In-charge, Niraj Birthare, visited Village '**Kali Bavdi**' and asked the electors to support the respondent in the election and also arrested some electors and assaulted them.

61. Though Rakesh Suryavanshi (P.W.7) and Guddu @ Sukhram (P.W.6) have stated that they along with Hansraj Chouhan (P.W.5) and other villagers were shouting slogans in favour of Gopal Kannoj (P.W.3) and that the respondent asked them not to raise slogans in favour of Gopal Kannoj (P.W.3) and further asked them to support her, however, Hansraj Chouhan (P.W.5) has admitted in para-1 that on 11.11.2013 on arrival of the respondent to Village-‘*Kali Bavdi*’ for ‘*Jan Sampark*’, he himself and some other villagers had shouted slogans against her, as no developmental work was done in the village. Guddu @ Sukhram (P.W.6) in para-4 has admitted that he and Hansraj Chouhan (P.W.5) were working in favour of Gopal Kannoj (P.W.3), an independent candidate. It further transpires from the testimony of Hansraj Chouhan (P.W.5) that slogans were shouted against (Smt.) Ranjana Baghel when she tried to solicit their support in the election.

62. As regards the allegation that the respondent had threatened Hansraj Chouhan (P.W.5) and other villagers, the evidence of Hansraj Chouhan (P.W.5), Guddu @ Sukhram (P.W.6) and Rakesh Suryavanshi (P.W.7) lacks consistency. Hansraj Chouhan (P.W.5) says that the respondent asked them to support her and not to work for Gopal Kannoj (P.W.3) and that on their refusal she threatened to ‘put them into jail’. To quote, this witness has stated that –

“उनके द्वारा कहा गया था कि यदि हम लोग उनके पक्ष में कार्य नहीं करेंगे तो वे पुलिस से कार्यवाही करवाकर हमें जेल में बंद करवा देंगे”

63. Guddu @ Sukhram (P.W.6), however, does not say that any threat to put the supporters of Gopal Kannoj (P.W.3) into jail was held by the respondent. He simply says the that the respondent asked them not to shout slogans in favour of Gopal Kannoj (P.W.3) and to work for her, else they will be 'taught a lesson' through police. To quote, this witness has stated that:

"श्रीमती रंजना बघेल ने कहा कि, गोपाल कन्नौज के पक्ष में नारे मत लगाओ, हमारे साथ में काम करो ऐसा नहीं करोगे तो हम पुलिस से सबक सिखाएंगे।"

64. In this regard, Rakesh Suryavanshi (P.W.7) has deposed that the respondent simply solicited their support and said that if they will not work for her, the 'results will not be good'. To quote, this witness has stated that –

"उन्होंने गांव वालों से कहा था कि, आप लोग गोपाल कन्नौज का काम क्यों कर रहे हैं उन्होंने कहा था कि मेरे लिये काम करो और यदि उनके लिए काम नहीं किया तो उसका परिणाम बुरा होगा। मैं इसके बाद घर चला गया था।"

65. Obviously, there is no reference in the testimony of Rakesh Suryavanshi (P.W.7), that respondent had extended a threat to teach lessons to the villagers through police or to put them into jail in case of their failure to support her. Therefore, the version put forth by Hansraj Chouhan (P.W.5), and Guddu @ Sukhram (P.W.6), both being interested witnesses as working for independent candidate Gopal Kannoj (P.W.3), to the contrary is not at all inspiring.

66. Though it is alleged that in the midnight, one Niraj Birthare, the then In-Charge, Police Post Bakaner, came to the village with police force and had arrested some villagers and

also assaulted Hansraj Chouhan (P.W.5) and Guddu @ Sukhram (P.W.6) and the matter was reported to the police as well as I.G. Indore, however, the testimony of Hansraj Chouhan (P.W.5), Guddu @ Sukhram (P.W.6) and Rakesh Suryavanshi (P.W.7) regarding the manner in which matter was reported to the police is quite anomalous. While Guddu @ Sukhram (P.W.6) says (para-2 of the cross-examination) that no written report regarding this incident was submitted by him and other persons at Police Station Dharamapuri, where they had gone to complain about the matter, and that complaint to I.G. was also made orally, Hansraj Chouhan (P.W.5) says that a written report was given at Police Station Dharampuri and when they were not properly heard a memorandum '*Gyapan*' was submitted to I.G., Indore. Here it is noteworthy that the copy of written report said to have been given at the police station or the copy of the memorandum said to have been submitted to I.G. Police, Indore, has not been adduced in evidence. It is also noticeable that no complaint was made to S.P. Dhar under whose jurisdiction Niraj Birthare, In-charge, Police Station Bakaner was working. There is further anomaly with regard to making report in writing because Rakesh Suryavanshi (P.W.7) says that Online complaint was lodged with I.G. Indore, however, copy of such Online report has also not been filed. Further, though Guddu @ Sukhram (P.W.6) says that he was assaulted by police and was medically examined in the Government Hospital, Dharampuri from where a treatment slip was also issued which is in his possession, however, no record either from the possession of Guddu @ Sukhram (P.W.6) nor from

the hospital with regard to examination and treatment of Guddu @ Sukhram has been brought before this Court by way of evidence.

