



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

BEFORE

HON'BLE SHRI JUSTICE VIVEK JAIN

CIVIL REVISION No. 464 of 2023

NEETU PARMAR

Versus

VARSHAGADEKAR AND OTHERS

WITH

CIVIL REVISION No. 497 of 2023

ANJALI SHIVHARE

Versus

NEETU PARMAR AND OTHERS

AND

CIVIL REVISION No. 499 of 2023

SHIVKUMAR MAHORE

Versus

NEETU PARMAR AND OTHERS

Appearance:

Shri Sanjay Agrawal - Senior Advocate with Ms. Aishwarya Nandani Tiwari and Shri Aditya Raj Shukla – Advocates for petitioner in respective petitions.

Shri Nikhil Tiwari – Advocate for respondent No.2 in CR No.499/2023.

Shri Rajendra Kumar Mishra - Advocate for respondent No.1 in CR No.464/2023 and for respondent No.2 in CR No.497/2023.

Shri Amit Mishra - Panel Lawyer for respondent-State.

**ORDER****(Reserved on 07.01.2026)****(Pronounced on: 06.04.2026)**

These three revisions under Section 115 CPC read with Section 26(2) of the Madhya Pradesh Municipalities Act, 1961 (for short “**Act of 1961**”) have been filed arising out of the judgment dated 13.06.2023 passed by the Election Tribunal of First District Judge, Multai in Election Petition MJC No.23/2022, whereby the election of the petitioner in CR No.464/2023 has been set aside and declared illegal and void. Consequential directions have been issued to carry out fresh process of election to the office of President, Municipal Council, Multai, Distt. Betul (MP).

2. CR No.464/2023 is filed by the returned candidate whereas CR No.497/2023 and CR No.499/2023 have been filed by the Councillors of Municipal Council who were voters to the election of President in their capacity of electors, but they were not parties to the election petition.

3. The counsel for the respondents has raised serious objection as to maintainability of all the three revisions. So far as maintainability of revisions filed by electors is concerned, it is contended that elector



is having a right to file election petition but once there is a decision given by the Election Tribunal, then as per Section 26(2) any person aggrieved by decision of the Judge on the petition can file revision and the person aggrieved would be the person who would have been party in the election petition or who would have been contesting candidate in the election. Now as the fresh election only has been ordered, therefore, the person who would have been aggrieved is the elected candidate and to that extent, the revision of only elected candidate can be entertained, but of no other party can be entertained and, therefore, the revisions filed by two Councillors in their capacity as electors deserve to be dismissed as not maintainable.

4. So far as the revision filed by the returned candidate is concerned, it is contended that initially in CR 464/2023, this Court had granted stay on 07.08.2023 and the stay order had been challenged before the Hon'ble Supreme Court. Thereafter revision itself had been heard on merits by a coordinate Bench of this Court on 04.10.2023 and it was decided by this Court that since the revision was filed on 01.07.2023 and the security deposit as required under Rule 19(2) of the M.P. Municipalities (Election Petition) Rules has been filed on 03.07.2023 which is two days later to the date of



presentation of the revision, therefore, in terms of the language of Rule 19(2), the revision is not maintainable and it is mandatorily required to be dismissed and, therefore, the coordinate Bench dismissed the revision.

5. The aforesaid order was challenged by the petitioner before the Hon'ble Apex Court in SLP (Civil) No. 1397 of 2024 wherein the Hon'ble Apex Court has directed vide order dated 27.10.2025, that the revision is to be heard on merits.

6. It was contended by learned counsel for the respondents election petitioners that even if the Hon'ble Supreme Court has directed the revision to be heard on merits but even then the Hon'ble Supreme Court has not set aside the order passed by this Court dated 04.10.2023. Therefore, the aforesaid objection still stands because the findings as contained in the order dated 04.10.2023 have neither been set aside nor dealt with by the Hon'ble Supreme Court while reminding the matter back to this Court. It is argued that the merits would mean the questions of maintainability also because once there is provision in mandatory language of Rule 19(2) that revision has to be dismissed for non-compliance of provision of deposit of security,



then that is binding in nature and, therefore, this Court should consider this objection also on merits.

7. Though the Hon'ble Supreme Court has not reserved the said objection to be raised again before this Court after remand, but looking to the arguments of the learned counsel for the respondents that the Hon'ble Supreme Court has not set aside the findings as to non-maintainability of the revision on account of non-compliance of Rule 19(2) and the question, therefore, this Court deems fit that the said question be also dealt with by this Court and deals with the question again in terms of the remand made by the Hon'ble Supreme Court.

8. Though this Court had heard the case within the time limit of three months as fixed by the Hon'ble Apex Court, but at the time of hearing, it was intimated by counsel for respondents that against the remand order dated 27.10.2025, a review petition has been filed at Diary No. 69466 of 2025 but not listed due to defects therein. This Court after hearing the parties had reserved the case for orders, but granted liberty to the parties to intimate if any order is passed in review. However, till date, no progress in pending review has been intimated nor it is intimated as to whether defects have been removed,



or not. Therefore, as the matter was reserved on 07.1.2026, hence, without waiting any more, the present final order is being passed.

9. The question raised is that Rule 19(2) has not been complied and it is not in dispute that the security deposit has not been made on the very same date but has been made after 2 days i.e. on 03.07.2023. The Madhya Pradesh Municipalities (Election Petition) Rules, 1962. (for short referred to as “**Rules of 1962**”) provides in Rule 19(2) as under:-

“(2) At the time of presentation of the petition for revision under sub-section (2) of Section 26 against the decision of the Judge, the petitioner shall deposit with the High Court a sum of Rs.250 as security for the costs of the revision. If the provisions of this rule are not complied with the High Court shall dismiss the petition.”

10. The language of Rule 19(2) is, therefore, mandatory but it is to be seen that whether this Rule 19(2) is in violation of the provisions of the Act, or it merely fills the gap or there is conflict between the Act vis-à-vis the Rules, or there is conflict of Rules of 1962 against the High Court Rules. If Rule 19(2) of the Rules of 1962 only fills up the gap, then their validity has to be adjudged on the anvil of the vires of the said Rules. However, the vires of the said Rules have not been put to challenge, therefore, this Court cannot go into the question of validity of Rules of 1962 and the vires of Rules of 1962 as such.



However, this Court restricts itself to the question whether the Rules of 1962 are in conflict with the parent Act, or with the High Court Rules, or not. In case of conflict, the Rules of 1962 would not apply and the parent Act would apply. High Court Rules shall also apply in case of conflict with Rule 19(2) of Rules of 1962.

