

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

HON'BLE SHRI JUSTICE ANIL VERMA

ELECTION PETITION NO. No.1 OF 2019

BETWEEN:-

**SUBHASH KUMAR SOJATIA S/O LATE
SHRI R.M. SOJATIA, AGED ABOUT 66
YEARS, R/O: HOUSE NO.150, PRADEEP
SADAN, BHANPURA, DISTRICT
MANDSAUR (M.P.)**

.....PETITIONER

**(SHRI RAVINDRA SINGH CHHABRA – SENIOR COUNSEL WITH
SHRI MUDIT MAHESHWAR AND SHRI AMAN ARORA - ADVOCATES)**

AND

- 1. DEVILAL DHAKAD S/O LATE SHRI
JODHRAJ DHAKAD, AGED ABOUT 64
YEARS, R/O: HOUSE NO.131, VILLAGE
KALAKOT, TEHSIL BHANPURA,
DISTRICT MANDSAUR (M.P.)**
- 2. TUFAN SINGH SIDODIYA S/O SHRI
SARDAR SINGH AGED ABOUT 57
YEARS, R/O: VILLAGE BARKHEDI
MITTHU, POST KURLASI, TEHSIL
GAROTH, DISTT. MANDSAUR (M.P.)**
- 3. JAGDISH RANGOTHA S/O SALAGRAM
RANGOTHA AGED ABOUT 39 YEARS,
R/O: VILLAGE BAMINI, TEHSIL
GAROTH, DISTRICT MANDSAUR (M.P.)**
- 4. RAMKARAN RALOTIYA S/O NARAYAN
RALOTIYA AGED ABOUT 28 YEARS,
R/O: VILLAGE LAKHAKHEDI, TEHSIL
GAROTH, DISTRICT MANDSAUR (M.P.)**

5. **SAEED AHMAD S/O SUBRATI AHMAD
AGED ABOUT 64 YEARS, R/O: VILLAGE
BHEODA MANDI, TEHSIL BHANPURA,
DISTRICT MANDSAUR (M.P.)**
6. **AMARLAL MINA S/O PANNALAL MINA
AGED ABOUT 46 YEARS R/O: VILLAGE
THAGI, POST NAVALI, TEHSIL
BHANPURA, DISTRICT MANDSAUR
(M.P.)**
7. **BANSHILAL GWALA S/O ARJUN SINGH
AGED ABOUT 30 YEARS, R/O: GWALA
MOHALLA, GAROTH, DISTRICT
MANDSAUR (M.P.)**
8. **RAJESH VISHWAKARMA S/O SURESH
CHANDRA, AGED ABOUT 38 YEARS,
R/O: GAROTH ROAD, SHAMGARH,
DISTRICT MANDSAUR (M.P.)**
9. **PHOOLCHAND S/O RAMPRATAP AGED
ABOUT 52 YEARS, R/O: VILLAGE
BABULDA, TEHSIL BHANPURA,
DISTRICT MANDSAUR (M.P.)**
10. **JAGDISH S/O BHAWANI SHANKAR
AGED ABOUT 45 YEARS, R/O: CHATRI
ROAD, BHANPURA, DISTRICT
MANDSAUR (M.P.)**
11. **AHASAS HUSSAIN S/O HASAN KHA
AGED ABOUT 50 YEARS R/O: NEAR
TARWALI MASJID, BHANPURA,
DISTRICT MANDSAUR (M.P.)**

.....RESPONDENTS

***(SHRI ROHIT KUMAR MANGAL WITH SHRI SUNIL VERMA, SHRI
ANURODH SINGH GAUD AND SHRI SOMESH GOBHUJ – ADVOCATES FOR
RESPONDENT NO.1)***

Whether approved for Reporting : YES

Reserved on : 10/08/2023

Pronounced on : 31/08/2023

This Election Petition coming on for admission this day, the Court passed the following:

ORDER

This Election Petition under Section 80, 81, 100(1)(b), 100(1)(d) read with Section 123(2), 123(3) and 123(4) of the Representation of the People Act, 1951 (for short “RP Act”) has been filed by the petitioner/defeated candidate with the symbol of hand (Panja) calling in question the election of respondent No.1 Devilal Dhakad, a returned candidate with the symbol of lotus (Kamal) from the Constituency No.227, Garoth, District Mandsaur in the General Election for M.P. State Legislative Assembly held in November 2018 and seeking relief to set aside the election of the respondent No.1 and for declaring himself as an elected candidate.

02. It is not disputed that in the aforesaid election the candidate including the respondent No.1 Devilal Dhakad, an official candidate of Bhartiya Janata Party and petitioner Subhash Kumar Sojatia, an official candidate of Indian National Congress, are in the fray. The polling was held on 28/11/2018, counting of votes took place on 11/02/2018 and on the same day result was declared, in which the respondent No.1 Devilal Dhakad secured 75946 valid votes and he was declared returned candidate. His nearest contestant/petitioner Subhash Kumar Sojatia

secured 73838 votes. The respondent No.1 defeated the petitioner by margin of 2108 votes.

03. The petitioner Subhash Kumar Sojatia has challenged the election of respondent No.1 alleging that the respondent No.1 has filed his nomination Form No.26 along with the affidavit on 09/11/2018 and in para 8 of his affidavit he has categorically mentioned that there are no government dues against him. The respondent No.1 has not paid dues of diversion taxes of Rs.588/- for the period of 2011-12 to 2017-18 for his property situated at village Bhanpura, Patwari Halka No.10, Survey No.1694, which is owned and possessed by him. This fact has been admitted by the respondent No.1 in para 7 of the affidavit. Certified copy of response of Tehsildar, Bhanpura revealing outstanding diversion dues of respondent No.1 received under the provisions of M.P. Lok Sewaon Ke Pradan Ki Guarantee Adhiniyam, 2010 and the receipt dated 19/12/2018 issued by the Sanchalak, Lok Seva Kendra, Bhanpura are filed as Annexure P/7. Respondent No.1 has taken a house at Survey No.1362, Bhanpura on rent at the rate of Rs.300/- per month from the State of M.P. and also obtained electricity connection of the said house, respondent No.1 has applied for a No Objection Certificate to the Tehsildar. The respondent No.1 has deliberately suppressed all these material facts in his affidavit. Electricity bill dated 31/12/2018 of the aforesaid leased premises bearing mobile number of the respondent No.1 would indicate that the said premise is in the possession of the respondent No.1, whereas the affidavit filed by the respondent No.1 categorically states that he has not taken any government property on

lease, thereby false information has been given in the said affidavit.

04. Petitioner further contended that the respondent No.1 has not paid the rent dues of government accommodation till 30/11/2018 amounting to Rs.29,700/-. The copy of the electricity bill dated 31/12/2018 and the List of Defaulters dated 18/12/2018 issued by the Tehsildar, Bhanpura has been filed. Demand notice issued by the Tehsildar, Bhanpura to respondent No.1 demanding payment of Rs.21,000/- on or before 25/06/2016 has also been filed. Therefore, respondent no.1 was defaulter. The electors were deprived of this vital and false information provided by the respondent No.1, who concealed the aforesaid fact in the affidavit. Thus, the respondent No.1 committed corrupt practice by undue influence and publication of false statement of aforesaid fact. Respondent No.1 was duty bound to disclose the income from the amount deposited in his Savings Bank Account and Fixed Deposit Account, but he deliberately suppressed the interest income and professional income earned from Banks and Individuals by conducting title search of the properties and preparing reports. The nomination of the respondent No.1 has been improperly accepted on the basis of false, misleading and incomplete information stated in his affidavit. The Model Code of Conduct came into effect immediately from the date, the press note was issued by the Election Commission of India i.e. 06/10/2018. On 17/11/2018 respondent No.1 organised an Election Campaign/Public Meeting at New Bus Stand, Garoth, which was scheduled to be presided by Shri Shivraj Singh Chouhan (the then Chief Minister of M.P.), but before arrival of Shri Shivraj Singh Chouhan,

public speech was made by Jagdish Soni at 3:30 PM in order to seek votes on the basis of religion, caste and community. The aforesaid appeal was made with the consent and in presence of Rajendra Jain, who is the authorised election agent of the respondent No.1. The relevant transcript of the speech delivered by Jagdish Soni is available in a CD along with the certificate issued under Section 65-B of the Indian Evidence Act.

05. The petitioner further contended that “*Banjara Community*” is declared as a backward class community by the State of Madhya Pradesh and Central Government. The respondent No.1 through Jagdish Soni sought votes on the basis of religion and caste of Banjara Community. Thus, respondent No.1 violated the Model Code of Conduct and Section 123(3) of RP Act. The corrupt practices of seeking votes on the basis of religion, caste and community materially affected the election result of the returned candidate and the same furthered the prospects of his election. Respondent No.1 has committed corrupt practice firstly by concealing the fact of government lease rent and other government dues and secondly by seeking votes in the name of religion, race, caste and community. Therefore, the act of respondent No.1 falls within the ambit of Section 100(1)(b) of RP Act and his election deserves to be declared as void from Garoth Constituency.

06. The respondent No.1 in his written statement categorically mentioned that there is no government dues against him. It is also denied that respondent No.1 has not paid diversion charges of Rs.588/- for the period 2011-12 to 2017-18 for his property situated at village

Bhanpura. It is specifically denied that respondent no.1 has deliberately not revealed the fact that he has taken a house in survey No.1362 situated at Bhanpura on rent of Rs.300/- per month from State of M.P. It is also denied that for obtaining the electricity connection of said house he has applied for No Objection Certificate to Tehsildar and it is also denied that respondent No.1 has deliberately not revealed above fact in his affidavit. It is also specifically denied that respondent No.1 states in his affidavit that he has not taken any government property on lease and he has furnished false information in the affidavit. It is also denied that respondent no. 1 has not paid the rent dues till 30/11/2018 amounting to Rs.29,700/-. It is also denied that on or before 25/06/2016, Tehsildar Bhanpura has issued demand notice to respondent No.1 demanding payment of Rs.21,000/-. It is also denied that respondent No.1 was defaulter and electors were deprived of this vital information by respondent No.1 who concealed the aforesaid facts in affidavit. It is also specifically denied that respondent No.1 committed corrupt practice by undue influence and publication of false statement of fact.

07. Respondent No.1 in his written statement further specifically denied that respondent No.1 deliberately not revealed the interest income of saving bank account and fixed deposit account earned by him and suppressed his professional income earned from the banks and individuals by conducting title search of the properties and preparing its reports. It is also denied that the nomination of respondent no.1 has been improperly accepted on the basis of false, misleading and incomplete information stated in his affidavit. It is also specifically

denied that on 17/11/2018 in a public meeting /election campaign held at New Bus Stand Garoth, the public speech was made by Jagdish Soni in order to seek votes on the basis of religion, caste and community. It is also specifically denied that the aforesaid appeal was made in presence of Rajendra Jain, election agent of respondent No.1. It is also specifically denied that respondent No.1 through Jagdish Soni sought votes on the basis of religion and caste of Banjara community. It is also specifically denied that respondent No.1 violated the Model Code of Conduct and Section 123(3) of RP Act. It is also denied that such corrupt practices of seeking votes adversely affected the election result of the returned candidate and prospects of his election. It is also specifically denied that respondent No.1 has committed corrupt practices firstly by concealing the fact of government lease and government dues and secondly by seeking the votes in the name of religion, race, caste and community. It is also specifically denied that the aforesaid act of respondent No.1 falls within the ambit of Section 100(1)(b) of RP Act and his election deserves to be declared as void from Garoth Constituency.

08. Respondent No.1 in his written statement further specifically submitted that case No.34/81-82/ अ-2 was filed before the court of Sub Divisional Officer Garoth for diversion of the agricultural land of survey No.1694 admeasuring 0.733 Are, vide order dated 22/04/1982 SDO, Garoth has diverted the aforesaid land of Vidya Nagar Cooperative Society for the use of non agricultural purposes and said diverted land was purchased by Ramesh Chandra from the society through registered

sale deed dated 13/12/2009 and in which it is mentioned that alleged land was not placed sold out or hypothecated to anywhere and it is not having any type of government or private dues and no case is pending before any court.

09. *Vasuli Patel* Manakchand Bhana executed an affidavit on 10/07/2019 by stating that he does not know where is the person's land/plot located. Premium amount of the diversion of land was deposited before the Sub Divisional Officer (Revenue) and also before him, but he never sent a notice to respondent No.1 for depositing any diversion amount and not orally informed him. The list submitted by *Vasuli Patel* Manakchand is suspicious and cannot be relied upon. Tehsildar Bhanpura has issued no dues certificate on 05/11/2018 regarding respondent No.1 by stating that no land revenue, *Panchayat* dues and penalty or any other dues remains on respondent No.1. On 06/11/2018 respondent No.1 has deposited Rs.120/- and Rs.1,640/- at Municipal Council Bhanpura and obtained receipt dated 06/11/2018 and Municipal Council Bhanpura has also issued No Dues Certificate on 06/11/2018.

10. Respondent No.1 in his written statement further submitted that although he has taken a house situated in survey No.1362 on rent, but as per the order dated 30/10/2007 passed by the Tehsildar, the rent was fixed at Rs.150/- per month and it was not Rs.300/- per month. Respondent No.1 on 09/11/2019 filed an affidavit that he has handed over the vacant possession of the aforesaid land to Tehsildar on 06/09/2018. Therefore, no amount of Rs.29,700/- as arrears of rent is

due, he has deposited the arrears of rent amounting to Rs.18,600/- for the period of August, 2018 to October, 2018 before Tehsildar, Bhanpura. As per the order dated 30/10/2007, he has taken the house on second floor situated in survey No.1362 on rent of Rs.150/- per month and after vacating the premises, Raj Bihari Dwivedi Advocate filed an application on 07/12/2018 before Tehsildar Bhanpura. On 06/09/2018 respondent No.1 filed an application before M.P. Paschim Kshetra Vidyut Vitaran Company Sandhara for transferring the electricity connection No. BPA2-2-2-N3205004367 to the personal resident of respondent No.1 and thereafter, he obtained No Dues Certificate from the concerned electricity company. Actual owner of the house/shop is Nirmal Kumar Chauradiya, Kamal Chauradiya and Nawal Kumar Chauradiya, not the M.P. Government therefore, no government dues is pending against respondent No.1. The respondent No.1 was never declared defaulter from any of the Government department. He had not done any corrupt conduct to undue influence the voters. As per column 5.5 Rs.32,413/- has been mentioned in the bank account of respondent No.1, therefore, he did not get any income from any other sources.

