

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

HON'BLE SHRI JUSTICE VIVEK RUSIA

Election Petition No. 38 of 2019

BETWEEN:-

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

.....PETITIONER

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

AND

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

.....RESPONDENTS

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

Reserved on : 31.01.2023.

Pronounced on : 03.02.2023

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

ORDER

The petitioner has filed the present election petition to declare

the election of the respondent / returned candidate as void.

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

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

29.4.2019 Last date for filing of nomination.

30.4.2019 Scrutiny of nomination.

2.5.2019 Last date for withdrawing of candidature.

19.5.2019 Date of Polling.

23.5.2019 Counting of votes.

27.5.201 Date before which the election shall be completed.

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

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

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

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

respect of any polling station or polling stations.

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

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

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

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

Return of the respondent

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

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

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

Issues framed in the Election Petition

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

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

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

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

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

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

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

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

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

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

Submissions of petitioner's counsel

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

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

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

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

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

Submissions of respondent's counsel

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

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

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

Appreciations and conclusion

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

“100. Grounds for declaring election to be void – (1)
Subject to the provisions of sub-section (2) if the High Court is of opinion -
(d) that the result of the election, in so far as it concerns a returned candidate, has been materially affected -
(iv) by any non-compliance with the provisions of the Constitution or of this Act or of any rules or orders made under this Act,
the High Court shall declare the election of the returned candidate to be void.”

The above provision clearly provides the ground for declaring

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

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

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

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

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

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

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

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

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

materially affecting the result of the returned candidate. In other words, the violation or breach or non-observation or non-compliance of the provisions of the Constitution or the 1951 Act or the rules or the orders made thereunder, by itself, does not render the election of a returned candidate void 100(1)(d)(iv). For the election petitioner to succeed on such ground viz., 100(1)(d)(iv), he has not only to plead and prove the ground but also that the result of the election insofar as it concerned the returned candidate has been materially affected. The view that we have taken finds support from the three decisions of this Court in (1) Jabar Singh Vs. Genda Lal³; (2) L.R. Shivaramagowda and Others Vs. T.M. Chandrashekhar (dead) by LRs. and Others.⁴ and (3) Uma Ballav Rath (Smt.) Vs. Maheshwar Mohanty (Smt) and others⁵.

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

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

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

of Kalyan Kumar Gogoi (supra) are reproduced below :

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

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

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

"100. Grounds for declaring election to be void. - (1) Subject to the provisions of sub- section (2) if the High Court is of opinion -

(a) to (c)

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

(i) to (iii)

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

returned candidate to be void."

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

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

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

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

(VIVEK RUSIA)
JUDGE

Alok/-