11. The Rules of 1962 have been framed exercising powers conferred on the State Government as per Sections 355(1), 355(2)(i) and 23 of the Act of 1961. Section 23 gives power to the State Government to regulate the procedure for disposal of election petitions. Section 23 reads as under:-

“23. Procedure to be followed in disposal of election petition.-
An election petition shall be enquired into and disposed of according to such summary procedure as may be prescribed by rules made under this Act.”

12. Section 355(1) and 355(2)(i) of the Act of 1961 give a power to the State Government to regulate procedure to be followed in disposal of election petitions. Section 355(1) and 355(2)(i) are as under:-

“355. Power to make rules.- (1) In addition to any power specially conferred by this Act, the State Government may prescribe forms and make rules generally for the purpose of carrying into effect the provisions of this Act.

(2) In particular and without prejudice to the generality of the foregoing power, such rules may provide for all or any of the following matters, namely:-

(i) procedure to be followed in disposal of election petition;

xx

xx

xx”



13. Therefore, the Act does not empower the State Government to regulate the procedure before the High Court. The procedure before the High Courts is regulated in terms of Article 225 of the Constitution of India which is as under:-

“225. Subject to the provisions of this Constitution and to the provisions of any law of the appropriate Legislature made by virtue of powers conferred on that Legislature by this Constitution, the jurisdiction of, and the law administered in, any existing High Court, and the respective powers of the Judges thereof in relation to the administration of justice in the Court, including any power to make rules of Court and to regulate the sittings of the Court and of members thereof sitting alone or in Division Courts, shall be the same as immediately before the commencement of this Constitution:

Provided that any restriction to which the exercise of original jurisdiction by any of the High Courts with respect to any matter concerning the revenue or concerning any act ordered or done in the collection thereof was subject immediately before the commencement of this Constitution shall no longer apply to the exercise of such jurisdiction.”

14. In terms of Article 225 of the Constitution of India, the procedure which was prevailing at the time of enforcement of the Constitution was the Letters Patent of the High Court at Nagpur and the Letters Patent of the High Court at Nagpur in Clause 27 gives right to the High Court to regulate its own procedure. Letters Patent of Nagpur High Court are now applicable to Madhya Pradesh High Court since its inception on 01.11.1956. Clause 27 of the Letters Patent is as under:-

**“27. Regulation of Proceedings.-**

And we do further ordain that it shall be lawful for the High Court of Judicature at Nagpur from time to time to make rules and orders for regulating the procedure of the Court and for the purpose of adopting as far as possible the Code of Civil Procedure 1908, passed by the Governor General in Council and the provisions of any law which has been or may be made, amending or altering the same, by competent legislative authority for India, to all proceedings in its testamentary, intestate and matrimonial jurisdiction respectively.”

15. Therefore, the High Court may regulate its procedure, or the competent Legislature may make laws, regulating its procedure. It is to be seen that whether the Act contemplates the procedure before the High Court to be regulated at all anywhere in the entire Act, or not. If Section 23 is seen, it gives an enabling provision to regulate the procedure of election petitions, but in the entire Act, there is no corresponding provision to regulate the procedure before the High Court. The election petitions are filed under Section 20. Section 21 relates to relief that may be claimed by the petitioner. Section 22 enumerates the grounds for declaring election to be void. Section 23 provides procedure to be followed in disposal of election petition. Section 26 is in respect of finality of decision and revision is to be filed as per Section 26(2). Section 26 is as under:-

“26. Finality of decision.---

(1) No appeal shall lie against the decision of the Judge on the petition.



(2) *Any person aggrieved by the decision of the Judge on the petition may, within thirty days from the date of such decision, apply to the High Court for revision on any of the following grounds:-*

- (a) *that the decision is contrary of law;*
- (b) *that the Judge has exercised jurisdiction not vested in him by law or has failed to exercise a jurisdiction vested in him by law, but subject to such orders as the High Court may pass thereon, such decision shall be final."*

16. The Act does not contemplate regulating the procedure before the High Court in any manner whatsoever. Despite this, Rule 19(2) regulates the procedure before the High Court. The Act consciously contains enabling provision for regulating the procedure before the *Election Tribunal* but consciously does not contain any provision to regulate the procedure before the *High Court* while dealing with challenge to the election petition. The framers of the Act were conscious of provisions of Article 225 of the Constitution of India read with Clause 27 of Letters Patent of the High Court of Nagpur and they consciously did not engraft any provision in the Act to regulate the procedure of the High Court. Despite that, the rule-making authority by way of delegated legislation, has regulated the procedure of the High Court, which conflicts with the parent Act and in case of conflict with the parent Act, it is settled in law that the delegated legislation has to give way to the parent Act.



17. Therefore, Rule 19(2) being in conflict with the parent Act, it cannot be pressed into service to hold that the High Court is obliged to dismiss the civil revision on the ground of non-payment of security deposit. All the judgments which were considered earlier on 04.10.2023 and were placed before this Court during course of hearing of these revisions also do not take into account the position that Rule 19(2) in regulating the procedure before the High Court is in conflict with the parent Act and, therefore, the Rules have to give way to the Act.

18. One more important aspect is to be noted here that as per Section 20 of the Act of 1961, the requirement of security deposit is laid down in the Act itself. The provision for security deposit in the election petition is laid down in the Act itself in Section 20(4), whereas the provision of security deposit for filing revision before the High Court is laid down in the Rules, which again conflicts with the Act.

19. Not only there is conflict with the parent Act, the Rule 19(2) is in conflict with M.P. High Court Rules 2008 (for short “High Court Rules”) also. These Rules have been made exercising the following powers as contained in its Preamble:-

**“PREAMBLE**

In exercise of powers conferred by 1 [Article] 225 of the Constitution of India, section 54 of the States Reorganisation Act, 1956, clauses 27 and 28 of the Letters Patent, section 3 of the Madhya Pradesh Uchcha Nyayalaya (Khandpeeth Ko Appeal) Adhiniyam, 2005, the High Court of Madhya Pradesh hereby makes the following Rules, regulating practice and procedure of the High Court:”

20. The High Court Rules do not contain any requirement of security deposit for Civil Revisions. Civil Revision is defined in Chapter-2, Rule 5 as under:-

“5. Civil Revision - Ordinarily following categories of cases shall be registered as a Civil Revision-

- (1) revision under section 23-E of the M.P. Accommodation Control Act, 1961;
- (2) revision under section 115 of the Code of Civil Procedure, 1908;
- (3) revision under section 392 or 441-F of the M.P. Municipal Corporation Act, 1956;
- (4) revision under section 26 of the M.P. Municipalities Act, 1961;**
- (5) revision under section 75 of the Provincial Insolvency Act, 1920;
- (6) revision under 1 [section] 25 of the Provincial Small Cause Courts Act, 1887;
- (7) revision under section 83 (9) of the Wakf Act, 1995; or
- (8) any other revision of civil nature, provided or permissible under any other law for the time being in force.
- (9) a revision under section 53 of the Juvenile Justice (Care and Protection of Children) Act, 2000 relating to civil matters.
- (10) a revision under section 102 of the Juvenile Justice (Care and Protection of Children) Act, 2015 relating to civil matters.]”

