IN THE HIGH COURT OF MADHYA PRADESH
AT JABALPUR

BEFORE

HON'BLE SHRI JUSTICE VIVEK JAIN

CIVIL REVISION NO. 918 OF 2025.

MOHD SOHRAAB
Vs
MOHD NAFEES AND OTHERS .

Appearance:

Shri Kaustubh Singh - Advocate for the petitioner.
Shri Rashid Suhail Sidiqi- Advocate with Shri Eijaz Nazar Siddiqui, Advocate for the respondent.

(O R D E R)

(Reserved on : 08/12/2025)
(Pronounced on: 20/01/2026)

The present revision has been filed under Section 26(2) of M.P. Municipalities Act 1961 read with Section 151 of CPC.

2. The present petition has been filed by the successful candidate who has been removed from the post by the Election Tribunal of 1st Additional District Judge, Nagaud, District Satna, in EP No. 1/ 2000 vide order dated 22.08.2025.

3. The election tribunal has held that on account of suppression of material facts and particulars in affidavit submitted along with the nomination form, the petitioner is deemed to have conducted corrupt practice and therefore, it was held that the nomination of the petitioner was liable to be rejected, and he is deemed to have committed a corrupt practice. Consequently, the Election Tribunal set aside the

election of the petitioner as councillor of Ward No. 13 of Nagar Parishad Nagod, District Satna. The counsel for the petitioner at the outset submitted that he does not challenge the finding of the Election Tribunal whereby the election of the present petitioner has been declared as null and void for having submitted incorrect information in nomination form and affidavit as to the pending criminal cases and income of the petitioner. The present petition is being pressed only to the extent of the consequential direction made by the Election Tribunal in directing that the present respondent No. 1 who was the runner up in the election, be declared elected in place of petitioner. It is argued that once the election of the petitioner has been set aside on the ground that his nomination was bad in law and that he has committed corrupt practice, therefore the natural consequence would have been to order re-election for the seat, and the election tribunal could not have directed the runner up to be elected.

4. It is argued that the petitioner had obtained 337 votes whereas the respondent No. 1 had obtained 293 votes. If the 337 votes hold in favour of the petitioner are deemed to have got wasted or thrown away on account of declaring the election of the petitioner as null and void, then no consequential direction could have been given to declare the runners up as elected candidate because it cannot be anticipated that the electorate who has travelled to the polling station on the date of election would have voted, if the petitioner was not in the fray as contesting candidate. Therefore, fresh election ought to have been ordered. Learned counsel for the petitioner submits that law in this regard is very well settled and has been so held by the Hon'ble Supreme Court in case of ***Prakash Khandre v. Vijay Kumar Khandre, (2002) 5 SCC 568***, so

also in the case of ***Muniraju Gowda P.M. v. Munirathna, (2020) 10 SCC 192***. It is therefore, argued that this part of the impugned order passed by the election tribunal be set-aside, whereby the election tribunal has declared the first runner up i.e. present respondent No. 1 as elected candidate and the fresh election in the constituency be ordered.

5. *Per contra*, it is vehemently argued by the learned counsel for the respondent No. 1 that there is a sea of difference between Section 101 of the Representation of People Act 1951 and Section 24 of M.P. Municipalities Act. It is argued that as per Section 101 of the Representation of People Act 1951, the election tribunal under the Act of 1951 can pass order to declare another candidate to be duly elected if the High Court deciding the election petition is of opinion that upon deleting the votes obtained by the returned candidate by corrupt practice, the petitioner or any other candidate would have obtained majority of valid votes. It is argued that on the other hand, the language of Section 24 of M.P. Municipality Act is totally different because as per Section 24 of Act of 1961, the word employed as per Section 24(2)(b), are that after deleting the votes obtained by the returned candidate, if the election petitioner or any other candidate would have obtained majority of valid votes, then he can be declared elected. It is therefore, contended that there being a world of difference between the language of Act of 1951 and the State Act of 1961 and therefore, the petition has no merit and deserves to be dismissed.

6. Heard.

7. In the present case, the case has been pressed only on the ground that whether after declaring the election of the present petitioner as null and void, the Tribunal could have ordered the first runner-up to have been declared elected without ordering for a fresh election.

8. Though the counsel for the respondent did not oppose to the broad proposition that in case the election to a contesting candidate is declared null and void, then if there was a multi-cornered contest and there were more than two candidates in the fray, then upon deletion of votes of the successful candidate, the runner-up cannot be declared elected but submits that this would apply only in cases of election governed by Act of 1951 and not by the State Act of 1961.