11. The respondent No.1 in his written statement further contended that he was never appointed as Panel Lawyer of the central government, he never accepted any fees from any of the parties or bank regarding the title search. He has resigned from the post of Additional Government Prosecutor in the year 2015 and thereafter, he has closed his advocacy profession and did not raise any income from advocacy. On 20/09/2018 he has also filed an application before the Central Bank

Sandhara for withdrawing his name from the panel of the bank and therefore, the bank has removed his name on 20/09/2018. It is admitted that on 17/11/2018 public meeting was conducted at New Bus Stand, Garoth which was presided by Shri Shivraj Singh Chouhan, Chief Minister of M.P. It is also admitted that Jagdish Soni has delivered his lecture at about 03:30 PM before arriving the Chief Minister, but it was not related with any caste, religion, race or community. Respondent No.1 was not present at the time of lecture of Jagdish Soni. Jagdish Soni has not delivered the said lecture with the consent of respondent No.1 or his election agent. Harish Marmat is an interested witness being a paid employee in petitioner's personal educational institution and every month he is getting Rs.12,500/- salary. Government has not drawn any legal proceeding against respondent No.1 regarding the recovery of any arrears of diverted land or any other revenue. Petitioner has *malafidely* prepared document regarding rent amount of Rs.300/- per month after completion of election. Jagdish Soni was not the election agent of respondent No.1 and respondent No.1 never authorized Jagdish Soni to deliver any lecture in the public meeting.

12. Respondent No.1 further submitted in his written statement that State Bank Bhanpura has issued No Dues Certificate on 01/10/2018 by categorically mentioning that respondent No.1 has completely paid the house loan and car loan. Amount of Rs.80,000/- was due above upon Jatanbai who is wife of respondent No.1 and due date is 15/06/2019 therefore, the allegation for aforesaid dues cannot be leveled upon him. The petitioner is running a trust which was established in the name of

Dr. R.M. Sojatia and petitioner was remained President for a long period and he has enclosed the 0.066 hectare government land about 20 years ago and also damaged the government therefore, proceeding under section 248 of M.P.Land Revenue Code is pending against the petitioner before Naib Tehsildar Bhanpura, therefore, being an encroacher, petitioner is not entitled to elect as M.L.A. from Garoth Constituency. Hence he prays for dismissal of the election petition with cost.

13. Respondent No.2 Toofan Singh in his written statement submits that he has been unnecessarily impleaded as a respondent, therefore, petition liable to be dismissed on the ground of mis-joinder of the parties. Averments made in para 1 to 28 are not related with, therefore, no need to reply the same. These are related only to respondent No.1, petition is filed on the basis of false grounds which deserves to be dismissed.

14. The respondent No.3 Jagdish in his written statement submits that para 1 to 27 are not related with him, therefore, no need to reply the same. He has unnecessarily impleaded as a respondent therefore, petition is liable to be dismissed on the ground of mis-joinder of the parties, all the averment made in the aforesaid paras are related only to respondent No.1 who is the answering respondent therefore, petition is filed on the basis of false ground and it deserves to be dismissed.

15. The respondent No.7 in his written statement submits that para 1 to 28 are not related with him, therefore, no need to reply the same. He has unnecessarily impleaded as a respondent therefore, petition

is liable to be dismissed on the ground of mis-joinder of the parties, all the averment made in the aforesaid paras are related only to respondent No.1 who is the answering respondent therefore, petition is filed on the basis of false ground and deserves to be dismissed.

16. Before advertng to rival submissions made by both the learned counsel for the parties, it will be appropriate to reproduce the relevant provisions of RP Act.

“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”

100. Grounds for declaring election to be void.—
[(1) Subject to the provisions of sub-section (2) of [the High court] is of opinion—

(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

.....

123. Corrupt practices.—*The following shall be deemed to be corrupt practices for the purposes of this Ac—*

.....

2) *Undue influence, that is to say, any direct or indirect interference or attempt to interfere on the part of the candidate or his agent, or of any other person [with the consent of the candidate or his election agent], with the free exercise of any electoral right:*

Provided that—

(a) without prejudice to the generality of the provisions of this clause any such person as is referred to therein who—

(i) threatens any candidate or any elector, or any person in whom a candidate or an elector is interested, with injury of any kind including social ostracism and ex-communication or expulsion from any caste or community; or

(ii) induces or attempts to induce a candidate or an elector to believe that he, or any person in whom he is interested, will become or will be rendered an object of divine displeasure or spiritual censure,

shall be deemed to interfere with the free exercise of the electoral right of such candidate or elector within the meaning of this clause;

(b) a declaration of public policy, or a promise of public action, or the mere exercise of a legal right without intent to interfere with an electoral right, shall not be deemed to be interference within the meaning of this clause.

[(3) The appeal by a candidate or his agent or by any other person with the consent of a candidate or his election agent to vote or refrain from voting for any person on the ground of his religion, race, caste, community or language

or the use of, or appeal to, religious symbols or the use of, or appeal to, national symbols, such as the national flag or the national emblem, for the furtherance of the prospects of the election of that candidate or for prejudicially affecting the election of any candidate:

[Provided that no symbol allotted under this Act to a candidate shall be deemed to be a religious symbol or a national symbol for the purposes of this clause.]”

17. On 02/12/2019, on the basis of pleadings of all the parties, the following issue No.1 to 8 were framed and thereafter, additional issue No.9 was framed. These issues and findings against each issue is described and recorded in table below:-

<u>No.</u>	<u>Issues</u>	<u>Findings</u>
1.	Whether, payment of outstanding diversion dues amounting Rs. 588/- (for the period 2012-13 to 2017-18) for property situated at Patawri Halka No. 10, Survey No. 1694 Gram Bhanpura owned and possessed by Respondent no. 1 was made by him on or before 9.11.2018 i.e. the last date of filling of the nomination form for the General Election of M.P. State Legislative Assembly, 2018, if no, then what would be its effect?	No
2.	Whether, the respondent no. 1 by non-disclosure/suppression of diversion dues amounting to Rs 588/- payable to the State Government for his property situated at Patwari Halka No. 10 Survey No. 1694 Gram Bhanpura in the Affidavit (Annexure P/6) amounts to corrupt practice as defined u/s 123(2) and 123(4) of the RP Act, 1951?	No
3.	Whether, respondent no. 1 by non –	Not Proved

disclosure suppression of leased premise House bearing survey no. 1362, Bhanpura and the outstanding lease rent thereof as on 9.11.2018 in the Affidavit under Form 26 of Conduct of Election Rules, 1961 (Annexure P/6) amounts to corrupt practice as defined u/s 123(2) and 123(4) of the RP Act, 1951?

4. Whether, respondent no. 1 has suppressed the interest income earned by him from his Saving Banks Accounts and Fixed Deposit Accounts till 9.11.2018 and also professional income or other income from the Banks and /or individuals for conducting title search in his affidavit filed under Form 26 of Conduct of Election Rules, 1961 (Annexure P/6) and if yes, then its amounts to corrupt practice u/s 123(2) and 123(4) of the RP Act, 1951? **No**
5. Whether, in the public meeting held on 17.11.2018 at New Bus Stand Garoth, Mr. Jagdish Soni sought votes in the name of religion, caste and community with the consent of respondent no. 1 and/or his election agent Mr. Rajendra Jain thereby committed corrupt practice u/s 123(3) of the RP Act, 1951? **Not Proved**
6. Whether, non-disclosure of interest income, professional income, details of Government leased premises and the outstanding government dues/lease rent in Affidavit (Annexure P/6) by respondent no. 1 resulted in improper acceptance of his nomination form and non compliance of the provisions of law? **No**

- | | |
|--|--|
| 7. Whether, the election petition and documents are verified by the petitioner as per Section 83 of the Representation of Peoples Act, 1951 and, if not, election petition is liable to be dismissed? | Already decided
vide order dated
16/01/2020 |
| 8. Reliefs and cost. | Petition dismissed
with costs. |
| 9. Whether, due to encroachment made by petitioner, is disqualified or ineligible for declaring as an elected candidate from constituency No. 227 in the General Election of M.P. State Legislative Assembly 2018? | No |

ISSUES NO. 1 AND 2

18. Issues No. 1 and 2 both are interconnected and are related with similar facts, therefore, both the issues are being considered together.

19. The petitioner in order to prove issue No.1 and 2 examined himself as PW-1, Rakesh Kumar Yadav (PW-5), Nagesh Pawar (PW-6). In rebuttal respondent No.1 has examined himself as DW-1, Rameshchandra Satpuda (DW-8) and Narayan Nandeda (DW-11). The petitioner relied upon the documentary evidence from Exhibit-P/7 to P/21 and in rebuttal respondent No.1 relied upon the document exhibited as Exhibit-D/6 to D/9-C.

20. In the case in hand the petitioner has filed this Election Petition on the allegation of “Corrupt Practices”, therefore, burden of proof lies upon the petitioner and he is supposed to prove the facts

within special knowledge by adducing best evidence as per provision of Section 106 of Evidence Act. It is a settled law that it never shifts and the standard of proof to discharge this burden is the same as in criminal case. The matter requiring proof should be established beyond any reasonable doubt and in the case of doubt the benefit should go to the returned candidate.

21. Hon'ble the apex Court in the case of ***Tukaram S. Dighole Vs. Manikrao Shivaji Kokate*** reported in ***(2010) 4 SCC 329***, in paragraph No.12 has held as under:-

“12. Before we proceed to examine the controversy at hand, we deem it necessary to reiterate that a charge of corrupt practice, envisaged by the Act, is equated with a criminal charge and therefore, standard of proof therefor would not be preponderance of probabilities as in a civil action but proof beyond reasonable doubt as in a criminal trial. If a stringent test of proof is not applied, a serious prejudice is likely to be caused to the successful candidate whose election would not only be set aside, he may also incur disqualification to contest an election for a certain period, adversely affecting his political career. Thus, a heavy onus lies on the election petitioner to prove the charge of corrupt practice in the same way as a criminal charge is proved.”

22. In the case of ***R. P. Moidutty Vs. P. P. Kunju Mohammad*** reported in ***(2000) 1 SCC 481***, the Hon'ble apex Court has held as under:-

“14. It is basic to the law of elections and election petitions that in a democracy, the mandate of the people as expressed at the hustings must prevail and be respected by the Courts and that is why the election of a successful candidate is not to be set aside lightly. Heavy onus lies on

the election petitioner seeking setting aside of the election of a successful candidate to make out a clear case for such relief both in the pleadings and at the trial. The mandate of the people is one as has been truly, freely and purely expressed. The electoral process in a democracy such as ours is too sacrosanct to be permitted to be polluted by corrupt practices. If the court arrives at a finding of commission of corrupt practice by a returned candidate or his election agent or by any other person with the consent of a returned candidate or his election agent then the election of the returned candidate shall be declared to be void. The underlying principle is that corrupt practice having been committed, the result of the election does not echo the true voice of the people. As the consequences flowing from the proof of corrupt practice at the election are serious, the onus of establishing commission of corrupt practice lies heavily on the person who alleges the same. The onus of proof is not discharged merely on preponderance of probabilities; the standard of proof required is akin to that of proving a criminal or a quasi-criminal charge. Clear cut evidence, wholly credible and reliable, is needed to prove beyond doubt the charge of corrupt practice.”

23. Similarly, in the case of **Lakshmi Raman Acharya Vs. Chandan Singh** reported in (1977) 1 SCC 423, Hon'ble the apex Court has observed thus:-

“2. Certain principles governing election disputes are now well settled. One such principle is that proceedings arising out of election petitions are quasi-criminal in character and the allegations made in the petition must be proved beyond reasonable doubt.”

24. We are citizen of India always feel proud that we have a world largest democratic system. The foundation of a healthy democracy is to have well informed citizen voters. The right of the voter to know

the relevant particulars of the candidates is very important. The reason to have right of information with regard to the criminal antecedents, academic qualification and assets of the candidate is that voter can judge and decide in whose favour he should cast his vote. He is to be consider whether his candidate may or may not have sufficient assets so that he may not be tempted to indulge in unjustified means of accumulating wealth. For assets of liability, the voter may exercise his discretion in favour of a candidate whose liability is minimum and / or there are no over dues of public financial institution or government dues.

25. Petitioner's first contention in the case in hand is that respondent No.1 adopted corrupt practices by non-disclosing the require information and submitting incorrect information in the affidavit filed along with the nomination form relating to disclosure of assets, liabilities, details of government leased premises, outstanding government dues in respect of properties owned and occupied by respondent No.1 as well as dues on the government properties leased out to him.

26. The petitioner Subhash Kumar Sojatia (PW-1) has deposed that on 09/11/2018 respondent No.1 Devilal Dhakad filed his nomination form with an affidavit on behalf of “Bharatiya Janta Party” and his original nomination letter is Ex.-P/7. The respondent No.1 Devilal Dhakad in his nomination form in the column of immovable property disclosed that his immovable property is situated at *Patwari Halka* No.10, Survey No.1694, Village Bhanpura, but he mentioned 'zero' dues against the said property. Petitioner has obtained certain information

through 'Lok Seva Kendra' through Ex.-P/9 and it has been found that total outstanding dues against the aforesaid property from the year 2011-12 to 2017-18 at the rate of Rs.84/- per year total amounting to Rs.588/- is payable to the State Government.

27. The respondent No.1 along with his written statement filed a copy of the order dated 22/04/1982 (Ex.P/10-C) passed by the Sub Divisional Officer, Garoth stating that he has purchased the aforesaid land through sale deed Ex.-P/11. Respondent No.1 has filed a 'No Dues Certificate' Ex.-P/12-C issued by the Tehsildar, Bhanpura and Dispatch Number No.870 is mentioned on that document. Thereafter, petitioner through 'Lok Seva Kendra' again obtained information and found that respondent No.1 Devilal Dhakad has paid diversion fee after completion of legislative election in the month of May, 2019 through challan (Ex.-P/16). He has also collected the Dispatch Register (Ex.-P/17) by which it has been gathered that 'No Dues Certificate' issued on Dispatch No.870 is in the name of one Trilok Patidar. He again filed an application through 'Lok Seva Kendra' before the office of Tehsildar questioning that how many applications have been filed by respondent No.1 since 01/11/2018. In response to that he has received document Ex.-P/20 and 21 and by those document it is revealed that Dispatch No.870 was in the name of some Trilok Kumar.