(Emphasis supplied)



21. Chapter-10, Rule-3 contains general requirements for filing, that are as under:-

3.(1) Every –

(a) memorandum of appeal civil or criminal,

(b) memorandum of objection under order XLI rule 22 of the Code of Civil Procedure, 1908,

(c) a writ or revision (civil or criminal) petition,

(d) an application under section 6 [528 of the Sanhita, 2023],

(e) return or rejoinder in a writ petition,

- shall be in paper-book form, enclosed in cover with page numbers & index in Form No. 4; and shall be filed in two identical sets in a division bench case.”

22. Therefore, there is no requirement of filing any security deposit. The entire Chapter-10 does not contain any requirement for filing security in any Civil Revision, though the provisions of Civil Procedure Code and the Court Fees Act, etc. have been mentioned to be applicable in Rule 10 and 11 of Chapter 10. Rule 16 and 17 relate to filing certified copies of impugned order, filing to be made in paper book form, narration of grounds, etc.

23. So far as payment/deposit of security is concerned, neither the High Court Rules, nor the Code of Civil Procedure, contemplates any security for Revisions. As per CPC, the only security that is provided for making challenge to a higher court, is under Order XLI Rule 10 and Order XLV



Rule 7, for appeals to High Court and Supreme Court respectively, that have to be paid as ordered by the appellate Court.

24. Further provision is made in Chapter 13 Rule 18, and Chapter 13-A Rule 18 of the High Court Rules, that provide security to be levied in writ petitions and Public Interest Litigations at discretion of the Court. However, there is no provision to levy security in other cases in the High Court Rules. These clauses 18 of Chapter 3 and 3-A respectively are as under:-

“18 The Court may in its discretion, either before the opposite party is called upon to appear and answer or afterwards on the application of the opposite party, demand from the petitioner security for the costs of the petition.

18. The Court may require a petitioner to deposit such security as deemed fit.”

25. Therefore, the requirement under Rule 19(2) of the Rules of 1962 directly militates against the provisions the Letters Patent under which the High Court is constituted, as well as against the High Court Rules, apart from it being in conflict with its parent Act, i.e. M.P. Municipalities Act. In case of conflict with High Court Rules, the High Court Rules shall prevail, as they have been framed under the powers conferred by Article 225 of the Constitution, so also Conferred by the Letters Patent.



26. Therefore, the objection that this Court is obliged to dismiss the revision (CR No. 464 of 2023) for want of compliance of Rule 19(2) is discarded and the revision is to be heard and decided on merits, as the Revision complies with all the requirements as per the High Court Rules. All the previous judgments that have been relied by counsel for the respondents, do not turn anything in favour of the respondents because in none of the said judgments, the issue of Rule 19(2) of the Rules of 1962 being in conflict with High Court Rules, fell for consideration.

27. Now this Court proceeds to decide the revision filed by returned candidate, i.e. CR No. 464 of 2023, on merits.

28. This Civil Revision has been filed by the petitioner/returned candidate whose election has been set aside, being aggrieved by the order dated 13.06.2023 passed by the First District Judge, Multai, District Betul, whereby the election petition filed by the respondent No.1/runner-up candidate has been allowed by the Election Tribunal of the First District Judge, and by setting aside the election, fresh elections have been directed to be conducted.

29. The elections were held to Municipal Councils in Madhya Pradesh in the year 2022 and the election for the post of President was



indirect election inasmuch as the Councillors, one each from each Ward, were to be elected directly by the electorate of general public and the 15 Councillors would then elect a President of the Municipality from amongst themselves. The election to the post of Councillors was on party line but the election to the post of President was not on party line and in the Municipal Council, Multai, District Betul, there were 15 Wards and, therefore, 15 Ward Members/Councillors had been elected by the electorate of general public. The election of President was to be conducted from amongst the 15 Councillors.

30. In the election for the post of President, the respondent No.1, the present petitioner as well as the respondent No.2 had filled up the nomination forms. The respondent No.1 had the support of Bhartiya Janta Party (BJP) though the election was not on party lines. The respondent No.2, namely, Vandana Sahu thereafter withdrew from her candidature and only two candidates remained in the fray i.e. the present petitioner and the respondent No.1. The present petitioner secured 9 votes out of 15 whereas the respondent No.1 secured 6 votes out of 15 and the petitioner was, therefore, declared elected by the Electoral Officer.



31. Against the election of petitioner, an election petition under Section 20 of the M.P. Municipalities Act, 1961 was filed by the respondent No.1 wherein allegation was made that various ballots had identification marks made on them and the Election Officer accepted 4 of such ballots which had such identification marks which has polluted the election process. It was alleged that the petitioner as well as the respondent No.1 both originally belonged to BJP and were elected on an BJP mandate as Councillors, but the returned candidate i.e. the present petitioner unlawfully took the support of Indian National Congress (INC for short) Councillors and managed to succeed in the indirect election to the post of President. The allegation was made that the democratic process was misused and by employing illegal resources the Councillors of aforesaid political party were managed to get election in her favour. It was alleged that there were 6 Councillors of Congress Party and 9 Councillors of Bhartiya Janta Party. The present petitioner i.e. returned candidate secured one vote which is her own vote, two votes of Bhartiya Janta Party and six votes of other political parties and since she has managed votes of other political party, therefore, it is to be inferred that there is corrupt practice and employment of illegal resources in getting such election



and, therefore, the election is void and deserves to be declared as such.

32. On these assertions, the election was challenged on two grounds. The first ground was that there are identification marks on four ballots and these ballots are, therefore, void ballots and the second ground was that the present petitioner/successful candidate has managed to get support of Councillors of opposite political party i.e. INC and therefore, it is to be inferred that she has employed illegal resources that amounts to corrupt practices. The Election Tribunal has allowed the election petition by holding that various ballots had identification marks and also that since the support of Councillors of opposite political party was taken, therefore, there is inference of corrupt practice and it is further held that since two of such Councillors have been appointed as Presiding Officers of the Municipal Council, therefore, it is clear that their votes had been won over by promising them lucrative posts and positions after election and, therefore, there is inference of corrupt practice in the election.