9. To appreciate the controversy in hand, the relevant provisions of the two Acts are required to be considered. The Act of 1951 in its Section 101 mentions as under: -

> *"**101. Grounds for which a candidate other than the returned candidate may be declared to have been elected**.—If any person who has lodged a petition has, in addition to calling in question the election of the returned candidate, claimed a declaration that he himself or any other candidate has been duly elected and [the High Court] is of opinion—*
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> > *(a) that in fact the petitioner or such other candidate received a majority of the valid votes; or*
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> > *(b) that but for the votes obtained by the returned candidate **by corrupt practices** the petitioner or such other candidate would have obtained a majority of the valid votes, [the High Court] shall, after declaring the election of the returned candidate to be void declare the petitioner or such other candidate, as the case may be, to have been duly elected."*

10. On the other hand, Section 24(2) of M.P. Municipality Act of 1961 mentions the following provision.

> ***24. Decision on election petition. —***
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> *(2) If any person who has filed an election petition has, in addition to calling in question the election or [nomination] of the returned candidate, claimed declaration that he himself or any other candidate has been duly elected or [nominated] and the Judge is of opinion—*
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> *(a) that in fact the petitioner or such candidate received a majority of the void votes; or*
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> *(b) that but for the voted obtained by the returned candidate the petitioner or such other candidate would have obtained a majority if the valid votes; the Judge shall, after declaring the election or [nomination] of the returned candidate, to be void, declare the petitioner or such other candidate as the case may be, to have been duly elected or [nominated].”*

11. It has been vehemently argued by learned counsel for the respondent that in Act of 1951, only in case where the successful candidate has been declared elected by corrupt practices or has garnered votes by corrupt practices, then that much number of votes have to be deleted and it can be seen by the High Court that after deleting such votes obtained by the returned candidate “by corrupt practices”, the election petitioner or any other candidate has obtained majority of valid votes. It was argued that on the other hand, the State Act of 1961 does not contain any such rider and simply mentions in unconditional terms that in every case the election tribunal can see that except the votes obtained by the returned candidate, the election petitioner or any other candidate would have obtained a majority of valid votes and there is no rider for deleting such votes obtained only by corrupt practices.

12. In the present case, heavy reliance was placed by the petitioner on judgment of the Hon’ble Apex Court in the case of ***Prakash Khandre (supra)*** wherein the Hon’ble Apex Court has held that votes obtained by returned candidate would be

treated to be thrown away only in case the electorate had notice of the fact prior to polling in his favour in the election. It was held as under:-

> ***16.*** *The correctness of the said view was challenged before the Constitution Bench. The Court considered various English decisions cited at the Bar and observed that the cases decided by the courts in the United Kingdom appear to have proceeded upon some general rule of election law that the votes cast in favour of a person who is found disqualified for election may be regarded as thrown away only if the voters had notice before the poll of the disqualification of the candidate. Thereafter, the Court pertinently observed but in our judgment the rule which has prevailed in the British courts for a long time has no application in our country. The rule enunciated in U.K. has only the merit of antiquity; the rule cannot be extended to the trial of disputes under our election law, for it is not consistent with our statute law, and in any case the conditions prevailing in our country do not justify the application of that rule. The Court also considered Section 53 of the Act and held that it renders a poll necessary only if there are more candidates contesting the election than the number of seats contested and if the number of candidates validly nominated is equal to the seats to be filled, no poll is necessary and where by an erroneous order of the Returning Officer poll is held which, but for that order, was not necessary, the court would be justified in declaring those contesting candidates elected, who, but for the order, would have been declared elected.*
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> *xx xx xx*
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> ***24.*** *In view of the aforesaid settled legal position, in our view, the impugned order passed by the High Court declaring the election petitioner as elected on the ground that the votes cast in favour of the elected candidate (appellant) are thrown away was totally erroneous and cannot be justified. As held by the Constitution Bench in Konappa case [(1969) 2 SCR 90 : AIR 1969 SC 604 sub nom Vishwanatha Reddy v. Konappa Rudrappa Nadgouda] that some general rule of election law prevailing in the United Kingdom that the votes cast in favour of a person who is found disqualified for election may be regarded as "thrown away" only if the voters had noticed before the poll the disqualification of the candidate, has no application in our country and has only merit of antiquity. We would observe that the question of sending such notice to all voters appears to us alien to the Act and the Rules. But that question is not required to be dealt with in this matter.* ***As stated earlier, in the present case, for one seat, there were five candidates and it would be impossible to predict or guess in whose favour the***

> ***voters would have voted if they were aware that the elected candidate was disqualified to contest election or if he was not permitted to contest the election by rejecting his nomination paper on the ground of disqualification to contest the election and what would have been the voting pattern****. Therefore, order passed by the High Court declaring the election petitioner Dr Vijay Kumar Khandre as elected requires to be set aside.*
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> (Emphasis supplied)

13. The aforesaid case was a case where the candidate was declared disqualified and was not a case of corrupt practice. The counsel for the respondent No. 1 had tried to distinguish the case of **Prakash Khandre** (supra) while contending that in the Act of 1951, if the votes are obtained by corrupt practices, then they have to be deleted whereas in State Act of 1961, if votes are obtained in any manner by the candidate whose election has been declared void, then all his votes have to be deleted and the next candidate who is found to have obtained majority of votes, is to be declared as elected.