28. In-charge Tehsildar Rakesh Kumar Yadav (PW-5) has deposed that on 19/08/2019 with the application (Ex.-P/20) 'No Dues Certificate' dated 05/11/2018 (Ex.-P/12-C) was produced before him and in respect of application (Ex.-P/20) he has given his reply dated

20/08/2019 (Ex.-P/21), wherein he has deposed that “माननीय मेरे द्वारा उक्त नो-ड्यूज रजिस्टर का अवलोकन किया गया, जिसमें क्रमांक-870 पर किसी त्रिलोक कुमार पिता इंद्र नारायण पाटीदार भैसोदा का नाम अंकित है। माननीय के द्वारा जो छाया-प्रतिलिपि भेजी गयी है, उसका नाम अंकित नहीं है एवं आवक रजिस्टर का भी अवलोकन किया गया, उसमें भी रासबिहारी द्विवेदी द्वारा किया गया आवेदन अंकित नहीं है।” जिस कारण प्रपी-20 के द्वारा वांछित प्रमाणित प्रति प्रदाय नहीं किया जा सकना, मेरे द्वारा प्रपी-21 में लेख किया था।”

29. The petitioner in support of his contention examined In-charge Tehsildar Nagesh Pawar (PW-6), who has deposed that he is appearing before the Court along with original document (Ex.-P/9) and as per the document in Column No.4 diversion fees amounting to Rs.588/- for the period 2011-12 to 2017-18 is payable to the State Government, has been mentioned by Devilal Dhakad in respect of property situated at *Patwari Halka* No.10, Survey No.1694, Village Bhanpura owned and possessed by the respondent No.1.

30. The respondent No.1 Devilal Dhakad (DW-1) in rebuttal deposed that SDO, Garoth has passed an order (Ex.-P/10-C) for diversion fee regarding the land bearing survey No.1694, situated at Bhanpura. He has purchased the land admeasuring 0.015 hectare through the registered sale deed (Ex.-P/11-C). Revenue authorities did not issue any notice to him prior to filing of nomination form regarding any diversion dues because he had already deposited the rent prior to filing the nomination and no outstanding government due was pending against him at the time of submission of nomination form.

31. In-charge Tehsildar Narayan Nandeda (DW-11) deposed that

he has issued No Dues Certificate on the basis of the report submitted by the Patwari and WBN, WBN does recovery of all the dues and maintain the record in the rural area. *Vasuli Patel* has been appointed, who collects all the recoveries of land revenue and other dues.

32. First of all this, Court will consider the List of Defaulters (Ex.-P/9), which contains the name of respondent No.1 Devilal at No.4 as a defaulter of dues of Rs.588/-. This list was prepared by *Vasuli Patel Manakchand Bhana*. Although respondent No.1 has filed an affidavit of *Manakchand Bhana* dated 10/07/2019 (Annex.-R/3). During the evidence of respondent No.1 (DW-1), an objection has been raised by learned counsel for the petitioner that such an affidavit cannot be treated as substantial evidence, although the aforesaid affidavit was marked as Ex.-D/6, however, it is quite clear that *Manakchand Bhana* has not examined by the respondent No.1, even his name was not included in the list of witnesses produced by the respondent No.1, therefore, in the non-examination of *Manakchand Bhana*, his affidavit cannot be treated as part of the evidence, because opponent did not get any opportunity for cross-examination.

33. In the case of *Ayaaubkhan Noorkhan Pathan Vs. State of Maharashtra and Others* reported in (2013) 4 SCC 465, the apex Court in paragraph No.31 laid down the following principles:-

“It is a settled legal proposition that an affidavit is not evidence within the meaning of Section 3 of the Indian Evidence Act, 1872 (hereinafter referred to as the ‘Evidence Act’). Affidavits are therefore, not included within the purview of the definition of "evidence" as has been given in Section 3 of the Evidence Act, and the same can be used as

"evidence" only if, for sufficient reasons, the Court passes an order under Order XIX of the Code of Civil Procedure, 1908 (hereinafter referred to as the 'CPC'). Thus, the filing of an affidavit of one's own statement, in one's own favour, cannot be regarded as sufficient evidence for any Court or Tribunal, on the basis of which it can come to a conclusion as regards a particular fact-situation. (Vide: Sudha Devi v. M.P. Narayanan & Ors., AIR 1988 SC 1381; and Range Forest Officer v. S.T. Hadimani, AIR 2002 SC 1147)."

On the basis of aforesaid discussion, it is held that the objection regarding the evidentiary value of affidavit raised by the learned counsel for the petitioner is accepted and it is held that filing of an affidavit of Manakchand Bhana (Ex.-D/6) cannot be admissible in the evidence.

34. Respondent No.1 Devilal Dhakad explained in his deposition that in the nomination form (Form-26) (Ex.-P/7) he has categorically stated the details regarding the land bearing Survey No.1694 situated at *Patwari Halka* No.10, Bhanpura and prior to submission of nomination form he has obtained No Dues Certificate (Ex.-D/9) issued by Accountant Rameshchandra Satpuda (DW-8) and Ex.-D/10 and D/11 issued by Junior Engineer, Electricity Company Praveen Sisodiya (DW-10). He has also obtained No Dues Certificate (Ex.-P/12) issued by the Tehsildar Narayan Nandeda (DW-11) and prior to nomination he did not get any notice from the Revenue Department regarding the dues of diversion fee.

35. Petitioner Subhash Kumar Sojatia (PW-1) admits in paragraph No.24 of his cross-examination that he did not produce any notice which was issued by the Revenue Department, against the

respondent No.1 Devilal Dhakad regarding the arrears of diversion tax and he did not possess the copy of the alleged notice. Petitioner Subhash Kumar Sojatia (PW-1) also admits in his cross-examination that he does not know that whether *Vasuli Patel* had given any information regarding the arrears of diversion tax or not. Naib Tehsildar Rakesh Kumar Yadav (PW-5) honestly admits that he has not issued any notice to Devilal Dhakad regarding the demand of dues of diversion fee.

36. Learned counsel for the petitioner submits that respondent No.1 Devilal Dhakad did not raise any objection regarding the List of Defaulters (Ex.-P/9) at the time of evidence. In reply, respondent No.1 Devilal deposed in paragraph No.13 of his testimony that he has received such information of defaulter list after completion of election process, therefore, prior to that he could not raise any objection.

37. The petitioner regarding the issue No.1 and 2 emphasize the Defaulter List (Ex.-P/9). It is contended by learned Senior Counsel for the petitioner that Defaulter List (Ex.-P/9) being a public document is admissible in evidence on its production without any proof. In fact, no objection was raised when exhibit was being marked and as such the credibility of the document cannot be impeached at this stage. Ex.-P/9 is certified copy of a public document. The said document was filed along with Election Petition as Annex.-P/7 and has been exhibited and proved by PW-1 Subhash Kumar Sojatia as evidence, therefore, no formal proof is required to prove a public document in light of Section 77 of Indian Evidence Act, 1872, which states that production of certified copy is a proof of document. In this regard, reliance is placed on a judgment

delivered in the case of *Madamnchi Ramappa Vs. Muthaluru Bojjappa* reported in *AIR 1963 SC 1633*, in which in paragraph No.9 it is held that “the document in question being a certified copy need not have been proved by calling a witness. Besides no objection has been raised about the mode of proof either in the trial court or in the district court.”

38. *Per contra*, learned counsel for the respondent No.1 submits that List of Defaulters did not prove by its author. It cannot be considered as a public document. It is a duty of the petitioner to first of all plead the relevant facts of alleged List of Defaulters in his Election Petition and thereafter, prove the same pleadings, document Ex.-P/9 and its contents by examining the author of the document, but petitioner did not make any averment with regard to adducing documentary evidence regarding the legality and validity of No Dues Certificate (Ex.-P/12) and the List of Defaulters (Ex.-P/9), therefore, such evidence cannot be admissible.

39. No doubt, as per the principles of the Evidence, relevancy, admissibility and proof are different aspects which should exist before a document can be taken in evidence. Evidence of a fact and proof of a fact are not synonymous terms. Proof in strictness marks merely the effect of evidence.

40. In support of his contention, learned counsel for the respondent No.1 placed reliance upon the judgment of Hon'ble the apex Court in the case of *Kattinokkula Murali Krishna Vs. Veeramalla Koteswara Rao and Others* reported in *(2010) 1 SCC 466*, in which it has been held that “it is a settled principle of law that evidence beyond

the pleadings can neither be permitted to be adduced nor can such evidence be taken into consideration.” In the case of *Prataprai N. Kothari Vs. John Braganza* reported in (1999) 4 SCC 403, it has been specifically held that “in absence of any plea, no evidence is admissible.” He has also placed reliance upon the judgment delivered in the cases of *Salem Advocate Bar Association, Tamil Nadu Vs. Union of India* reported in AIR 2005 SC 3353 and *Electrosteel Castings Limited Vs. UV Asset Reconstruction Company Limited and Others* reported in (2022) 2 SCC 573.

41. It has been pointed out by the learned counsel for the petitioner that as per the provisions of Section 83 of RP Act in the election petition no detail pleading is required and election petition shall content only a concise statement of material facts on which the petitioner relies. He has also contended that in the case of *Ashraf Kokkur Vs. K. V. Abdul Khader* reported in (2015) 1 SCC 129, Hon'ble the apex Court has held that “the requirement under Section 83(1)(a) of the RP Act in contradistinction to Section 83(1)(b) of the RP Act is that the election petition need contain only a concise statement of the material facts and not material particulars. “Concise” according to Oxford Dictionary means, “brief and comprehensive”. Concise Oxford Dictionary has given the meaning to the expression “concise” as “giving a lot of information clearly and in few words”. As per Webster's Comprehensive Dictionary, International Edition, expression has been defined as “expressing much in brief form”.

42. However, Hon'ble the apex Court in the case of *Kalpana*

Mehta and Others Vs. Union of India and Others reported in (2018) 7 SCC 1 has held that:-

“449.5. That mere fact that document is admissible in evidence whether a public or private document does not lead to draw any presumption that the contents of the documents are also true and correct.”

43. Hon'ble the apex Court in the case of ***Narbada Devi Gupta Vs. Birendra Kumar Jaiswal and Another*** reported in (2003) 8 SCC 745 in paragraph No.16 has held that the legal position is not in dispute that mere production and marking of a document as exhibit by the court cannot be held to be a due proof of its contents. Its execution has to be proved by admissible evidence, that is, by the “evidence of those persons who can vouchsafe for the truth of the facts in issue.”

44. Hon'ble the apex Court again in the case of ***S. Gopal Reddy Vs. State of A.P.*** reported in (1996) 4 SCC 596 in paragraph No.29 has held that Section 67 of the Evidence Act, 1872 enjoins that before a document can be looked into, it has to be proved. Section 67, of course, does not prescribe any particular mode of proof. Section 47 of the Evidence Act which occurs in the chapter relating to “relevancy of facts” provides that the opinion of a person who is acquainted with the handwriting of a particular person is a relevant fact. The ordinary method of proving a document is by calling as a witness the person who had executed the document or saw it being executed or signed or is otherwise qualified and competent to express his opinion as to the handwriting.

45. Similarly in the case of ***Life Insurance Corporation of***

India and Another Vs. Ram Pal Singh Bisen reported in (2010) 4 SCC 491, Hon'ble the apex Court in paragraph No.31 has held as under:-

“Under the law of evidence also, it is necessary that contents of documents are required to be proved either by primary or by secondary evidence. At the most, admission of documents may amount to admission of contents but not its truth. Documents having not been produced and marked as required under the Evidence Act cannot be relied upon by the court. Contents of the documents cannot be proved by merely filing in a court.”

46. Apex Court in the case of ***Om Prakash Berlia and Another Vs. The Unit Trust of India and Others*** reported in AIR 1983 Bombay 1 in paragraph No.6 and 12 has held as under:-

“6. Secondly, Ss.61 and 62 read together show that the contents of a document must, primarily, be proved by the production of this document itself for the inspection of the Court. It is obvious that the truth of the contents of the document, even prima facie, cannot be proved by merely producing the document for the inspection of the Court. What it states can be so established.

*12. The Act requires, first. the production of the original documents. If the original documents is not available, secondary evidence may be given. This is to prove what the documents states. Upon this the documents becomes admissible, except where it is signed or handwritten, wholly or in part. In such a case the second requirement is, under S. 67, that the signature and handwriting must be proved. Further, where the party tendering the documents finds it necessary to prove the truth of its contents, that is the truth of what it states, he must documents so in the manner he would prove a relevant fact. As the case of *Bishwanath Raj; Madholal Sindhu* (AIR 1954 Bom 305); and *Mr. D.* indicate, this is generally done by calling the author of the documents.”*

47. In the instant case, it is noteworthy that the List of Defaulters (Ex.-P/9) is not a any type of judgment or order passed by any judicial or revenue Court. It is only a list, which was prepared by *Vasuli Patel*, who is a Class-III employee and can not treated as an public officer.

48. There is no doubt that certified copy of the List of Defaulters is a public document, but production of document and taking it on record and its admissibility is all together different facts. Mere production of certified copy of any public record is not a proof of its contents. Even petitioner has failed to examine its author, therefore, the aforesaid public document (Ex.-P/9) does not lead to draw any presumption that the contents of the document is also true and correct.

49. Hon'ble the apex Court in the case of *Prakash Rai Vs. J. N. Dhar* reported in *AIR 1977 Delhi 73* held that “mere production of a certified copy of a public document does not prove the same as the question of its admissibility involves that the contents must relate to a fact in issue or a fact relevant under the various sections of the Indian Evidence Act and that if the contents are statements of such facts and are not acts forming such facts, the statement must be relevant under Section 35 to 38 of the Evidence Act.”