33. The learned counsel for the petitioner has argued that in fact there are no identification marks on the votes which have been found by the Election Tribunal to be proved, and the decision of the Election



Tribunal in that regard is utterly perverse and contrary to record. The learned counsel for the petitioner has vehemently argued that all the votes were duly opened before the Election Tribunal, they were photocopied and the photocopies of the originals were exhibited. The exhibits have been placed on record before this Court and by pointing out to the votes, it was vehemently argued that the questioned votes which have been held to be votes containing identification marks of the voters are not in fact containing any identification marks and the alleged identification marks that have been found to be identification marks by the Election Tribunal are actually the natural blotting of the ink on ballot paper or the natural trail left by the pen on the ballot paper when the pen is lifted and these natural blots and trails of the pen on the ballot paper have been seen by the Election Tribunal as dots and dashes. It was argued that such type of dots and dashes are there on each and every ballot and in fact even on the ballots in favour of the election petitioner who ultimately lost the election and if such type of dots and dashes are seen to be identification marks, then it would be difficult to uphold any election which is conducted on the basis of ballot paper because no seal/stamp containing “Arrow” differentiating mark was given to the candidates and each candidate



was required to tick mark on ballot paper by ball pen or ink pen and such dots and dashes are natural dots and dashes of blots and pen trails on the paper and these are there on all the 15 ballots. The learned counsel for the petitioner by referring to all the ballots has vehemently argued that if these 15 ballots are seen, then there is no particular pattern in the dots and dashes so as to identify any of the voters and it could not be inferred that these dots and dashes are identification marks and a particular voter can be identified by such dots and dashes. Therefore, it is argued that the conclusion arrived at by the Election Tribunal is a far-fetched conclusion and it is not a legal and valid conclusion but it is only a presumption made by the Election Tribunal that is founded in fantasy, not in reality.

34. So far as the other ground of corrupt practice is concerned, the learned counsel for the petitioner has vehemently argued that the corrupt practice was alleged in the manner that the votes of opposite political party were secured but the corrupt practice has not been pleaded in the manner that certain Councillors have thereafter been appointed as Presiding Officers of the meetings of Councils which is used in Hindi as सभापति. It is argued that the Election Tribunal has



held that since two Councillors have been appointed as सभापति at later stage after the election, therefore, it is to be inferred that their votes had been procured by illegal resources or assurances which amounts to corrupt practice. It is argued that there was no such pleading in election petition and even if it is a fact which occurred during pendency of election petition, then there is no amendment in the election petition to that effect and the trial of allegations containing corrupt practice being a trial requiring strict proof like a criminal trial, therefore, nothing could be inferred by the Election Tribunal which was not part of pleadings and, therefore, by going beyond the pleadings of the election, the learned Tribunal has gravely erred in passing the impugned order. Therefore, it is argued that the impugned order passed by the Tribunal be set aside and the election of the petitioner be upheld.

35. *Per contra*, learned counsel for the respondent had argued at length in the matter of non-maintainability of the present civil revision for want of payment of security deposit at the time of filing of the present revision and contended that the revision having been filed two days prior to payment of the security deposit, therefore, the revision is



not maintainable. This Court has already considered the aforesaid aspects in the initial part of the order.

36. On merits, learned counsel for the respondent No.1 had argued that the order of the Election Tribunal is fully valid and proper because the votes of opposite political party were secured by the petitioner and it amounts to corrupt practice. It was further argued that the votes duly had an identification mark and a bare perusal of the votes would make it clear that as many as 6 votes are having identification marks out of the total 9 votes polled in favour of the present petitioner. It is argued that such identification marks render the votes as invalid and the Election Tribunal has not erred in declaring these votes as invalid.

37. The learned counsel for the respondent No.1 has argued that two Councillors were appointed as Presiding Officers of the meetings of the Municipal Council (सभापति) and once such lucrative position was offered to Councillors elected from the opposite party, then it amounts to presumption that there were corrupt practices employed in securing votes of the Councillors of INC. Therefore, it is argued that nothing wrong has been done by the Election Tribunal in holding the 6 votes



to be invalid and secured by Councillors of opposite party to be votes secured by unlawful means and employment of illegal resources that amounts to corrupt practices.

38. The counsel for the petitioner as well as the respondent No.1 were at consensus in contending that the petitioner and the respondent No.1, both were elected as Councillors on the mandate of BJP and, therefore, both were candidates of Bhartiya Janta Party and none of the Councillors who were elected on mandate of INC had remained in the fray and the sole candidate elected from INC mandate who had filled up the nomination form, namely, Vandana Sahu bowed out of the fray because she later on withdrew her nomination and, therefore, only two candidates remained in the fray and both were elected from BJP mandates.

39. This Court has heard learned counsel for the rival parties at length and perused the record.

40. This Court first takes up the question of identification marks on the ballot papers. The Election Tribunal has held that 6 ballot papers polled in favour of the present petitioner were invalid because they contained identification marks. The 6 ballots that allegedly contained the identification marks were Exhibits D-25, D-26, D-27, D-29, D-31



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and D-32. For ready reference, these exhibited ballot papers, in the position they are part of file of this Revision, are being reproduced in this order as under:-

C.A.No 1486/2023 (Express) अग्रिम कार्यवाही हेतु सत्यप्रतिलिपि Ex D - 25 जो कि MJC 23/2022 श्रीमति वर्षा विरुद्ध श्रीमति नीतू वगैरह निर्णय दिनांक 13.06.2023 न्यायालय :- श्रीमति शालिनी शर्मा सिंह प्रथम अपर जिला न्यायाधीश मुलताई जिला बैतूल से संबंधित है जिसमें पक्षकार निम्नानुसार है :- श्रीमति वर्षा पति दिनेश 38 साल निवासी गढ़ेकर एपाउंड बैतूल रोड मुलताई.....याचिकाकर्ता विरुद्ध 1 श्रीमति नीतू पति प्रहलादसिंह परमार 45 साल निवासी गुरुसाहबवाड मुलताई 2 श्रीमति वंदना पति नितेश साहू 40 साल निवासी बस स्टैंड के सामने सुभाषवाड मुलताई 3 श्रीमति पीठासीन अधिकारी एवं अनुविभागीय अधिकारी राजस्व मुलताई 4 जिला निर्वाचन अधिकारी बैतूल द्वारा श्रीमान अमनवीरसिंह बैस कलेक्टर बैतूल.....प्रतिवादीगण

-15-

प्ररूप-आ
(नियम -10 का उपनियम (3) देखिए)

मतपत्र

.....नगर पालिका परिषद मुलताई "अध्यक्ष" के पद के लिये
सम्यकरूपेण नाम निर्देशित अभ्यर्थियों के नाम