14. However, Section 101 of Act of 1951 has also been interpreted by the Hon'ble Apex Court in case of ***Muniraju Gowda*** *(supra)* in the following manner :

> ***20.*** *The ratio in Vishwanatha Reddy [Vishwanatha Reddy v. Konappa Rudrappa Nadgouda, AIR 1969 SC 604] was followed in Thiru John v. Returning Officer [Thiru John v. Returning Officer, (1977) 3 SCC 540] . Though this case concerned election to the Rajya Sabha through single transferable votes, this Court observed in this case that it would be extremely difficult if not impossible, to predicate what the voting pattern would have been, if the electors knew at the time of election that one was disqualified. The Court pointed out that the question as to how many of the voters would have cast their votes in favour of other continuing candidates and in what preferential order, remained a question in the realm of speculation and unpredictability.*
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> ***21.*** *In D.K. Sharma v. Ram Sharan Yadav [D.K. Sharma v. Ram Sharan Yadav, 1993 Supp (2) SCC 117] , this Court followed the dictum in Vishwanatha Reddy [Vishwanatha Reddy v. Konappa Rudrappa Nadgouda, AIR 1969 SC 604]*

to the effect that where there are more than two candidates in the field, it is not possible to apply the same ratio as could be applied when there are only two candidates. This principle was also reiterated in Prakash Khandre v. Vijay Kumar Khandre [Prakash Khandre v. Vijay Kumar Khandre, (2002) 5 SCC 568] , where this Court pointed out : (Prakash Khandre case [Prakash Khandre v. Vijay Kumar Khandre, (2002) 5 SCC 568] , SCC pp. 579-80, para 24)

> *"24. ... in the present case, for one seat, there were five candidates and it would be impossible to predict or guess in whose favour the voters would have voted if they were aware that the elected candidate was disqualified to contest election or if he was not permitted to contest the election by rejecting his nomination paper on the ground of disqualification to contest the election and what would have been the voting pattern."*

***22.** Therefore, apart from the fact that in the election petition, there were no pleadings of material facts co-relatable to the ingredients of clause (a) or (b) of Section 101 of the Act, to sustain Prayer (c), even legally the High Court could not have granted Prayer (c) in view of the fact that there were 14 candidates in the fray.*

15. Hon'ble Apex Court in the aforesaid case followed the ratio in the case of ***Thiru John v. Returning Officer, (1977) 3 SCC 540*** and of the Constitution Bench in ***Viswanath Reddy v. Konappa Rudrappa Nadgouda, reported in A.I.R 1969 SC 604***. In ***Thiru John (supra)***, the judgement of the Constitution Bench in ***Konappa Rudrappa (supra)*** was explained in para-60 to apply only where there are two candidates, and one is disqualified. It was held as under :-

***54.** This takes us to the next question. Should all the votes that had been polled in favour of the candidate (Shri John) who has been found by the Court to be statutorily disqualified for election, be regarded as thrown away, and in consequence, the appellant, Shri Subrahmanyam, who secured 300 votes as against none obtained by Shri Mohana Rangam, be declared elected?*

***55.** Again, the answer to this question, in our opinion, must be in the negative. It is nobody's case that the electors who voted for Shri John, had at the time of election, knowledge or notice of the statutory disqualification of this candidate. On the contrary, they must have been under the impression that Shri John was a candidate whose nomination had been validly accepted by the returning officer.*

Had the electors notice of Shri John's disqualification, how many of them would have voted for him and how many for the other continuing candidates, including Sarvshri Subrahmanyam and Mohana Rangam, and in what preferential order, remains a question in the realm of speculation and unpredictability.