50. From again perusal of the defaulter list (Ex.-P/9), it is clear that no date has been mentioned in the aforesaid list and it is not clear on which date and who has prepared the aforesaid list. Petitioner has failed to prove the document (Ex.-P/9) as per the requirement of Section 67 of the Indian Evidence Act. Even the petitioner did not describe the grounds for preparing the aforesaid list and the information about author of the list. In light of the aforesaid discussion and judgments, this Court

is of the considered opinion that List of Defaulters (Ex.-P/9) cannot be treated as a public document and without examining its author to prove that the contents of the document are also true and correct. Petitioner has also failed to prove the document Ex.-P/9, as per the requirement of Section 67 of the Indian Evidence Act.

51. So far as the matter of pleading in the election petition is concerned, although in the Section 83 of RP Act it has been categorically mentioned that election shall contain a concise submission of material facts on which the petitioner relies, but Section 87 of the RP Act provides that subject to the provisions of this Act and of any Rules made thereunder, every election petition shall be tried by the High Court, as nearly as may be, in accordance with the procedure applicable under the Code of Civil Procedure, 1908 to the trial of suits. Therefore, relying upon the judgment of of Hon'ble apex Court in the case of *Kattinokkula Murali Krishna (Supra)* it has been held that it is a settled principle of law that in the election petition, evidence beyond the pleadings can neither be permitted to be adduced nor can such evidence be taken into consideration. Hence, it is held that the petitioner has not pleaded in his averment regarding the List of Defaulters and the non-validity of the No Dues Certificate (Ex.-P/12), therefore, petitioner is not entitled to adduce the evidence beyond his pleadings and beyond the pleadings the aforesaid evidence cannot be looked into.

52. Learned counsel for the petitioner submits that respondent No.1 in his nomination form (Ex.-P/7) at Clause 8(vii) of the affidavit submitted false information by mentioning 'Zero' against the government

dues and the said information is *per se* false as the respondent No.1 had not paid diversion charges amounting to Rs.588/-. Although he has produced No Dues Certificate (Ex.-P/12) bearing date 05/11/2018. The said document has been proved to be manipulated by deposition of PW-1, PW-5 and PW-6. These documents categorically stated that it has been issued at the request of respondent No.1, but in the contrary in the No Dues Certificate (Ex.-D/9), it has been mentioned that the certificate has been issued on the basis of the revenue record. In the No Dues Certificate (Ex.-P/12) dispatch No.870 has been mentioned, but as per the statement of Rakesh Kumar Yadav (PW-5) in the said register the dispatch No.870 has been marked in the name of some Trilok Kumar Patidar, therefore, No Due Certificate (Ex.-P/12) is a fake document. But respondent No.1 Devilal has proved the No Objection Certificate (Ex.-P/20).

53. Respondent No.1 has examined Narayan Nandeda (DW-11), who deposed that he has issued No Dues Certificate on the basis of the report submitted by the *Patwari* and WBN. The contention of the petitioner is that Ex.-P/12 is a forged document and it is prepared by fraud, but petitioner did not plead averment of fraud in the election petition. The Tehsildar Narayan Nandeda (DW-11) deposed that he has issued No Dues Certificate (Ex.-P/12) on the basis of the report submitted by the *Patwari* or WBN to prove that they have not submitted any report regarding the aforesaid No Dues Certificate of diversion tax, therefore, legal presumption may be drawn against the petitioner for non-examination of the concerned *Patwari* and WBN in his evidence.

54. Hon'ble the apex Court in the case of *Electrosteel Castings Limited Vs. UV Asset Reconstruction Company Limited and Others* reported in *(2022) 2 SCC 573*, in paragraph No.8.1 has held that “even as per Order VI Rule 4 in all the cases in which the party pleading relies on any misrepresentation, fraud, breach of trust, wilful default or undue influence, particulars shall be stated in the pleadings in respect of the aforesaid fraud.” Therefore, the petitioner is not entitled to produce evidence regarding the aforesaid fraud in absence of specific pleading in his election petition. The Tehsildar Rakesh Kumar Yadav (PW-5) in paragraph No.25 of his cross-examination stated that Ex.-P/17 of No Dues Register, entries at page No.855 to 857 in column No.3 were blank, but later on after 19/08/2019 all the three entries were made. Admission of Rakesh Kumar Yadav shows that entries in the Dispatch Register are very irregular. Initially some of the entries were found blank but later on when the original record was produced before this Court, it is found that entries were filled up. Rakesh Kumar Yadav (PW-5) also admits in paragraph No.26 of his cross-examination that it may be possible that due to the mistake Dispatch No.870 has been mentioned in the name of some other person namely Trilok Kumar.

55. At the time of filing of certified copy (Ex.-P/17) before this Court some entries were found blank but at the time of submitting original register, the entries were appeared filled up, which shows that Dispatch Register (Ex.-P/17) is not regularly and properly maintained by the Revenue Department. On the basis of the above Dispatch Register, non mentioning of the name of the respondent No.1 against the dispatch

number shown in the No Dues Certificate, it cannot be said that the No Dues Certificate (Ex.-P/12) is not at all admissible and reliable as an evidence. Even otherwise the petitioner has neither pleaded nor proved any other cogent evidence to establish reliability of untrustworthy NOC (Ex.-P/12) issued by the revenue authorities.

56. In view of the above alleged entries made in Dispatch Register (Ex.-P/17) cannot be treated as reliable and cogent evidence of its truthfulness and correctness, therefore, Dispatch Register appears to be very doubtful. Rakesh Kumar Yadav (PW-5) in his cross-examination in para 12 described that the intention of the issuing No Dues Certificate. He deposed that the intention behind issuing No Dues Certificate is that at the time of issuing certificate there was no outstanding government then dues and after the scrutiny of the record, if no outstanding due is found against the applicant then only the No Dues Certificate is issued by the Department.

57. From the statement of Rakesh Kumar Yadav (PW-5), the case of the respondent No.1 appears to be *bona fide* regarding issuance and genuineness of No Dues Certificate (Ex.-P/12), therefore, No Dues Certificate (Ex.-P/12) has been duly proved by the evidence of Rakesh Kumar Yadav (PW-5) as well as the evidence of Narayan Nandeda (DW-11).

58. It is pertinent to mention here that the Dispatch Register was then not in the control of the respondent No.1, since he is not doing entry into Dispatch Register. Respondent No.1 cannot be held liable for the same. Therefore, it cannot be said that at the time of submitting the

nomination form respondent No.1 was aware of the fact that diversion fees was due against his property situated at survey No.1694, area 0.015 hectare. So it cannot be said that the respondent No.1 has suppressed or hide the fact with regard to the government dues. Even being a government representative and looking to the petty amount *vide* Ex.-P/16, respondent No.1 deposited and explained in para 13 and 25 of his cross-examination, therefore, it cannot be said that at the time of submitting the nomination form, the diversion tax was due against the petitioner with regard to the property situated at the survey No.1694, village Bhanpura.

59. Hon'ble the apex Court in the case of *The State Election Commission, Bihar and Another Vs. Manager Prasad and Others* reported in *2014 SCC OnLine Pat 2570* in paragraph No.10 has held that “...when a person applied for no dues certificate and the same was granted to him, it was sufficient to hold that he had no dues for the purpose of filing his nomination papers.”

60. In view of the aforesaid analysis, it is crystal clear that at the time of submission of nomination form no amount against the diversion tax was due for the period 2011-12 to 2017-18 and the respondent No.1 was not actually aware with the such facts, because Revenue authorities did not issue any notice against him for recovery of the arrears of any diversion tax. On the contrary revenue authorities has issued No Dues Certificate (Ex.-P/12) in favour of respondent No.1. Therefore, a person who is not aware of any fact, no question arises to suppress such facts and the effect of non-disclosure of aforesaid government dues are not

covered under Section 100(1)(d), 123(2) and 123(4) of the RP Act.

61. Respondent No.1 Devilal Dhakad has deposed that prior to filing of the nomination form on 06/11/2018, he has deposited Property and Consolidated Tax (*Sampatti and Samekit Kar*) through receipts (Ex.-D/7 and D/8) and thereafter, he obtained No Dues Certificate (Ex.-D/9). Rameshchandra Satpuda (DW-8) supported the statement of respondent No.1 Devilal Dhakad by stating that after perusal of the revenue record, he has issued No Dues Certificate (Ex.-D/9) in favour of the respondent No.1 Devilal Dhakad.

62. Looking to the facts and circumstances of the instant case, petitioner has failed to prove issue No.1 and 2 beyond the reasonable doubt and has not discharged his burden to prove issue No.1 and 2, therefore, both **these issues are decided in favour of respondent No.1.**

ISSUE NO.3

63. The petitioner in order to prove this issue No.3 examined himself as PW-1, Rakesh Kumar Yadav (PW-5), Nagesh Pawar (PW-6) and Uma Shankar Patidar (PW-7) and Alok Purwar (PW-8). In rebuttal respondent No.1 has examined himself as DW-1, Rasbihari Dwivedi (DW-2), Naval Kumar (DW-4), Rameshchandra Satpuda (DW-8), Ravidhra Bhavsar (DW-9), Praveen Sisodia (DW-10) and Narayan Nandeda (DW-11). The petitioner relied upon the documentary evidence from Ex.-P/7, P/22 to P/43 and P/78 and respondent No.1 relied upon the documents exhibited as Ex.-D/10, D/11 and D/21 to D/26.

64. Regarding the above issue, petitioner made allegation and laid much stress stating that respondent No.1 occupied rental premises

situated at survey No.1362 at Village Bhanpura which belongs to the State Government and at the time of submitting nomination form (Ex.-P/7) suppressed / non-disclosed the information regarding the occupancy of said premises and arrears of lease rent, therefore, he has committed “corrupt practice” as per Section 123(1) and 123(4) of the RP Act. In order to prove this fact, initially petitioner made averment in election petition in paragraph No.14, 15 and 24 and produced a List of Defaulters (Ex.-P/24) as on 18/12/2018.

65. The respondent No.1 categorically denied all these allegations and has specifically made averments that on 06/09/2018 *vide* Ex.-P/35 he wrote a letter to the Tehsildar for taking over the possession of that rented house. The aforesaid house do not belong to the State Government and it is a property of a Trust. Such allegation regarding non-disclosure of government dues against the arrears of rent cannot be established beyond reasonable doubt.

66. The petitioner Subhash Kumar Sojatia (PW-1) in paragraph No.7 of his deposition deposed as under:-

“**7. प्रदर्श पी – 7** में श्री देवीला धाकड़ ने सर्वे क्रमांक 1362 पर स्थित भवन जहां ये निवास करते हैं, के संबंध में जानकारी छिपाई है यह भवन शासकीय है तथा तहसीलदार भानपुरा द्वारा उन्हें 30/10/2007 को आवंटित किया है जिसकी छायाप्रति उन्होंने अपने उत्तर के साथ पेश किया है जो **प्रदर्श पी-22-सी** है। मैंने तहसीलदार से यह भी जानकारी प्राप्त करने के लिये आवेदन लगाया कि उक्त सर्वे नम्बर में स्थित समस्त सरकारी भवनों में कितने किरायेदार हैं और उन पर कितना किराया बकाया है। आवेदन की रसीद **प्रदर्श पी-23** है। मुझे

बकायादारों कुल 47 की जो सूची प्राप्त हुई वह **प्रदर्श पी-24** है। इस सूची में श्री देवीलाल धाकड़ के नाम के समक्ष 29,700/- का बकाया 300 रुपये प्रतिमाह की दर से बकाया दर्शात । श्री देवीलाल जी धाकड़ द्वारा रसीद क्रमांक 40 बुक नं.7936 द्वारा 18,600 रुपये सर्वे क्रमांक 1362 पर निर्मित दुकानों भवनों का किराया 01/04/2008 से जुलाई 2018 तक कुल राशि 150 रुपये प्रतिमाह की दर से जमा करना दर्शात है जिसकी प्रति जवाब दावे के साथ लगाई गयी है इसी के साथ एक अन्य रसीद नं. 57 बुक नं. 7936 अगस्त 2018 से अक्टूबर 2018 तक तीन माह का किराया 450/- रुपये जमा किया। उक्त दोनो रसीदों पर दिनांक अंकित नहीं है। जो **प्रदर्श पी-25 और 26** है। इस जानकारी के उपरांत मैंने तहसीलदार कार्यालय में रसीद क्रमांक 39, 40, 41 एवं रसीद क्रमांक 56, 57, 58 के बारे में जानकारी हेतु आवेदन **प्रदर्श पी-27** और उसकी रसीद **प्रदर्श पी-28** है। मुझे इसकी जानकारी **प्रदर्श पी-29** के द्वारा प्राप्त हुई कि रसीद क्रमांक 39, 40, 41 से किराया राशि 15 मार्च 2019 को जमा हुई थी तथा रसीद क्रमांक 57 से बकाया राशि 09 जुलाई 2019 को तहसील कार्यालय में जमा हुई जिसमें ए से ए भाग पर तहसीलदार के हस्ताक्षर है। इस रसीदों की प्रमाणित प्रतिलिपी कुल संख्या 06 **प्रदर्श पी-30, पी-25-सी, पी-31, पी-26-सी, पी-32, पी-33** । श्री देवीलाल धाकड़ ने अपने जवाब के साथ मीटर शिफ्टिंग का आवेदन लगाया है जिसकी द्वितीय प्रति **प्रदर्श पी-34** है तथा कस्बा भानपुरा में शासकीय भवन का आवेदन निरस्त करने के लिये आवेदन दिनांक 06/09/18 **प्रदर्श पी-35** है। मैंने उक्त आवेदन के संबंध में एमपीईबी कार्यालय से आरटीआई के तहत जानकारी प्राप्त की जो **प्रदर्श पी-36** है तथा मुझे आरटीआई के तहत आवक जावक रजिस्टर की प्रति प्राप्त हुई जिसमें श्री देवीलाल धाकड़ के द्वारा दिये गये आवेदन