67. As regards allegation of extending threats by Niraj Birthare, In-charge, Police Station Bakaner, again the evidence on this point is anomalous . As per Hansraj Chouhan (P.W.5), Niraj Birthare said that if in future there is any slogan shouting against the respondent then strict action shall be taken which could lead them to jail. Thus, Hansraj Chouhan (P.W.5) does not say that he was asked to support the respondent, rather as stated by him, he was asked not to shout slogans against the respondent. Guddu @ Sukhram (P.W.6) also does not say that he was asked or threatened or pressurised by Niraj Birthare to support the respondent. This witness has deposed in para-1 that police asked them not to conduct in such a manner in the future, else they will be subjected to higher degree of assault. This witness has further stated that the police had asked them as to why they have '*hurled abuses*' against 'madam' and had done '*marpit*' with her. From this it clearly emerges that as such the police did not pressurise the electors to support the respondent, so as to further her prospects in the election. As regards Rakesh Suryavanshi (P.W.7) as per his own admission in para-7 he is not an eyewitness of the incident which allegedly occurred in the mid night.

68. Thus from the evidence led by the petitioner with regard to the alleged incident of village '*Kali Bavdi*', it is not established beyond reasonable doubt that either the respondent

had threatened the electors to support her or to face consequences at the hands of the police or that the police personnel of Police Post - Bikaner had pressurised or threatened them to extend support to the respondent in the election, else they will have to suffer adverse consequences.

69. Issue No.2 is decided accordingly.

ISSUE NO.3:

70. The petitioner with regard to issue No.3 has averred in para-17(2) of the petition that the respondent misusing her position as Cabinet Minister managed posting of Shri Abhay Singh Ahoriya, her brother through custom of '**Rakhi Dhaga**', as Sub-Divisional Officer of Manawar, for procuring his assistance for furtherance of her prospects in the election. It is further averred that Shri Ahoriya directly and indirectly supported the respondent by refusing to accept complaints against her and by neglecting her illegal activities of corrupt practices. As per petitioner, he received information about this incident through daily newspaper '**Balwas Times**' and '**City Blast**', published from Indore in which news in this regard was published and also through Bharat Solanki – an independent candidate, who had complained about it in writing, vide Annexure P/25, to the observer of Election Commission.

71. From the averments made by the petitioner, it is clear that he is not having any personal knowledge regarding these allegations. Bharat Solanki – an independent candidate, who allegedly, complained about the incident to the observer

of the Election Commission, has also not been examined before the Court nor the complaint said to have been made by him in this regard has been brought in evidence. Further, the petitioner has neither adduced in evidence the alleged newspaper clippings of '*City Blast*' and '*Balwas Times*' nor the reporter, editor or publisher of these newspapers have been examined in support of the allegation in this behalf. Thus, the petitioner in terms of his pleadings, as such, has not adduced any evidence to prove the allegations made in this regard in para 17(2) of the petition.

72. It is not a matter of dispute that during general election 2013 Shri Abhay Singh Ahoriya was posted at Manawar as Sub-Divisional Officer, however, this Court can take judicial notice of the fact that on issuance of notification of the election, postings and transfers of administrative officers, who have to play a role in administrative matters pertaining to election, are made under the directions, control and supervision of Election Commission, therefore, simply because the respondent was Cabinet Minister at the relevant time, it cannot be inferred that she managed posting of Shri Ahoriya as S.D.M. Manawar.

73. As regards tying of '*Rakhi*' by the respondent to Shri Abhay Singh Ahoriya, the respondent has averred that she celebrates '*Raksha bandhan*' festival at a large scale and that during such celebration '*Rakhi Dhaga*' is tied by her to various persons and that in that process she had also tied '*Rakhi*' to Abhay Singh Ahoriya. No evidence has been brought before the Court that because of some social custom

the respondent in order to have relationship of sister and brother has tied '*Rakhi Dhaga*' to Abhay Singh Ahoriya, and, therefore, both are having relationship of brother and sister. Thus, it cannot be said that the respondent was having customary relationship of brother-sister with Shri Ahoriya.

74. The allegation that Shri Ahoriya had refused to accept complaints against the respondent and had also neglected her alleged illegal activities of corrupt practices appears to be baseless because the petitioner himself in para-7 of his deposition has stated that he had not made any complaint against the respondent to Shri Ahoria and it is also not within his knowledge as to whether Shri Ahoriya has taken any action on any complaint made to him against the respondent.

75. Here we can refer to the testimony of Om Solanki (P.W.11) who was an election agent of Congress candidate Shri Niranjana Dabar (Para-2). Though this witness has deposed that he had made certain complaints to Shri Abhay Singh Ahoriya on which no action was taken by him, however, he stands contradicted by his own subsequent statement made in para-6 in which he has testified that Shri Abhay Singh Ahoriya, who was 'Returning Officer', had directed the concerned officials to take immediate action with regard to his complaint about alleged distribution of utensils by a shopkeeper. Here it is also noteworthy that not a single complaint made by Om Solanki (P.W.11), on which action was not taken by Shri Ahoriya, has been brought in the evidence before this Court.

76. Resultantly, the evidence adduced by the petitioner does not at all indicate that either Shri Ahoriya was posted at Manawar at the instance of the respondent or that he neglected the alleged illegal activities of the respondent, so as to further her prospects in the election. Issue No.3 is decided accordingly.

Issue No.4: Relief and cost:

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

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

79. 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 .

CC as per rules.

(VED PRAKASH SHARMA)
JUDGE

Soumya/sumathi