1	श्रीमति वर्षा गढ़ेकर	श्री दिनेश गढ़ेकर	वार्ड क्र- 03	
2	श्रीमति नीतू प्रहलाद सिंह परमार	श्री प्रहलाद सिंह परमार	वार्ड क्र- 06	X



पीठासीन अधिकारी
अनुविभागीय अधिकारी (राजस्व)
मुलताई

EXD25
DW2
26.4.23
(शालिनी शर्मा सिंह)
प्रथम अपर जिला न्यायाधीश
मुलताई, जिला-भेनारस

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C.A.No 1486/2023 (Express) अग्रिम कार्यवाही हेतु सत्यप्रतिलिपि Ex D - 26 जो कि MJC 23/2022 श्रीमति वर्षा विरुद्ध श्रीमति नीतू वगैरह निर्णय दिनांक 13.06.2023 न्यायालय :- श्रीमति शालिनी शर्मा सिंह प्रथम अपर जिला न्यायाधीश मुलताई जिला बैतुल से संबंधित है जिसमें पक्षकार निम्नानुसार है :- श्रीमति वर्षा पति दिनेश 38 साल निवासी गढ़ेकर गंगोपड बैतुल रोड मुलताईयाचिकाकर्ता विरुद्ध 1 श्रीमति नीतू पति प्रहलादसिंह परमार 45 साल निवासी गुरुसाहबवाडी मुलताई 2 श्रीमति वदना पति नितेश साहू 40 साल निवासी बस स्टैंड के सामने सुभाषवाडी मुलताई 3 श्रीमति पीठासीन अधिकारी एवं अनुविभागीय अधिकारी राजस्व मुलताई 4 जिला निर्वाचन अधिकारी बैतुल द्वारा श्रीमान अमनवीरसिंह बैस कलेक्टर बैतुलप्रतिवादीगण

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प्ररूप-आ
(नियम -10 का उपनियम (3) देखिए)

मतपत्र

.....नगर पालिका परिषद मुलताई "अध्यक्ष" के पद के लिये
सम्यकरूपेण नाम निर्देशित अभ्यर्थियों के नाम

1	श्रीमति वर्षा गढ़ेकर	श्री दिनेश गढ़ेकर	वार्ड क्र- 03	
2	श्रीमति नीतू प्रहलाद सिंह परमार	श्री प्रहलाद सिंह परमार	वार्ड क्र- 06	X



EXD26
DW2
26.4.23
(शालिनी शर्मा सिंह)
प्रथम अपर जिला न्यायाधीश
मुलताई, जिला-बैतुल

पीठासीन अधिकारी एवं
अनुविभागीय अधिकारी (राजस्व)
मुलताई

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C.A.No 1486/2023 (Express) अग्रिम कार्यवाही हेतु सत्यप्रतिलिपि Ex D - 27 जो कि MJC 23/2022 श्रीमति वर्षा विरुद्ध श्रीमति नीतू वगैरह निर्णय दिनांक 13.06.2023 न्यायालय :- श्रीमति शालिनी शर्मा सिंह प्रथम अपर जिला न्यायाधीश मुलताई जिला बैतुल से संबंधित है जिसमें पक्षकार निम्नानुसार है :- श्रीमति वर्षा पति दिनेश 38 साल निवासी गढ़ेकर गंगोपड बैतुल रोड मुलताईयाचिकाकर्ता विरुद्ध 1 श्रीमति नीतू पति प्रहलादसिंह परमार 45 साल निवासी गुरुसाहबवाडी मुलताई 2 श्रीमति वदना पति नितेश साहू 40 साल निवासी बस स्टैंड के सामने सुभाषवाडी मुलताई 3 श्रीमति पीठासीन अधिकारी एवं अनुविभागीय अधिकारी राजस्व मुलताई 4 जिला निर्वाचन अधिकारी बैतुल द्वारा श्रीमान अमनवीरसिंह बैस कलेक्टर बैतुलप्रतिवादीगण

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प्ररूप-आ
(नियम -10 का उपनियम (3) देखिए)

मतपत्र

.....नगर पालिका परिषद मुलताई "अध्यक्ष" के पद के लिये
सम्यकरूपेण नाम निर्देशित अभ्यर्थियों के नाम

1	श्रीमति वर्षा गढ़ेकर	श्री दिनेश गढ़ेकर	वार्ड क्र- 03	
2	श्रीमति नीतू प्रहलाद सिंह परमार	श्री प्रहलाद सिंह परमार	वार्ड क्र- 06	X



EXD27
DW2
26.4.23
(शालिनी शर्मा सिंह)
प्रथम अपर जिला न्यायाधीश
मुलताई, जिला-बैतुल

पीठासीन अधिकारी एवं
अनुविभागीय अधिकारी (राजस्व)
मुलताई

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C.A.No 1486/2023 (Express) अग्रिम कार्यवाही हेतु सत्यप्रतिलिपि Ex D - 29 जो कि MJC 23/2022 श्रीमति वर्षा विरूद्ध श्रीमति नीतू वर्गेश निर्णय दिनांक 13.06.2023 न्यायालय :- श्रीमति शालिनी शर्मा सिंह प्रथम अपर जिला न्यायाधीश मुलताई जिला बैतुल से संबंधित है जिसमें पक्षकार निम्नानुसार है :- श्रीमति वर्षा पति दिनेश 38 साल निवासी गढ़ेकर कपाड बैतुल रोड मुलताई.....याचिकाकर्ता विरूद्ध 1 श्रीमति नीतू पति प्रहलादसिंह परमार 45 साल निवासी गुरुसाहबवाडी मुलताई 2 श्रीमति वंदना पति नितेश साहू 40 साल निवासी बस स्टैंड के सामने सुभाषवाडी मुलताई 3 श्रीमति पीठासीन अधिकारी एवं अनुविभागीय अधिकारी राजस्व मुलताई 4 जिला निर्वाचन अधिकारी बैतुल द्वारा श्रीमान अमनवीरसिंह बैस कलेक्टर बैतुल.....प्रतिवादीगण

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प्ररूप—आ
(नियम -10 का उपनियम (3) देखिए)

मतपत्र

.....नगर पालिका परिषद मुलताई "अध्यक्ष" के पद के लिये
सम्यकरूपेण नाम निर्देशित अभ्यर्थियों के नाम

1	श्रीमति वर्षा गढ़ेकर	श्री दिनेश गढ़ेकर	वार्ड क्र- 03	
2	श्रीमति नीतू प्रहलाद सिंह परमार	श्री प्रहलाद सिंह परमार	वार्ड क्र- 06	X