प्रदर्श पी-34 की जानकारी प्राप्त नहीं जो **प्रदर्श पी-37** है (दो प्रश्न) । श्री देवीलाल जी ने मीटर शिफ्टिंग का आवेदन फरवरी 2019 में दिया था उसी के साथ उन्होंने नगरपालिका से नोड्यूज एवं मीटर शिफ्टिंग शुल्क रूपये 400/- भी जमा किया, आवेदन प्राप्ति दिनांक 23/02/2019 जो **प्रदर्श पी-38** है जिसके ए से ए भाग पर श्री देवीलाल जी के हस्ताक्षर है। उक्त आवेदन के साथ माह जनवरी 2019 का बिल भी श्री देवीलाल जी ने लगाया जो **प्रदर्श पी-39** है तथा कार्यालय नगरपरिषद भानपुरा द्वारा जारी अनापत्ति प्रमाणपत्र दिनांक 22/02/2019 जो **प्रदर्श पी-40** है। **प्रदर्श पी-41** के द्वारा मीटर शिफ्टिंग शुल्क 400 रूपये दिनांक 23/06/2019 को श्री देवीलाल जी धाकड़ द्वारा जमा किया गया । मैंने तहसील कार्यालय से जानकारी प्राप्त करने का प्रयास किया कि श्री देवीलाल जी को आवंटित मकान का आवंटन निरस्त हो गया है या नहीं जिसका आवेदन **प्रदर्श पी-42** है। पत्र क्रमांक 14/08/2019 से तहसीलदार ने यह जानकारी दी की आवेदन पत्र दिनांक 06/09/2018 तहसील कार्यालय में प्रस्तुत नहीं किया गया गया है जो **प्रदर्श पी-43** है जिसके ए से ए भाग पर तहसीलदार के हस्ताक्षर है। मुझे यह जानकारी प्राप्त हुई कि उक्त सरकारी आवास पर श्री देवीलाल जी का आधिपत्य है। मेरा यह कहना है कि श्री देवीलाल जी ने नामांकन पत्र के साथ संलग्न शपथ पत्र में सरकारी आवंटन एवं उसके ड्यूज संबंधित जनाकरी छिपाई है।”

67. The respondent No.1 Devilal Dhakad in paragraph No.14 of his deposition admits that house situated at survey No.1362 at Village Bhanpura was leased out to him *vide* allotment order dated 13/10/2007 (Ex.-P/22) at the rate of rent of Rs.150/- per month but not at Rs.300/- per month and on 06/09/2018 he has given a letter (Ex.-P/35) to the

Tehsildar Garoth for vacating the aforesaid rented house. He has also given a letter (Ex.-P/34) for meter shifting. He has obtained No Dues Certificate dated 02/11/2018 (Ex.-D/10-C) from the Electricity Board and also obtained a No Dues Certificate (Ex.-D/11), which was named on his wife Jatanbai. Respondent No.1 Devlal in paragraphs No.18 and \ 19 of his cross-examination clarify that said house was registered in the name of Nirmal Kumar, Kamal Kumar and Nawal Kumar and allotted to him by the Government. In the month of July, 2018 he has deposited Rs.18,600/- as rent *vide* receipts (Ex.-P/25 and 26). He has applied before the Tehsildar seeking No Dues Certificate. He has received information for the first time regarding the dues of arrears of amount after filing the election petition and prior to that he has not received any notice.

68. Naib Tehsildar Rakesh Kumar Yadav (PW-5) also deposed in his deposition that he signed the receipts (Ex.-P/25 and 26), which were issued in favour of the respondent No.1 Devlal Dhakad upon depositing the arrears of rent amount of Rs.18,600/-. The petitioner has filed an application Ex.-P/27 seeking True Copy of the receipt of depositing of the arrears of rent. In reply he supplied information (Ex.-P/29) and as per the aforesaid information receipts No.39, 40 and 41 (Ex.-P/29, P/30 and P/31) have been issued on 15/03/2019 and receipt No.56 (Ex.-P/32) has been issued in the name of Subhash Kumar S/o Uttam Chandra Badhva on 03/06/2019 and receipt No.58 (Ex.-P/33) has been issued on 09/07/2019 in the name of Ashok Kumar S/o Devlal Punjabi. Respondent No.1 also filed an application Ex.-P/42 seeking

True Copy of the cancellation order in respect of allotted house and he has made its reply (Ex.-P/43) on 14/08/2019 and informed him that no application for cancellation of allotment has been furnished before the office on 06/09/2018.

69. In-charge Tehsildar Nagesh Pawar (PW-6) also deposed that he came along with Dispatch Register, which starts from dated 06/07/2018 to 28/03/2019, No Dues Certificate (Ex.-P/17), List of Defaulters, letter dated 14/08/2019 issued to the petitioner and letter issued to respondent No.1 dated 19/08/2019. Copy of Dispatch Register is Ex.-P/78. Assistant Engineer, MPEB, Bhanpura Uma Shankar Patidar (PW-7) also deposed that respondent No.1 has filed an application seeking No Objection Certificate (Ex.-P/40) and another application for meter shifting (Ex.-P/38), which was mentioned in the Dispatch Register (Ex.-P/79). In that it is also mentioned that shifting charges have been paid on the same date. Junior Engineer, MPEB Alok Purwar (PW-8) also proved in his deposition that he has signed the documents Ex.-P/37, P/38, P/40 and P/41 and also signed Ex.-P/79.

70. First of all learned counsel for the respondent No.1 contended that rented premises cannot be treated as government accommodation. Although respondent No.1 Devilal admits in paragraph No.17 of his deposition that the house situated at survey No.1362 was leased out to him, but he has clarified that house is registered in the name of Nirmal Kumar, Kamal Kumar and Nawal Kumar. One of them Nawal Kumar has been examined as DW-4, which he has categorically stated that *Khasra* No.1362 is situated on the land belonging to

Mannalal Dhanraj Chauradiya Trust. He has purchased the said house in the year 1987 and due to the political rivalry it was included in the Trust's property and he was always deprived from hearing. Secretary Rajendra Kumar Chauradiya on behalf of the trust has filed a case before this Court, which is still pending.

71. However, Tehsildar, Bhanpura *vide* order dated 30/10/2007 (Ex.-P/22-C) allotted the aforesaid house to the respondent No.1 as Government house, but from perusal of the *Naamantran Prapatra* (Ex.-D/21) it appears that this house is registered in the name of Nirmal Kumar, Kamal Kumar and Nawal Kumar. Nawal Kumar (DW-4) also corroborated the same. Petitioner has not proved any relevant document demonstrating that the aforesaid premises is a property belonging to the ownership of Government. It is mere a trust property, therefore, it cannot be treated as government accommodation.

72. Hon'ble the apex Court in the case of *Union of India Vs. Onkar Nath Dhar* reported in *AIR 2021 SC (Supp) 439* held that “government accommodation is meant for serving government employees to facilitate to discharge their duties. Government accommodation is not meant for retirees.” The Nomination Form No.26 *vide* Ex.-P/7 Clause 8 specifically provides a disclosure of government accommodation. In the instant case, the petitioner neither pleaded nor proved that the rented premises is a government accommodation. Therefore, there is no need to disclose the information of aforesaid rented house in the nomination form.

73. The petitioner has annexed the List of Defaulters as Ex.-

P/24 prepared by the Office of the Tehsildar, Bhanpura for the outstanding lease rent for the government property belonging to house situated at survey No.1362, Bhanpura with the Election Petition. In that list the name of the respondent No.1 shown at serial No.36 as the defaulter of outstanding rent amounting to Rs.29,700/- for the aforesaid government property. Although respondent No.1 (DW-1) also admits in paragraph No.18 of his deposition that he did not complaint to any authority that his name was wrongly entered in the defaulter register, therefore, it is proved that name of the respondent No.1 had been shown in the Defaulters List (Ex.-P/24).

74. Although an attempt has been made by the respondent No.1 to raise suspicion on Ex.-P/25 to P/39 that the outstanding rent and electricity charges had already been deposited. On the basis of the oral evidence of petitioner Subhash Kumar (PW-1), Rakesh Kumar Yadav (PW-5), Nagesh Pawar (PW-6), Uma Shankar Patidar (PW-7), Alok Purwar (PW-8) and other documentary evidence, it is proved that receipt No.40 (Ex.-P/25), receipt No.57 (Ex.-P/26) are undated, but in the letter (Ex.-P/29) it has been proved that through the receipt No.40 money was deposited on 15/03/2019 and through the receipt No.57 the amount had been deposited on 09/07/2019 i.e. much after the filing of nomination form.

75. At the cost of repetition, it is pertinent to mention here that in the instant case the respondent No.1 occupied a rented premises situated at survey No.1362 at Bhanpura, which do not belongs to the State Government. Respondent No.1 had occupied the lease hold

premise, but it was not his asset, because he is neither the owner nor the title holder, therefore, there is no need to disclose the aforesaid rented premises in the head of assets in the nomination form.

76. Respondent No.1 has placed reliance upon the judgment delivered by this Court in the case of *Rasal Singh Vs. The Election Commission of India and Others* reported in *I.L.R. [2016] MP, 1411*, wherein this Court in paragraph No.23 and 24 has held as under:-

“23. A Division Bench of this Court in 2010 (2) MPLJ 149 [Kashinath Sharma and another Vs. Chief Election Commissioner and others], considered the impact of the subsequent order of election commission dated 27.03.2003 and opined as under:-

"12. It is thus, clear that as per the orders passed by the Election Commission on 27-3-2003, the Returning Officer could not have rejected the nomination paper of the respondent No. 6 on the ground that he had furnished wrong information or suppressed material information with regard to his assets in the declaration filed along with the nomination paper. We cannot also set aside the orders passed by the Returning Officer accepting the nomination paper of the respondent No. 6 on the ground that the Returning Officer should have rejected the same in view of the directions of the Supreme Court in Peoples Union for Civil Liberties (PUCL) and others vs. Union of India and others (supra), discussed above."

24. Thus, in the light of the judgment in PUCL (supra) and revised order of election commission dated 27.03.2003, it cannot be said that nomination should have been rejected for non-disclosure of assets and liabilities."

77. It is remarkable that respondent No.1 Devilal stated that he

had vacated the rented premises situated at survey No.1362 and handed over its possession to Tehsildar, Bhanpura through letter dated 06/09/2018 (Ex.-P/35). However, above letter contains only seal and signature of any clerk of Inward-Dispatch Section, but respondent No.1 has not examined such dispatch clerk. The Tehsildar Narayan Nandeda (DW-11) admits in his cross-examination that such letter (Ex.-P/35) has not been executed before him and no date was mentioned in it. Therefore, it appears to be suspicious document. Advocate Rasbihari Dwivedi (DW-2) only stated that he had applied for allotment of that premises on 07/10/2018, which was vacated by respondent No.1 Devilal. The status of this letter is similar as Ex.-P/35 indicating that same does not contain date of its receipt and dispatch clerk did not testify before the Court. No such letter / order has been issued by the Office of Tehsildar, Bhanpura which shows that the aforesaid premises was vacated by respondent No.1 prior to filing of his nomination form.

78. The term “corrupt practice” as provided under Section 123, which provides circumstances of corrupt practices. Section 123(2) provides corrupt practice by any undue influence by candidate or his agent or any person with the consent of candidate or his election agent with the free exercise of any electoral right. In the present case, the Petitioner has not adduced any iota of evidence in the form of oral or documentary evidence which proves that by virtue of non-disclosure of outstanding rent, any voter was suffered to free exercise of his electoral right. The Petitioner has not examined any voter and even he himself could not adduce such kind of fact that how or in what manner the voters

were unable to freely exercise their right provided under article 19(1)(a) of the Constitution of India.

79. Learned counsel for the petitioner placed reliance upon the judgments delivered in the case of *PUCL Vs. Union of India* reported in (2003) 4 SCC 399, *Kishan Shankar Kathore Vs. Arun Dattatray Sawant and Others* reported in (2014) 14 SCC 162, *Krishnamoorthy Vs. Sivakumar* reported in (2015) 3 SCC 467, *Lok Prahari Vs. Union of India* reported in (2018) 4 SCC 699, *S. Rukmini Madegowda Vs. State Election Commission and Others* reported in 2022 SCC OnLine SC 1218 and *Jalagam Venkat Rao Vs. Vanama Venkateswara Rao* passed by Telangana High Court in Election Petition No.31/2019 on 25/07/2023, but all the above citations are distinguishable from the facts and circumstances of the instant case, therefore, all these citations are not applicable in the instant case.

80. Therefore, I am inclined to agree with the ratio laid down in *Rasal Singh (Supra)* case. Although the respondent No.1 has proved with probable defence that at the time of submitting the nomination form, neither any outstanding rent of any government accommodation was due nor he was informed about such liability of payment of outstanding rent, therefore, it cannot be said that respondent No.1 made any kind of suppression or non-disclosure while submitting the details in column No.8 of affidavit in form No.26. Even such type of disclosure or suppression does not come under the purview of Section 123(2) and (4) of RP Act.

81. Accordingly, finding on issue No.3 is given as “not

proved”.

ISSUE NO.4

82. The petitioner in order to prove issue No.4 examined himself as PW-1, Ramlal Bairwa (PW-9), Sunil Nayak (PW-10), Jagdish Parmar (PW-11). Respondent no. 1 in rebuttal has examined himself as DW-1, Sunil Jain (DW-6), Bajrang Lal Patidar (DW-7). The petitioner has relied upon documentary evidence from Ex.-P/44 to Ex.-P/75, Ex.-P/80C to Ex.-P/108 and respondent no. 1 relied upon document exhibited as Ex.-D/12 to Ex.-D/22. Material pleadings with respect to issue No.4 finds place at para Nos.16, 17 and 18 of election petition and para Nos.16 and 17 of the written statement filed by respondent No.1.

83. It is contended by petitioner that respondent No.1 has concealed or suppressed the interest income earned by him on the amount deposited in his saving bank accounts and also professional income from the banks and the individuals and such suppression of income in the affidavit filed under Nomination Form 26 of Conduct of Election Rules, 1961 is a corrupt practice under The Representation of The People Act, 1951. The burden lies upon the petitioner to put strict proof thereof against this issue.

84. The respondent No.1 denied all these allegation and submitted that he has not suppressed his interest income as well, as he also specifically stated that balance in the bank account including the interest income was shown in the nomination form. Then he did not get the amount of interests on FDR because the interests on FDR was to be received on maturity of FDR. Respondent No.1 also stated in his reply

that he did not charge or receive any professional income for title search from the borrower or bank and he did the aforesaid work free of cost in the public interest. The petitioner Subhash Kumar Sojatia deposed in para 8 of his statement that respondent No.1 Devilal Dhakad is an advocate by profession and he did property title search, sell and loan work for the bank and respondent No.1 in his nomination form suppressed the interest income accrued on the amount deposited in the saving banks and in the FDR and he also suppressed the income earned from title search. The respondent No.1 voluntarily suppressed his above income in the affidavit filed alongwith the nomination form and it was intended to present a good image to the public, due to this he lost fifteen thousand to twenty thousand votes in the election. After the election he has gathered the aforesaid information. The petitioner has proved and exhibited documents Ex.-P/44 to Ex.-P/75.