56. *In the view we take, we are fortified by the observations in this Court's decision in R.M. Seshadri v. G.V. Pai [(1969) 1 SCC 27, 37 : AIR 1969 SC 692, 701] . In that case, the election of R.M. Seshadri to the Madras Legislative Council was set aside on the ground that he was guilty of the corrupt practice of hiring or procuring motor vehicles to carry voters. The total votes polled were 12,153. Since the voting was by a single transferable vote, three out of the five candidates were eliminated at different counts with the result that their votes were transferred to the second candidate named in the ballot. At the final count Seshadri received 5643 votes and his nearest rival, G.V. Pai received 5388 votes. The number of the voters who were carried in the hired or procured vehicles could not be ascertained.*

57. *Before this Court, it was contended that the election of Seshadri having been set aside, G.V. Pai, who had polled the next highest number of votes should be declared elected. Hidayatullah, C.J. speaking of the Court, rejected this contention with these observations (SCC p. 37):*

> *"This (question) will depend on our reaching the conclusion that but for the fact that voters were brought through this corrupt practice to the polling booths, the result of the election had been materially affected. In a single transferable vote, it is very difficult to say how the voting would have gone, because if all the votes which Seshadri had got, had gone to one of the other candidates who got eliminated at the earlier counts, those candidates would have won. We cannot order a recount because those voters were not free from complicity. It would be speculating to decide how many of the voters were brought to the polling booths in the cars. We think that we are not in a position to declare Vasanta Pai as elected, because that would be merely a guess or surmise as to the nature of the voting which would have taken place if this corrupt practice had not been perpetrated."*

58. *The position in the instant case is no better. It is extremely difficult, if not impossible, to predicate what the voting pattern would have been if the electors knew at the time of election, that Shri John was not qualified to contest the election. In any case, Shri Subrahmanyam was neither the sole continuing candidate, nor had he secured the requisite quota of votes. He cannot, therefore, be declared elected.*

> ***59.*** *The dictum of this Court in Viswanatha v. Konappa does not advance the case of the appellant, Shri Subrahmanyam. In that case, the election in question was not held according to the system of a single transferable vote. There were only two candidates in the field for a single seat, and one of them was under a statutory disqualification. Shah, J. (as he then was) speaking for the Court, held that the votes cast in favour of the disqualified candidate may be regarded as thrown away, even if the voters who had voted for him were unaware of the disqualification, and the candidate securing the next highest number of votes was declared elected. The learned Judge was however careful enough to add:*
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> > *"This is not to say that where there are more than two candidates in the field for a single seat, and one alone is disqualified, on proof of disqualification all the votes cast in his favour will be discarded and the candidate securing the next highest number of votes will be declared elected. In such a case, question of notice to the voters may assume significance, for the voters may not, if aware of the disqualification, have voted for the disqualified candidate."*
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> ***60. The ratio decidendi of Vishwanatha v. Konappa is applicable only where (a) there are two contesting candidates and one of them is disqualified, (b) and the election is on the basis of single non-transferable vote. Both these conditions do not exist in the present case.*** *As already discussed, Shri Subrahmanyam appellant was not the sole surviving continuing candidate left in the field, after exclusion of the disqualified candidate, Shri John. The election in question was not held by mode of single transferable vote, according to which, a simple majority of votes secured ensures the success of a candidate, but by proportional representation with single transferable vote, under which system the success of a candidate normally depends on his securing the requisite quota.*
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> (Emphasis supplied)

16. The Constitution Bench in ***Konappa Rudrappa (supra)*** has held that the votes polled in favour of returned candidate would be treated as thrown away votes on the grounds that he was disqualified from contesting and the election petitioner was entitled to be declared elected but it cautioned that the rule of exclusion of votes secured by corrupt practice by the returned candidate in computation of total votes and consequential declaration of candidate to secure the next higher number of votes

as newly elected, can be applied only when there are only two candidates at an election.

17. Therefore, it has been conclusively by the Hon'ble Supreme Court that even in cases covered under Act of 1951 and even if the votes are found to have been obtained by corrupt practice then after deleting the votes obtained by corrupt practice, the next candidate can be declared elected only when there were only two candidates in the fray and in case of multi-cornered contest, such an order cannot be passed.

18. In the present case there were as many as seven candidates in the fray and the election petitioner i.e. present respondent No.1 had attained 293 votes whereas another candidate had attained 240 votes and one another candidate had attained 197 votes and upon deleting 337 votes obtained by the present petitioner who was the winning candidate, it cannot be predicted that in which way 337 voters would have voted.

19. Consequently, this court is of the considered opinion that the trial court has gravely erred in declaring the respondent No. 1 as returned candidate in place of the petitioner. Once the election tribunal was holding that on account of material suppression in the nomination and affidavit, the returned candidate had obtained all his votes by corrupt practice, then the only course of action open for the election tribunal in present case, which was of multi-cornered contest, was to order for re-election.

20. The impugned order passed by the election tribunal, is therefore, modified to the extent that the seat of Ward No.13, Nagar Parishad Nagod, District Satna is

declared vacant and the concerned authority shall hold fresh election for the said post of councillor of Ward No. 13 expeditiously as per law, preferably within four months of this order.

21. With the aforesaid direction, to the aforesaid extent, the revision is ***allowed***.

(VIVEK JAIN)
JUDGE

MISHRA