EXD29
DWL
26.4.23

(प्रारिणी जमा सिंह)
प्रथम अपर जिला न्यायाधीश
मुलताई, जिला-बैतुल

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पीठासीन अधिकारी एवं
अनुविभागीय अधिकारी (राजस्व)
मुलताई

C.A.No 1486/2023 (Express) अग्रिम कार्यवाही हेतु सत्यप्रतिलिपि Ex D - 31 जो कि MJC 23/2022 श्रीमति वर्षा विरूद्ध श्रीमति नीतू वर्गेश निर्णय दिनांक 13.06.2023 न्यायालय :- श्रीमति शालिनी शर्मा सिंह प्रथम अपर जिला न्यायाधीश मुलताई जिला बैतुल से संबंधित है जिसमें पक्षकार निम्नानुसार है :- श्रीमति वर्षा पति दिनेश 38 साल निवासी गढ़ेकर कपाड बैतुल रोड मुलताई.....याचिकाकर्ता विरूद्ध 1 श्रीमति नीतू पति प्रहलादसिंह परमार 45 साल निवासी गुरुसाहबवाडी मुलताई 2 श्रीमति वंदना पति नितेश साहू 40 साल निवासी बस स्टैंड के सामने सुभाषवाडी मुलताई 3 श्रीमति पीठासीन अधिकारी एवं अनुविभागीय अधिकारी राजस्व मुलताई 4 जिला निर्वाचन अधिकारी बैतुल द्वारा श्रीमान अमनवीरसिंह बैस कलेक्टर बैतुल.....प्रतिवादीगण

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प्ररूप—आ
(नियम -10 का उपनियम (3) देखिए)

मतपत्र

.....नगर पालिका परिषद मुलताई "अध्यक्ष" के पद के लिये
सम्यकरूपेण नाम निर्देशित अभ्यर्थियों के नाम

1	श्रीमति वर्षा गढ़ेकर	श्री दिनेश गढ़ेकर	वार्ड क्र- 03	
2	श्रीमति नीतू प्रहलाद सिंह परमार	श्री प्रहलाद सिंह परमार	वार्ड क्र- 06	X



EXD31
DW2
26.4.23

(प्रारिणी जमा सिंह)
प्रथम अपर जिला न्यायाधीश
मुलताई, जिला-बैतुल

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पीठासीन अधिकारी एवं
अनुविभागीय अधिकारी (राजस्व)
मुलताई



Civil Revision Nos.464 of 2023,
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C.A.No 1486/2023 (Express) अग्रिम कार्यवाही हेतु सत्यप्रतिलिपि Ex D - 32 जो कि MJC 23/2022 श्रीमति वर्षा विरुद्ध श्रीमति नीतू वगैरह निर्णय दिनांक 13.06.2023 न्यायालय :- श्रीमति शालिनी शर्मा सिंह प्रथम अपर जिला न्यायाधीश मुलताई जिला बैतूल से संबंधित है जिसमें पक्षकार निम्नानुसार है :- श्रीमति वर्षा पति दिनेश 38 साल निवासी गढ़ेकर पाउंड बैतूल रोड मुलताई याचिकाकर्ता विरुद्ध 1 श्रीमति नीतू पति प्रहलादसिंह परमार 45 साल निवासी गुरुसाहबवाड मुलताई 2 श्रीमति वंदना पति नितेश साहू 40 साल निवासी बस स्टैंड के सामने सुभाषवाड मुलताई 3 श्रीमती पीठासीन अधिकारी एवं अनुविभागीय अधिकारी राजस्व मुलताई 4 जिला निर्वाचन अधिकारी बैतूल द्वारा श्रीमान अमनवीरसिंह बैस कलेक्टर बैतूल प्रतिवादीगण

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प्ररूप-आ

(नियम -10 का उपनियम (3) देखिए)

मतपत्र

.....नगर पालिका परिषद मुलताई "अध्यक्ष" के पद के लिये
सम्यकरूपेण नाम निर्देशित अभ्यर्थियों के नाम

1	श्रीमति वर्षा गढ़ेकर	श्री दिनेश गढ़ेकर	वार्ड क्र- 03	
2	श्रीमति नीतू प्रहलाद सिंह परमार	श्री प्रहलाद सिंह परमार	वार्ड क्र- 06	X



EXD32
DWL
26.4.23

(शालिनी शर्मा सिंह)
प्रथम अपर जिला न्यायाधीश
मुलताई जिला - बैतूल

जिला निर्वाचन अधिकारी एवं
अनुविभागीय अधिकारी राजस्व
मुलताई

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41. From a perusal of Ex.D-25, it is clear that either the pen malfunctioned or the other line of the cross was too short and thereafter the pen was again lifted and that line was again extended. In the ballot paper Ex. D-26, it is clear that the cross does not have any mark but in the top right corner of the cross, there is a small dot which can be residual droplet of ink. In the ballot paper Ex.D-27 though there are certain dots and trails in the left top and bottom corners of the cross, but these could be blot marks or the pen lifting trail. In the ballot paper Ex.D-29 also, the dot in top left corner seems to be the paper blot mark on the ballot. Similar is the position in Ex.D-31 in which there is a dot apparent at top right corner of the cross but that could be a blot mark and same situation is in Ex.D-32.

42. Not only that, these ballot papers seem to contain pen trails or ink droplets or ink blot dots but moreover there is no particular pattern in these so as to identify the ballots. These cannot be taken to be identification marks because such type of blots and dots have appeared even in the ballot papers in favour of the election petitioner and all the six votes in favour of the election petitioner contain such type of dots and pen trails. The six ballot papers in favour of the election petitioner are as under:-



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C.A.No 1486/2023 (Express) अग्रिम कार्यवाही हेतु सत्यप्रतिनिधि Ex.D - 18 जो कि MJC 23/2022 श्रीमति वर्षा गडेकर श्रीमति नीतू वगेरह निर्णय दिनांक 13.06.2023 न्यायालय :- श्रीमति शांतिनी शर्मा सिंह उपाय अग्रर जिला न्यायाधीश मुलताई जिला बेतुल से संबंधित है जिसमें पक्षकार निम्नानुसार है :- श्रीमति वर्षा पति दिनेश 38 साल निवासी गडेकर गण्डाड बेतुल रोड मुलताई याचिकाकर्ता विरुद्ध 1 श्रीमति नीतू पति प्रहलादसिंह परमार 45 साल निवासी गुरुसाहबवाडी मुलताई 2 श्रीमति बदना पति नितेश साहू 40 साल निवासी बस स्टैंड के सामने सुभाषवाडी मुलताई 3 श्रीमति पीतालीन अधिकारी एवं अनुविभागीय अधिकारी राजस्व मुलताई 4 जिला निर्वाचन अधिकारी बेतुल द्वारा श्रीमान अननवीरसिंह बैस कलेक्टर बेतुल प्रतिवादीगण