85. The petitioner has examined Ramlal Bairwa (PW-9) who is the Senior Manager in the Central Bank of India Branch Sandhara District Mandsaur. Ramlal Bairwa categorically stated in his statement that he has produced the bank statement for the period 01/04/2016 to 31/07/2017 and 01/04/2017 to 31/03/2018. He has also produced the term deposit interest certificate of year 2016 and 2017 and as per the term deposit certificate amount of Rs.3,080/- has been given to respondent no. 1 and for the year of 2017-18, as per the term deposit certificate amount of Rs.2,244/- has been given as an interest to respondent No.1. He has also produced a letter dated 04/05/2007 (Ex.P-80) whereby the respondent No.1 Devilal Dhakad has been permitted to

conduct search report and as per letter Ex.P-80 respondent No.1 has been permitted to conduct the search. Ex.-P/82 is a receipt of Rs.50/- which was deposited by Devilal Dhakad in the Sub Registrar Office. Ramlal Bairwa (PW-9) also produced statement of certificate under Section 2A(a) of Banker's Book of Evidence Act, 1891 (in short Act, 1891) (Ex.-P/84 to Ex.-P/91). From perusal of the aforesaid documents it appears that most of the documents are related prior to last financial year 2017-18 which is relevant for the information regarding the nomination form and its affidavit.

86. Learned counsel for respondent No.1 vehemently argued contended that as per Section 2-A and 2(8) of Act 1891, the certificate has neither produced nor proved by petitioner, therefore, the aforesaid certificates filed by petitioner are not admissible in evidence.

87. The Hon'ble Apex court in case of ***Om Prakash Vs. CBI and Others*** reported in ***(2017) SCC Online Delhi 10249*** held as under:-

“19. As noted above, Section 4 of the Act which provides for a certified copy of the entry in the Bankers' books to be received as prima facie evidence of existence of such entry all legal proceedings is subject to other provisions of the Act which include Section 2A. Section 2A of the Act, inter alia, provides that print-out of the entry or a copy of the print-out is required to be accompanied by a certificate to the effect that it is a print out of such entry by the principal accountant or a Branch Manager and a certificate by incharge of the computer system containing a brief description of the computer system and the particulars. Further section 2(8)(c) of the Act also provides that the print out of an entry in the book of an account should ensure the accuracy of such print out and contain the certificate in accordance with provisions of Section 2A

of the Act. Thus, a computer print out of the entries in the book which does not contain certificate as provided under section 2A of the Act would not be a certified copy within the meaning of Section 2(8) of the act and would not be then admissible as the original entry itself under section 4 of the Act.”

88. Although despite of objection raised by respondent No.1 the court has exhibited all these certificates, but it is settled principle of law that if the document is *per se* inadmissible then even if marked as exhibit, the same cannot be read in evidence.

89. It is also noteworthy that during the evidence of Ramlal Bairwa (PW-9), petitioner raised an objection that certificate produced by the petitioner is not according to the law as laid down by the Hon'ble Apex court in case of *Arjun Panditrao Khotkar Vs. Kailash Kushanrao Gorantyal* reported in *(2020) 7 SCC 1* and petitioner be directed to produce the bank statement and interest certificate according to the law but then again the petitioner filed the aforesaid certificates which are not fulfilled the requirements of section 2-A (a, b, c) of Act, 1891. From perusal of the certificate Ex.-P/87, P/91, P/93, P/95, P/97, P/99, P/101, P/103, P/105 and P/107, in the eleventh line after the words 'obtained by' there is a blank in all these certificates. Therefore, all these certificates are incomplete and not according to the requirement of Section 2A of Banker's Books of Evidence Act 1891 and these certificates are not issued by the person in-charge of the said computer system. Therefore, all these incomplete and defective certificates can not be admissible in evidence.

90. It is also noteworthy that interest on the savings bank

accounts and interest in the FDR is neither a source of income nor a source of livelihood. Therefore, above facts are not required to be disclosed in the nomination form (Form 26). The interest on the FDR as per the certificate produced by petitioner was credited in his account after submitting the nomination form. Therefore, it cannot be said that at the time of filing the nomination form respondent No.1 was having any interest income on the aforesaid fixed deposit.

91. Learned counsel for the petitioner submitted that income earned from saving bank accounts is also an income and as per Section 80-TTA of Income Tax Act the same is exempted from taxation.

92. As such so far as the interest on the saving bank accounts are concerned, it is based upon balance on saving accounts and interest is not received separately by respondent no. 1 and it is accumulated in the saving bank accounts, which has been duly disclosed by respondent No. 1 in his nomination form. Therefore, petitioner has failed to prove that respondent no. 1 has suppressed any kind of income earned through interest from the saving bank accounts or FDRs. The exemption applies only when the income is declared. However, the interest income is an income taxable under section 56 of Income Tax Act but argument of learned counsel for the petitioner has no force because it is proved that as per the Banking Rules saving interest is not a source of income.

93. Apart from the above even assuming contention of facts from the perusal of these documents proved by the petitioner, it is apparently shows that from the term Deposit Interest Certificate (Ex.-P/90) in which the interest amount is only Rs.2,244/- per year, in Ex.-

P/102 the interim amount is Rs.381/- per year and in Ex.-P/106 the interest amount is only Rs.3,306/- per year. It is quite clear that such small amounts of interest cannot be treated as sufficient income for anyone, therefore, if it may found prove, such less amount cannot materially affect the mind set of the voters.

94. However, the petitioner has placed reliance upon the judgment of the Hon'ble Apex Court in the case of *Tuticorin Alkali Chemical and Fertilizers Ltd, Madras Vs. Commercial Income Tax, Madras* reported in (1997) 6 SCC 117, but in the same case, Hon'ble Apex Court held that the interest earned by Corporated Companies at pre-business stage by investing part of borrowed funds, it is taxable income as "income from other sources" and it is not adjustable against the interest paid on borrowing, even if the interest so paid could be capitalized after commencement of business, but it is to be seen that interest income may be taxable income for the purpose of income tax, but it is treated as a source of income, therefore, the law laid down in the said judgment is not applicable in the instant case.

95. So far as the professional income and other income of respondent No.1 from the bank and borrowers for conducting title search is concerned, from perusal of the appointment letter (Ex.-P/80) issued by Central Bank of India Regional Branch Ratlam, it appears that respondent No.1 Devilal Dhakad has authorized to conduct the title search and prepare search report by that letter. It only indicates that petitioner may be entitled to get remuneration upto Rs.400/- for every search. It is not a proof of income of respondent No.1. Although

petitioner has filed certain applications (Ex.-P/44 to Ex.-P/73) for the year 2017-18 regarding conducting the above search, but the petitioner has failed to prove any relevant document to establish that fee for every title search was paid to respondent No.1 Devlal Dhakad. The petitioner Subhash Kumar Sojatia himself admits in para 27 of his cross examination that he has not file any document to show that any amount has been paid to respondent No.1 for the title search. Ramlal Bairwa (PW-9) also admits the same in para 11 of his cross examination. The petitioner did not produce any receipt of alleged fee for the aforesaid title search paid to the respondent No.1. Even petitioner did not produce any alleged acquired fees for the property search had deposited in the bank account of respondent No.1. Therefore, in absence of the material evidence the petitioner completely failed to prove the income of respondent No.1 from the work of title search.

96. On the contrary, the respondent No.1 has examined Sunil Jain (DW-6) and Bajarang Lal Patidar (DW-7), both of them categorically stated that they had appointed respondent No.1 Devlal Dhakad for conducting title search of property for the purpose of the bank loan, but they did not pay any amount for the same to respondent No.1. On the basis of the aforesaid cogent evidence, this Court is of the considered opinion that respondent No.1 did not get any fees or professional charges for the work of title search from the any borrower or the bank, therefore, it is clear that he did not suppress his income from the aforesaid professional work.

97. Although respondent No.1 has filed certain affidavits (Ex.-

D/32 and Ex-D/20) in order to demonstrate that he did not receive any fees from the persons for title search, objection raised by petitioner during cross-examination of respondent no. 1 in respect of marking affidavits as Exhibits as they cannot be treated as evidence and this Court was deferred the adjudication of the objection at the stage of final hearing. It is quite clear that Ex-D/13 to Ex.-D/20 are only affidavits and they cannot be treated as primary evidence, therefore, these affidavits cannot be looked into as they are not the part of evidence. Accordingly, the objection raised by the petitioner is allowed.

98. The petitioner also filed judgment of Hon'ble Apex Court delivered in the case of *Lok Prahari Vs. Union of India and others* reported in *(2018) 4 SCC 699*, in which, Hon'ble Apex Court held that non-disclosure of assets and source of income would amount to undue influence and corrupt practice under section 123(2) of R.P. Act, 1951. The aforesaid judgment is based on non-disclosure of own assets, but in the instant case is not a case of total non-disclosure of assets and liabilities. The respondent No.1 has disclosed all the basic details of Bank Account and FDs and furnished his income in the affidavit filed along with nomination form (Ex.-P/7) and it shows that he earned Rs.1,80,000/- from rent, Rs.3,00,000/- per year from Meesha Bandi Pension and Rs.3,00,000/- per year from agriculture income and his wife's income is Rs.2,00,000/- per year from agriculture. In para 8, respondent No.1 *bonafidely* discloses all his bank accounts and deposited amounts. In the election petition, no specific allegation has been levelled against the respondent No.1. Any allegation cannot be

proved merely on the basis of any conjecture and surmises, therefore the provision of section 123(2) of RP Act is not attracted in the instant case.

99. On the basis of aforesaid analysis, this Court is of the considered opinion that the petitioner has failed to prove his case about this issue beyond reasonable doubt that respondent No.1 has suppressed interest income earned by him from saving banks accounts, fixed deposits and his professional income or other income from the bank and individual by conducting the title search, therefore, the relevant provision of section 123(2) and 123(4) of RP Act is not attracted in the instant case.

100. Accordingly, the finding given on the above issue No.4 is “not proved”.

ISSUE NO.5

101. The petitioner to prove this issue No.5 examined himself as PW-1, eye witnesses Kamlesh Joshi (PW-2), Harish Mermat (PW-3), Mahendra Singh (PW-4) and CD writer B. K. Ratnawat (PW-12). In rebuttal respondent No.1 has examined himself as DW-1, Rajesh Kumar Sethiya (DW-3) and Jagdish Soni (DW-5). The petitioner has categorically pleaded in this regard from paragraph No.19 to 24 of the election petition and respondent No.1 in his written submission pleaded from paragraph No.20 to 23. The petitioner relied upon the documentary evidence from Ex.-P/76, P/77, Article-A and Ex.-P/109. On the contrary, respondent No.1 did not produce any other documentary evidence regarding this issue.

102. About this issue, petitioner has alleged that the public

meeting held on 17/11/2018 at New Bus Stand, Garoth, Jagdish Soni sought votes in the name of caste, religion and community with the consent of respondent No.1 and his election agent Rajendra Jain and accordingly committed corrupt practice as defined under Section 123(3) of RP Act. The burden lies upon the petitioner to strict prove thereof.

103. It is admitted by the respondent No.1 in his written submission that public electoral meeting was organized by him on 17/11/2018 and in that meeting Jagdish Soni gave public speech in support of respondent No.1 and Rajendra Jain was the election agent of respondent No.1, but respondent No.1 specifically denied all other allegations levelled against him by stating that Jagdish Soni did not seek votes on the basis of caste, religion and community and no consent was given by the respondent No.1 and his election agent Rajendra Jain to Jagdish Soni to deliver the aforesaid speech.

104. Petitioner Subhash Kumar Sojatia (PW-1) deposed that on 17/11/2018 a public meeting was held at Bus Stand, Garoth, which was scheduled to be presided by Shri Shivraj Singh Chouhan (the then Chief Minister of Madhya Pradesh), but before his arrival Jagdish Soni, who is the senior leader of Bharatiya Janata Party and acts as a President of Nagar Panchayat, Shamgarh made a public speech in order to seek votes in favour of respondent No.1 and Bharatiya Janata Party as Shri Shivraj Singh Chouhan had constructed a temple of *Shri Rupsinghji Maharaj*, who is the *Aaradhya Dev* of *Banjara* Community at Melkheda. He has also appealed to the *Banjara* Community to caste their votes in the name of *Kuldevta Shri Rupsinghji Maharaj*. The petitioner Subhash Kumar

Sojatia also deposed that Jagdish Soni made such appeal with the consent of respondent No.1 and his electoral agent and public meeting was organized with the permission of Returning Officer (Ex.-P/76). He has also obtained CD and certificate under Section 65-B of the Indian Evidence Act from the Tehsildar, Garoth in respect of the public meeting. The word to word transcript of the CD is available in paragraph No.20 of the election petition and List of OBC issued by the Madhya Pradesh Government is Ex.-P/77 in which the *Banjara* Community is declared as backward community.

105. In support of his contention, learned Senior Counsel for the petitioner placed reliance upon the judgment delivered in the case of *Arjun Panditrao Khotkar Vs. Kailash Kushanrao Gorantyal and Others* reported in (2020) 7 SCC 1, wherein the apex Court in paragraph No.51 has held as under:-

“51. On an application of the aforesaid maxims to the present case, it is clear that though Section 65-B(4) is mandatory, yet, on the facts of this case, the respondents, having done everything possible to obtain the necessary certificate, which was to be given by a third party over whom the respondents had no control, must be relieved of the mandatory obligation contained in the said sub-section.”

106. Kamlesh Joshi (PW-2), Harish Mermat (PW-3) and Mahendra Singh (PW-4) have been examined as eye-witnesses to the public meeting dated 17/11/2018 and all these witnesses have categorically stated that speech was delivered by Jagdish Soni in the presence of Rajendra Jain, who is the election agent of respondent No.1

and Jagdish Soni in his speech made appeal to the *Banjara* Community to cast their votes in favour of respondent No.1 as Shri Shivraj Singh Chouhan, the then Chief Minister had declared construction of temple of *Shri Rupsinghji Maharaj*. Kamlesh Joshi (PW-2) also stated that there are about 25 to 30 thousand voters of *Banjara* Community lived in the Garoth Constituency.

107. In rebuttal, respondent No.1 Devilal Dhakad deposed in paragraph No.11 of his deposition that without his permission Jagdish Soni delivered his address and even at that time he was not present there, but Jagdish Soni did not made any such address, which affected the voters on the basis of caste, religion and community. Although the respondent No.1 Devilal Dhakad in paragraph No.31 of his cross-examination admits that he has given an application (Ex.-P/76) to the Assistant Returning Officer for organizing the aforesaid public meeting, which was presided by the then Chief Minister Shri Shivraj Singh Chouhan, however, he was not personally present there as he went to Helipad to receive the Chief Minister. Jagdish Soni in his address only mention about the temple of *Kuldevta* of *Banjara* Community *Shri Rupnarayanji Maharaj*, when they went from there at that time *Banjara* Community welcome them. He himself did not make any complaint about the address of Jagdish Soni, because there was nothing objectionable in his address.

108. Rajesh Kumar Sethiya (DW-3) clarify that he was present in the public meeting held on 17/11/2018 at Garoth and Jagdish Soni delivered his speech, but no one has made any complaint regarding the

address delivered in the public meeting.

109. Jagdish Soni (PW-5) deposed that on 17/11/2018 he went in the public meeting, which was being presided by the then Chief Minister, but before arrival of the Chief Minister, he has delivered his address on the stage and no prior intimation was given to him to make such a speech and his name was not included in the list of persons, which were supposed to deliver their speeches. It is true that he was seeking votes in favour of Devilal Dhakad. Jagdish Soni admits that he said that Congress Party did not made any effort to build temple for *Banjara* Community and temple of *Shri Rupsinghji Maharaj* was constructed by Shri Shivraj Singh Chouhan. However, that temple was built four years before the election. Jagdish Soni categorically denied in his cross-examination that he has made appeal to caste votes in favour of respondent of respondent No.1 on the basis of the construction of the temple and caste and community.

110. Learned counsel for the respondent further submits that Kamlesh Joshi (PW-2), Harish Mermat (PW-3) and Mahendra Singh (PW-4) are the interested witnesses. Kamlesh Joshi (PW-2) admits in his cross-examination that he is taking care of the political work of petitioner Subhash Kumar for last 17 years and for the same period he also did some private job with the petitioner and petitioner is regularly paying him monthly salary. Time to time petitioner has also extended financial aid to him. He was always with the petitioner for his political work as well as for Court proceedings.

111. Harish Mermat (PW-3) also admits in his deposition that he

knows the petitioner since his childhood and he worked with the petitioner from 2001 to 2007 and after he is still working with the petitioner since 2018. He taking care of the School, College and Agricultural work and other personal work of residence of the petitioner. Mahendra Singh (PW-4) also admits in his cross-examination that he has worked with the petitioner from the year 1998 to 2003 and still he is working with the petitioner and is helping him in his political field.

112. Therefore, from perusal of the statements of all these three witnesses, it is quite clear that these three witnesses belong to petitioner's political party "Congress". For last so many years they are working with the petitioner and are getting financial aid from the petitioner, therefore, contention of respondent No.1 is that all these witnesses appears to be interested witnesses of petitioner.

113. The High Court of Chhattisgarh in the case of *Brijmohan Singh Vs. Saroj Pande* reported in *AIR 2013 Chh 141* in para 33 has held as under:-

"33. The Supreme Court, in the case of Surinder Singh vs. Hardial Singh (AIR 1985 SC 89) (supra) has held that merely on statements of the witnesses who are essentially party workers or supporters a charge of corrupt practice cannot be taken as proved. Oral evidence, particularly, coming from tainted source, cannot form the sole basis of proof of corrupt practice."

114. Petitioner has not examine any independent resident of Village Bhanpura in his evidence. All the three witnesses did not narrate about the aforesaid speech delivered by Jagdish Soni to any other independent witness. Even they did not make any complaint before the

District Election Officer or Election Commissioner. Hon'ble the apex Court in the case of *Borgaram Deuri Vs. Premodhar Bora and Another* reported in (2004) 2 SCC 277, wherein it has been held that “the court should be on its safe guard while evaluating the testimony of interested witnesses observed that they must be subjected to a closer scrutiny”. The testimony of all these three witnesses is not corroborated by any independent witness, therefore, the evidence of Kamlesh Joshi (PW-2), Harish Mermat (PW-3) and Mahendra Singh (PW-4) cannot be believed and they cannot be considered as credible and reliable witnesses.

115. Learned counsel for the respondent No.1 contended with force that the certificate issued under Section 65-B of the Indian Evidence Act, 1872 regarding the public meeting was not in accordance with the provision of the said Act, therefore, the contention of above CD is not admissible in the evidence. B.K.Ratnawat (PW-12) has categorically admits in his cross-examination that he has not prepared the CD and he has prepared the certificate as per the provisions of Section 65-B of the Indian Evidence Act and CD is prepared by a Computer, which was not under his control. B. K. Ratnawat also admits in paragraph No.4 of his cross-examination that he was not duly authorized by the District Election Officer for issuing the aforesaid certificate and nothing has been mentioned in the Ex.-P/109 that on which date the DVD was prepared.

116. It is true that B.K. Ratnawat (PW-12) did not produce any CD / DVD or any other device before the Court along with the aforesaid certificate. Initially he has prepared the aforesaid certificate on a plain

paper, which was signed by him along with Tehsildar and thereafter, he downloaded the draft of the affidavit from the net and after filling, it has produced the same before this Court. But he did not know as and when the data is uploaded or saved in the computer. It is true that in Ex.-P/109 numbers of Motherboard and Processor are not mention. B. K. Ratnawat also admits in paragraph No.8 of his cross-examination that in the Ex.-P/109 it has been written that “computer owned by him, but it is a computer of Nagar Panchayat and DVD was prepared by Vikram Verma, who is an operator in the Nagar Panchayat”. Petitioner did not examine the aforesaid material witnesses Vikram Verma, who has prepared the concerned DVD.

117. Hon'ble the apex Court in the case of *Anvar P.V. Vs. P. K. Basheer and Others* reported in (2014) 10 SCC 473 in paragraph No.14 has held as under:-

“14. 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.”

118. Hon'ble the apex Court again in the case of ***Sundar @ Sundarrajan Vs. State of Inspector of Police*** reported in **2023 SC OnLine SC 310** held that “therefore, the law is now settled : a Section 65-B certificate is mandatory in terms of this Court's judgment in *Anvar P.V.* as confirmed in *Arjun Panditrao Khotkar*”.

119. In view of the aforesaid judgments, it is crystal clear 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.

120. In the present case, when during the evidence the CD was exhibited, then the respondent No.1 has raised an objection regarding its admissibility. It is also noteworthy that even playing the DVD before the Court showing that speech of Jagdish Soni (DW-5) was not recorded in continuance. Hence, it is an evidence of tempering or manipulating with the CD. The contents of CD are not admissible in evidence, therefore, any possibility of tempering or manipulating with the aforesaid CD cannot be ruled out. Hence, in these circumstances the aforesaid CD became doubtful.

121. It is highly surprised that the speech of Jagdish Soni is of about 15 minutes only, but the data of his speech captured four CDs. Although one CD is more than sufficient to save the aforesaid audio data of 15 minutes pseech, therefore, preparation of the aforesaid four CDs appears to be very doubtful.

122. At this stage, it is pertinent to mention that the certificate Ex.-P/109 was prepared in respect of the first CD, which was produced before this Court, but during the evidence, it has been gathered that the

first CD produced before this Court was found in broken and damaged condition, therefore, this Court had directed for producing the second CD and subsequent certificate under Section 65-B of the Evidence Act has been issued pursuant to the direction issued by this Court and the Hon'ble apex Court vide order dated 12/12/2022 passed in SLP (C) No.20925-20926/2022, but actually certificate Ex.-P/109 was given in respect of earlier CD, therefore, this certificate is not found just and proper.

123. In view of the above, it is clear that the certificate issued under Section 65-B of the Indian Evidence Act, 1872 is not in accordance with the provisions of the said Act, therefore, the content of above CD is not admissible in the evidence.

124. So far as the consent of respondent No.1 and his electoral agent Jagdish Soni for delivering his address on behalf of the respondent No.1 is concerned, learned Senior Counsel for the petitioner argues that such consent should be presumed by circumstances. In the case of ***Jagdev Singh Sidhanti Vs. Pratap Singh Daulta and Others*** reported in ***AIR 1955 SC 183*** in paragraph No.12 has held as under:-

“12. It may be remembered that in the trial of an election petition, the burden of proving that the election of a successful candidate is liable to be set aside on the plea that he was responsible directly or through his agents for corrupt practices at the election, lies heavily upon the applicant to establish his case, and unless it is established in both its branches i.e. the commission of acts which the law regards as corrupt, and the responsibility of the successful candidate directly or through his agents or with his consent for its practice not by mere preponderance of probability, but by cogent and reliable evidence beyond any

reasonable doubt, the petition must fail. The evidence may be examined bearing this approach to the evidence in mind.”

125. Hon'ble the apex Court in the case of ***Surinder Singh Vs. Hardial Singh*** reported in ***(1985) 1 SCC 91*** has held that “consent of the candidate for holding out threat to the voters, voters free exercise of electoral vote must be specifically pleaded and proved beyond reasonable doubt.”

126. With regard to the aforesaid contention, petitioner did not examine any witness, who would deposed that before him respondent No.1 or his election agent against Rajendra Jain has given consent for delivering the aforesaid speech. However, respondent No.1 had included the name of Rajendra Jain in his list of witnesses, but during the trial unfortunately Rajendra Jain expired and due to his sad demise the factum of aforesaid consent was remained unproved. It is quite clear that the name of the Jagdish Soni was not mentioned in the list of persons, which were supposed to deliver their speeches and he was not initially informed to give any intimation for delivering his speech, therefore, in absence of the above, it cannot be said that he was duly authorized by the respondent No.1 and his election agent for delivering the said speech.

127. Apart from the above, it is also important that the transcription provided in the election petition is not prepared by the petitioner himself and he did not examined the relevant person, who has prepared the aforesaid transcription, the transcription is not duly verified

and signed by its writer. Therefore, the said transcription is not admissible in the evidence. Even otherwise, the contents of transcription of the CD do not provide any clinching evidence to show that Jagdish Soni was seeking votes on the basis of caste, religion and community. Therefore, the provisions of Section 123(3) of RP Act is not attracted in the instant case.

128. On analyzing the materials available on record, it is, therefore, evident that the petitioner has failed to prove the charges of “corrupt practice” against the respondent No.1 herein by adducing clear-cut evidence, which can be said to be wholly credible and reliable. A charge of corrupt practice cannot be proved by preponderance of probabilities. The charges of corrupt practice are needed to be proved beyond reasonable doubt, which the petitioner failed to do. It is beyond any cavil that the allegations of corrupt practice must be pleaded strictly in terms of Section 83 of the RP Act and proved beyond all reasonable doubt.

129. Learned counsel appearing on behalf of the respondent No.1 submits that Temple of *Shri Rupsinghji Maharaj* had already been constructed four years before the election, therefore, it cannot be said that respondent No.1 sought any vote for construction of aforesaid temple. In the instant case, it is not proved that Jagdish Soni with the consent of respondent No.1 or his election agent Rajendra Jain delivered the aforesaid speech. Jagdish Soni was not representative of the returned candidate and therefore, it cannot be said that by such appeal, election of petitioner was materially affected and it is not established that the

respondent No.1 was indulged in any kind of corrupt practice.

130. In view of the aforesaid, this Court is of the considered view that that in light of the pleadings of both the parties, oral as well as documentary evidence available on the record and also on the basis of the settled legal principles laid down by the apex Court in the cases referred herein above, it is clear that the petitioner utterly failed to prove the charges of “corrupt practice” levelled by him against the respondent No.1 under Section 123(1) of RP Act. The evidence has been adduced by the petitioner without laying any foundation in the pleadings. The evidence adduced is also not sufficient, cogent, clinching or trustworthy so as to hold the respondent guilty for corrupt practice. Hence, it is held that petitioner has failed to prove issue No.5.

131. Accordingly, finding is given on issue No.5 as “**not proved**”.

ISSUE NO.6

132. At this issue, the petitioner raised plea that affidavit of non-disclosure of interest income, professional income and details Government leased premises and outstanding Government dues/lease in the affidavit and nomination form of respondent No.1 is improperly acceptable and not complied with the provision of RP Act . For proving this issue absolutely, heavy burden lies upon the petitioner.

133. Hon’ble Apex Court in the case of *Krishnamurthy Vs. Sivakumar* reported in *(2015)3 SCC 467* in para 63 has categorically held that “thus, if the corrupt practice is proven on the foundation of Section 100(1)(b), the High Court is not advert to the facet whether

result of the election has been materially affected, which has to be necessarily recorded as a finding of a fact for the purpose of Section 100(1)(d)(ii).”

134. The Supreme Court further in para 64 relied upon the judgment delivered by in the case of *Sumant N. Balkrishna Vs. George Fernandez* reported in (1969) 3 SCC 238, where it was held that “if we were not to keep this distinction in mind there would be no difference between section 100(1)(b) and 100(1)(d) in so far as an agent is concerned. We have shown above that a corrupt act *per se* is enough under section 100(1)(b).” In para No. 65, it has been further held that “if the corrupt practice, as envisaged under section 100(1)(b) is established, the election has to be declared void. No other condition is attracted to it.”

135. The petitioner has also placed reliance upon the judgment delivered by Hon’ble Apex Court in the case of *Mopuragundu Thippeswamy Vs. K. Eranna* reported in 2018 SCC Online Hyd.413, wherein para-94, it has been categorically held that “as per the principle enunciated in the cases cited supra, if the Election Petitioner establishes the corrupt practice resorted by by the returned candidate or failure on the part of the returned candidate to furnish the information as contemplated under section 33-A of the R.P. Act, 1951, the question whether the result of the returned candidate was materially affected or not is not a relevant factor to set aside the election of the returned candidate. Hence the submission made by the learned counsel for the respondent has no leg to stand.”