प्रारूप-आ
(नियम -10 का उपनियम (3) देखिए)

मतपत्र

.....नगर पालिका परिषद मुलताई "अध्यक्ष" के पद के लिये
सम्यकरूपेण नाम निर्देशित अभ्यर्थियों के नाम

1	श्रीमति वर्षा गडेकर	श्री दिनेश गडेकर	वार्ड क्र- 03	X
2	श्रीमति नीतू प्रहलाद सिंह परमार	श्री प्रहलाद सिंह परमार	वार्ड क्र- 06	

EXD 18
Dw2
26-4-23

(शांतिनी शर्मा सिंह)
उपाय अग्रर जिला न्यायाधीश
मुलताई जिला-बेतुल

पीठाधीश्वर अतिरिक्त एवं
अनुविभागीय अधिकारी (राजस्व)
मुलताई

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C.A.No 1486/2023 (Express) अग्रिम कार्यवाही हेतु सत्यप्रतिनिधि Ex.D - 19 जो कि MJC 23/2022 श्रीमति वर्षा गडेकर श्रीमति नीतू वगेरह निर्णय दिनांक 13.06.2023 न्यायालय :- श्रीमति शांतिनी शर्मा सिंह उपाय अग्रर जिला न्यायाधीश मुलताई जिला बेतुल से संबंधित है जिसमें पक्षकार निम्नानुसार है :- श्रीमति वर्षा पति दिनेश 38 साल निवासी गडेकर गण्डाड बेतुल रोड मुलताई याचिकाकर्ता विरुद्ध 1 श्रीमति नीतू पति प्रहलादसिंह परमार 45 साल निवासी गुरुसाहबवाडी मुलताई 2 श्रीमति बदना पति नितेश साहू 40 साल निवासी बस स्टैंड के सामने सुभाषवाडी मुलताई 3 श्रीमति पीतालीन अधिकारी एवं अनुविभागीय अधिकारी राजस्व मुलताई 4 जिला निर्वाचन अधिकारी बेतुल द्वारा श्रीमान अननवीरसिंह बैस कलेक्टर बेतुल प्रतिवादीगण

प्रारूप-आ
(नियम -10 का उपनियम (3) देखिए)

मतपत्र

.....नगर पालिका परिषद मुलताई "अध्यक्ष" के पद के लिये
सम्यकरूपेण नाम निर्देशित अभ्यर्थियों के नाम

1	श्रीमति वर्षा गडेकर	श्री दिनेश गडेकर	वार्ड क्र- 03	X
2	श्रीमति नीतू प्रहलाद सिंह परमार	श्री प्रहलाद सिंह परमार	वार्ड क्र- 06	

EXD 19
Dw2
26-4-23

(शांतिनी शर्मा सिंह)
उपाय अग्रर जिला न्यायाधीश
मुलताई जिला-बेतुल

पीठाधीश्वर अतिरिक्त एवं
अनुविभागीय अधिकारी (राजस्व)
मुलताई

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C.A.No 1486/2023 (Express) अग्रिम कार्यवाही हेतु सत्यप्रतिलिपि Ex D - 20 जो कि MJC 23/2022 श्रीमति वर्षा विरुद्ध श्रीमति नीतू वर्गेरह निर्णय दिनांक 13.06.2023 न्यायालय :- श्रीमति शालिनी शर्मा सिंह प्रथम अपर जिला न्यायाधीश मुलताई जिला बैतूल से संबंधित है जिसमें पक्षकार निम्नानुसार है :- श्रीमति वर्षा पति दिनेश 38 साल निवासी गढ़ेकर अलाउड बैतूल रोड मुलताई याचिकाकर्ता विरुद्ध 1 श्रीमति नीतू पति प्रहलादसिंह परमार 45 साल निवासी गुरुसाहबवाड मुलताई 2 श्रीमति वंदना पति दिनेश साहू 40 साल निवासी बस स्टैंड के सामने सुनापवाड मुलताई 3 श्रीमति पीठासीन अधिकारी एवं अनुविभागीय अधिकारी राजस्व मुलताई 4 जिला निर्वाचन अधिकारी बैतूल द्वारा श्रीमान अमनवीरसिंह बंस कलेक्टर बैतूल.....प्रतिवादीमण

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प्ररूप-आ
(नियम -10 का उपनियम (3) देखिए)

मतपत्र

.....नगर पालिका परिषद मुलताई "अध्यक्ष" के पद के लिये
सम्यकरूपेण नाम निर्देशित अभ्यर्थियों के नाम

1	श्रीमति वर्षा गढ़ेकर	श्री दिनेश गढ़ेकर	वार्ड क्र- 03	X
2	श्रीमति नीतू प्रहलाद सिंह परमार	श्री प्रहलाद सिंह परमार	वार्ड क्र- 06	



EX D20
DW2
26.4.23

(शालिनी शर्मा सिंह)
प्रथम अपर जिला न्यायाधीश
मुलताई जिला-बैतूल

पीठासीन अधिकारी एवं
अनुविभागीय अधिकारी (राजस्व)
मुलताई

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C.A.No 1486/2023 (Express) अग्रिम कार्यवाही हेतु सत्यप्रतिलिपि Ex D - 20 जो कि MJC 23/2022 श्रीमति वर्षा विरुद्ध श्रीमति नीतू वर्गेरह निर्णय दिनांक 13.06.2023 न्यायालय :- श्रीमति शालिनी शर्मा सिंह प्रथम अपर जिला न्यायाधीश मुलताई जिला बैतूल से संबंधित है जिसमें पक्षकार निम्नानुसार है :- श्रीमति वर्षा पति दिनेश 38 साल निवासी गढ़ेकर अलाउड बैतूल रोड मुलताई याचिकाकर्ता विरुद्ध 1 श्रीमति नीतू पति प्रहलादसिंह परमार 45 साल निवासी गुरुसाहबवाड मुलताई 2 श्रीमति वंदना पति दिनेश साहू 40 साल निवासी बस स्टैंड के सामने सुनापवाड मुलताई 3 श्रीमति पीठासीन अधिकारी एवं अनुविभागीय अधिकारी राजस्व मुलताई 4 जिला निर्वाचन अधिकारी बैतूल द्वारा श्रीमान अमनवीरसिंह बंस कलेक्टर बैतूल.....प्रतिवादीमण

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प्ररूप-आ
(नियम -10 का उपनियम (3) देखिए)

मतपत्र

.....नगर पालिका परिषद मुलताई "अध्यक्ष" के पद के लिये
सम्यकरूपेण नाम निर्देशित अभ्यर्थियों के नाम