136. But as discussed herein above at the issue Nos.1 to 4 that respondent no. 1 is not liable and he has not committed any kind of suppression of facts with regard to the interest income, professional income, details of government leased premises and outstanding government dues. Improper acceptance of nomination form is provided under section 100(1)(d)(i) of the R.P. Act, 1951. This provision also provides that election can be declared void, if has been proved by virtue of improper acceptance of nomination form and non-compliance of provision of law, the election of returned candidate has materially been affected. The word “materially affected” has been interpreted by Hon’ble Apex Court and it has been held that for seeking declaration or setting aside election on the basis of improper acceptance, proving of materially affected is sine-qua-non therefore, without proving materially affected election of returned candidate cannot be declared as void.

137. In the case of *Santosh Yadav Vs. Narender Singh* reported in (2002) 1 SCC 160, Hon’ble Apex Court held as under:-

“7. The Parliament has drawn a clear distinction between an improper rejection of any nomination and the improper acceptance of any nomination. In the former case, to avoid an election, it is not necessary to further prove that the result of the election has been materially affected. The underlining reasoning for this was well set out by a Constitution Bench of this Court in Surender Nath Khosla and Anr. Vs. S. Dalip Singh & Ors., AIR 1957 SC 242. There is a presumption in the case of improper rejection of a nomination paper that it has materially affected the result of the election. The fact that one of several candidates for an election was kept out of the

arena is by itself a very material consideration. The officer rejecting the nomination paper of a candidate may have kept out the most desirable candidate, the most desirable from the point of view of electors and the most formidable candidate from the point of view of the other candidates, from seeking election and therefore the Parliament felt that an improper rejection of any nomination paper is conclusive proof of the election being void and therefore dispensed with the need of evidence being tendered in proof of the result of the election having been materially affected. On the other hand, in the case of an improper acceptance of a nomination paper, proof is required by way of evidence demonstrating that the coming into the arena of an additional candidate has had the effect on the election in such a manner that the best choice of the electorate was excluded.

8. It is well settled by a catena of decisions that the success of a winning candidate at an election should not be lightly interfered with. This is all the more so when the election of a successful candidate is sought to be set aside for no fault of his but of someone else. That is why the scheme of Section 100 of the Act, especially clause (d) of sub-section (1) thereof clearly prescribes that in spite of the availability of grounds contemplated by sub-clauses (i) to (iv) of clause (d), the election of a returned candidate shall not be avoided unless and until it was proved that the result of the election, in so far as it concerns a returned candidate, was materially affected.”

138. Hon’ble Supreme Court in the case of ***Komeng Dolo Vs. Atum Welly*** reported in ***AIR 2017 SC 2869***) further held that “after such summation, the Court analysed the materials on record and concurred

with the view of the High Court that the appellant, election petitioner, had failed in discharging the heavy burden which lay on her of proving that the result of election, insofar as it concerns the returned candidate, had been materially affected by improper acceptance of the nomination of Shri Naresh Yadav.”

139. Therefore, it is crystal clear that to be successful in election petition for declaration of election of returned candidate to be void, parties must plead and prove that result of election would have substantially and materially affected, but no evidence has been adduced by the petitioner to show that the votes casted in favour of respondent No.1 would have gone to the petitioner, if his nomination paper was not accepted. Only because, the petitioner has got second largest number votes, will not interfere this Court to show a presumption that in case of rejection of nomination paper of respondent No.1, votes would have been gone in favour of the petitioner. The petitioner also failed to adduce evidence that non-acceptance of nomination paper of respondent No.1 would have materially affected the result of the election. There were other contesting candidates and if nomination paper of respondent No.1 was not accepted then said votes could have been casted in favour or petitioner or other contesting candidates. Court will not presume that all votes casted in favour of respondent no.1 could otherwise go in favour of the petitioner. In view of the same, the petitioner has failed to adduce any evidence to show that result of election would have been materially and substantially affected if nomination paper of respondent No.1 was rejected.

140. Although the petitioner has placed reliance upon the law laid down in the case of *Madiraju Venkata Ramana Raju Vs. Peddireddigiri Ramchandra* reported in *(2018) 14 SCC 1* and raised a plea that if the nomination form has been accepted, then no need to prove materially affected. Whereas earlier constitutional Bench of Hon'ble Supreme Court in the case of **Santosh Yadav** (*supra*) has laid down that in case, improper acceptance of nomination paper, election petitioner has to prove that by virtue of such improper acceptance of nomination paper, election has to be materially affected. While passing the judgment of **Madiraju Venkata Ramana Raju** (*supra*), earlier judgment delivered by Constitutional Bench of Hon'ble Supreme Court in the case of **Santosh Yadav** (*supra*) has not been considered, therefore, the law laid down by Hon'ble Supreme Court in the case of **Madiraju Venkata Ramana Raju** (*supra*) is not applicable in the instant case.

141. In the instant case, the petitioner has not pleaded in the entire election petition regarding how the election has been materially affected by virtue of non-disclosure of alleged government dues, rented premises income, therefore, for want of such pleadings and the evidence, there is no iota of evidence that election of the petitioner is materially affected by virtue of improper acceptance of nomination form of respondent no.1. Hence, the plea of corrupt practice under section 123 of R.P. Act, 1951 is not proved. It has been held that acceptance of nomination form was not illegal. Resultantly, issue no. 6 is also answered in **negative**.

ISSUE NO.7

142. This Court has already decided issue No.7 *vide* order dated 16/01/2020.

ISSUE NO.8

143. Petitioner by virtue of this petition is not only seeking relief for setting aside the election of respondent No.1, but also seeking relief to declare himself as an elected candidate of Garoth constituency. The petitioner neither pleaded nor adduced any evidence that if the respondent No.1 is not elected or by virtue of such alleged corrupt practices, he would get the entire vote then he is not entitled to any relief. It is a settled principle of law that whenever there are more than two contesting candidates, if the election of one candidate is declared *void* on the basis of corrupt practices, then the other candidate cannot be declared as an elected candidate, because it is not necessary that the voters who had casted their votes to the returning candidate, if his election was cancelled then all the voters would had caste their votes in favour of the petitioner, therefore, merely on the basis of guess and surmises, a person cannot be declared as an elected candidate, therefore, petitioner has no right to be declared as an elected candidate.

ISSUE NO. 9

144. Burden to prove this issue No.9 lies upon the respondent No.1.

145. Respondent No.1 regarding this issue has categorically pleaded in Para 13.9 of the written statement. Such pleadings were not rebutted by the petitioner. Respondent No.1 contended that petitioner himself made encroachment and due to the alleged immoral conduct of

encroachment, he is disqualified or illegible for declaring as an elected candidate from Constituency No.227, Garoth, District Mandasaur in the General Election for M.P. State Legislative Assembly held in November, 2018.

146. Respondent No.1 Devlal Dhakad (DW-1) in Para-38 of his deposition fairly admits that the petitioner's aforesaid encroachment is about 15 years old, but the document Ex.D/1 to D/5 are the documents for the proceedings which was held 4 years prior to the election and he has not given any prior notice to the petitioner regarding these documents, because he himself was not aware about these documents and only about one year ago he has first time came to know about these documents. He admits that all the proceedings were held during the era of BJP government. Respondent No.1 except himself did not examine any other witness in order to prove the issue No.9.

147. Petitioner Subhash Kumar Sojatia (PW-1) in Para 44 of his statement admits that in the year 2000 Dr. R.M. Sojatia Trust has been established and from the year 2000 to January 2021 he was remained President of the aforesaid Trust and then he resigned from both the posts of President and Trustee. It was a public trust and registered before the Registrar as per the bye-laws of the Trust and Trust is made for the public welfare. It is true that in the year 2018 he was President of the Trust. At the time of contesting Legislative Election, 2018 on 29/12/2022 Naib Tehsildar has given notice (Ex.D/1) under Section 248 of the M.P. Land Revenue Code and demarcation report (dated 01/12/2022) is Ex.-D/2. Because he was not the president at that time,

therefore, he did not challenge the demarcation report before any other court and he has filed a simple reply before the Naib Tehsildar that at present he is not the president of the Trust so notice be issued to the present president. Thereafter Naib Tehsildar vide order dated 30/01/2023 passed an order to remove the encroachment, that order is Ex.-D/3 and the same was also not challenged by him. Then, encroachment was removed as per the decision taken by the Trust in meeting dated 31/01/2023 and as per the aforesaid order it has been found that Trust has encroached upon the government land since last 20 years and he has not mentioned about such encroachment in his nomination form because there was no such column in the nomination form regarding the trust land. Petitioner Subhash Kumar Sojatia also admits that his family runs Vilakshan Jyoti Goshala, but it has not proved that he has encroached upon the government land for the purpose of Goshala. Petitioner did not examine any other witness regarding this issue.

148. From perusal of the order passed by the Naib Tehsildar, Bhanpura in Revenue Case No.0159/A-68/2022-23 (Ex.-D/3) it appears that above order was passed against the Trust and at the time of passing the aforesaid order, petitioner was not President of the aforesaid trust and Mr. Anand Kumar Sojatia was the President of the aforesaid trust and later on he has been made party in the same revenue case and order (Ex.-D/3) has been passed against Anand Kumar Sojatia, Sundar Bai and Mangilal Banjara. Therefore, it cannot be said that the aforesaid order for removing the encroachment has been passed against the petitioner. Accordingly, the same order (Ex.-D/4) is also against the said Trust.

Therefore, it is quite clear that the petitioner was not party at the time of passing of the said order in revenue case. Although the petitioner was President of the aforesaid Trust at the time of contesting the M.P. State Legislative Assembly Election, 2018, but at the time of filing of the nomination form he was not held as encroacher and no such order has been passed against him. Therefore, he was not duty bound to mention all these facts in his nomination form.

149. Learned counsel for the respondent No.1 contended that pleadings of respondent No.1 regarding this issue was not rebutted by the petitioner, therefore, it amounts to the admission. In rebuttal the petitioner submits that respondent No.1 did not comply the provisions regarding recrimination, therefore, respondent No.1 has failed to prove the issue No.9. It is noteworthy that plea of taking recourse of Section 97 of the RP Act has already been rejected by this Court vide order dated 20/03/2023 and the petitioner has challenged the same before the Hon'ble Apex Court by filing SLP No.6356-6358/2023, but the same was affirmed by the Hon'ble Apex Court vide order dated 10/04/2023. Therefore, respondent No.1 is entitled to adduce evidence regarding this issue.

150. The relevant provision of Section 97 of Representation of the People Act is reproduced as under:-

“S.97 – Recrimination when seat claimed- (1) When in an election petition a declaration that any candidate other than the returned candidate has been duly elected is claimed, the returned candidate or any other party may give evidence to prove that the election of such candidate would have been void if he had been the returned

candidate and a petition had been presented calling in question his election:

Provided that the returned candidate or such other party, as aforesaid shall not be entitled to give such evidence unless he has, within fourteen days from the date of [commencement of the trial], given notice to [the High Court] of his intention to do so and has also given the security and the further security referred to in section 117 and 118 respectively.

*(2) Every notice referred to in sub-section (1) shall be accompanied by the statement and [***] particulars required by section 83 in the case of an election petition and shall be signed and verified in like manner.”*

Looking to the object and scheme of Section 97, it is manifest that the provisions of Section 117 and 118 of RP Act must be applied *mutatis mutandis* to proceeding under Section 97 of the RP Act. The recriminator must produce a government treasury receipt showing that a deposit of Rs.2,000/- has been made by him either in a Government Treasury or in the Reserve Bank of India in favour of the Election Commission as cost of recrimination. If the recriminator fails to give the requisite security under Section 117 and 118 of the RP Act at the time of giving the notice of recrimination, he loses the right to lead evidence under Section 97 and the notice of recrimination stands virtually rejected.

151. The constitutional Bench of Hon'ble apex Court in the case of *Ravindra Nath Vs. Raghbir Singh and Another* reported in (1968) 1 SCR 104 : AIR 1968 SC 300 has categorically held that “if the security cost is not deposited along with the notice to recrimination then the recriminator loses his right to lead evidence under Section 97 of the RP

Act and recrimination notice stands virtually rejected.”

152. As per Section 79(b) of the RP Act definition of candidate means a person who has been claimed to have been duly nominated as candidate in any election. Undoubtedly a person becomes a candidate only after filing the nomination form of candidature and after declaration of the result of the election, candidature automatically finishes. Respondent No.1 has incorporate the aforesaid amendment in Para 13.9 of the written statement in the month of December, 2022. As per the provisions of Section 86(4) of the RP Act it is quite necessary to issue a 14 days clear notice to the opponent from the date of commencement of the trial is mandatory and as per the provision of Section 94 of the RP Act, depositing of the security amount is also quite mandatory, but the respondent No.1 Devlal admits in para 38 of his deposition that he has not given any notice to the petitioner regarding the documents Ex.-D/1 to D/5 within 14 days from the commencement of the trial. Even respondent No.1 did not produce any relevant document that he has deposited the security amount within the scheduled period. Therefore, as the non compliance of the aforesaid statutory requirement, respondent No.1 has failed to prove the issue No.9.

153. Accordingly, answer to issue No.9 is given as “**negative**”.

154. In view of the findings recorded by this Court against the petitioner with regard to issue Nos.1 to 6, petitioner has failed to prove all these issues. In this situation the election petition deserves to be dismissed.

155. Accordingly, the election petition is hereby dismissed. The

petitioner shall bear his own costs and costs of the respondent No.1 and other respondents shall bear their own costs.

156. The Registry is directed to send an authenticated copy of this order to the Election Commission of India and Speaker of Madhya Pradesh Legislative Assembly as provided for by Section 103 of the RP Act, at the earliest. The articles or record of Election Commission received, if any, by Registry / Principal Registrar of this Court be returned back to the concerned authority.

157. Before parting with the order, this Court would like to express its gratitude towards Shri Ravindra Singh Chhabra, learned Senior Counsel for the petitioner and Shri Rohit Kumar Mangal, learned counsel for the respondent No.1, for the efforts they have put in preparing the private paper-books, synopsis and issue-wise written final arguments. These material prepared by both of them helped to a great deal in dealing with large volume of record that was submitted before the Court.

Certified copy as per rules.

(ANIL VERMA)
J U D G E

Tejprakash Vyas