1	श्रीमति वर्षा गढ़ेकर	श्री दिनेश गढ़ेकर	वार्ड क्र- 03	X
2	श्रीमति नीतू प्रहलाद सिंह परमार	श्री प्रहलाद सिंह परमार	वार्ड क्र- 06	



EX D21
DW2
26.4.23

(शालिनी शर्मा सिंह)
प्रथम अपर जिला न्यायाधीश
मुलताई जिला-बैतूल

पीठासीन अधिकारी एवं
अनुविभागीय अधिकारी (राजस्व)
मुलताई

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Civil Revision Nos.464 of 2023,
497 of 2023 & 499 of 2023

C.A.No 1486/2023 (Express) अधिम कार्यवाही हेतु सत्यप्रतिलिपि ExD - 22 जो कि MJC 23/2022 श्रीमति वर्षा विरुद्ध श्रीमति नीतू चगैरह निर्णय दिनांक 13.06.2023 न्यायालय :- श्रीमति शालिनी शर्मा सिंह प्रथम अपर जिला न्यायाधीश मुलताई जिला बैतुल से संबंधित है जिसमें पक्षकार निम्नानुसार है :- श्रीमति वर्षा पति दिनेश 38 साल निवासी गढ़ेकर रोपावड बैतुल रोड मुलताई.....याधिकाकर्ता विरुद्ध 1 श्रीमति नीतू पति प्रहलादसिंह परमार 45 साल निवासी गुरुसाहबवाड मुलताई 2 श्रीमति वदना पति नितेश साहू 40 साल निवासी बस स्टैंड के सामने सुभाषवाड मुलताई 3 श्रीमान पीलासीन अधिकारी एव अनुविभागीय अधिकारी राजस्व मुलताई 4 जिला निर्वाचन अधिकारी बैतुल द्वारा श्रीमान अमनवीरसिंह बंस कलेक्टर बैतुल.....प्रतिवादीगण

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प्ररूप-आ
(नियम -10 का उपनियम (3) देखिए)

मतपत्र

.....नगर पालिका परिषद मुलताई "अध्यक्ष" के पद के लिये
सम्यकरूपेण नाम निर्देशित अभ्यर्थियों के नाम

1	श्रीमति वर्षा गढ़ेकर	श्री दिनेश गढ़ेकर	वार्ड क्र- 03	X
2	श्रीमति नीतू प्रहलाद सिंह परमार	श्री प्रहलाद सिंह परमार	वार्ड क्र- 06	



EXD22
DWL
26.4.23
(शालिनी शर्मा सिंह)
प्रथम अपर जिला न्यायाधीश
मुलताई, जिला-बैतुल

पंडीसमर ज.अ.वि.वि.ए.ए.
अनुविभागीय अधिकारी राजस्व
मुलताई

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C.A.No 1486/2023 (Express) अधिम कार्यवाही हेतु सत्यप्रतिलिपि ExD - 23 जो कि MJC 23/2022 श्रीमति वर्षा विरुद्ध श्रीमति नीतू चगैरह निर्णय दिनांक 13.06.2023 न्यायालय :- श्रीमति शालिनी शर्मा सिंह प्रथम अपर जिला न्यायाधीश मुलताई जिला बैतुल से संबंधित है जिसमें पक्षकार निम्नानुसार है :- श्रीमति वर्षा पति दिनेश 38 साल निवासी गढ़ेकर रोपावड बैतुल रोड मुलताई.....याधिकाकर्ता विरुद्ध 1 श्रीमति नीतू पति प्रहलादसिंह परमार 45 साल निवासी गुरुसाहबवाड मुलताई 2 श्रीमति वदना पति नितेश साहू 40 साल निवासी बस स्टैंड के सामने सुभाषवाड मुलताई 3 श्रीमान पीलासीन अधिकारी एव अनुविभागीय अधिकारी राजस्व मुलताई 4 जिला निर्वाचन अधिकारी बैतुल द्वारा श्रीमान अमनवीरसिंह बंस कलेक्टर बैतुल.....प्रतिवादीगण

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प्ररूप-आ
(नियम -10 का उपनियम (3) देखिए)

मतपत्र

.....नगर पालिका परिषद मुलताई "अध्यक्ष" के पद के लिये
सम्यकरूपेण नाम निर्देशित अभ्यर्थियों के नाम

1	श्रीमति वर्षा गढ़ेकर	श्री दिनेश गढ़ेकर	वार्ड क्र- 03	X
2	श्रीमति नीतू प्रहलाद सिंह परमार	श्री प्रहलाद सिंह परमार	वार्ड क्र- 06	



EXD23
DWL
26.4.23
(शालिनी शर्मा सिंह)
प्रथम अपर जिला न्यायाधीश
मुलताई, जिला-बैतुल

पंडीसमर ज.अ.वि.वि.ए.ए.
अनुविभागीय अधिकारी राजस्व
मुलताई

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43. Therefore, it appears that the paper of the ballots were such that the pens left trails or mark of blotting of ink on the paper because similar type of marks are there even in the ballots of the other candidate who had contended herself to be the honest candidate. If these blots and pen trails were there only in the ballots of the returned candidate, then in such circumstances, some conclusion or inference could have been drawn, but since similar type of blots and pen trails are there in the ballots of the other candidate also, therefore, it is to be inferred that it was something natural. Even if the voters had marked their marks on the ballots, then at least the contesting candidate was not required to mark anything because she had no cause to be identified or to make any identification mark in the ballot but of the ballot papers that have been reproduced above all the ballots have such marks which seem to be natural in flow of ink of the pen which was used for marking the cross sign in the ballots.

44. Therefore, to that extent, the order of the Election Tribunal in holding that the ballot papers had identification marks, seems to be contrary to law and it deserves to be and is hereby set aside.

45. Coming to the second ground i.e. corrupt practices of the present petitioner by employing illegal resources to procure the



ballots/votes is concerned, what has been found proved by the Election Tribunal is contrary to what was pleaded before the Election Tribunal. The relevant pleading of corrupt practice before the Election Tribunal was as under:-

“11. इस साक्षी का कहना है कि, उक्त निर्देश दिये जाने के बाद निर्वाचन अधिकारी ने सभी मतदाताओं को मतपेटी दिखायी जो कि खाली थी, इसके पश्चात् उन्होंने उसे सीलबंद किया तथा सीलबंद करने के पश्चात् निर्वाचन अधिकारी ने सभी पार्षदों को उक्त मतदान करने के लिए कहा, जिस पर सभी मतदाताओं ने अपना-अपना गुप्त मतदान कर उक्त सीलबंद पेटी में डाला। इस साक्षी का कहना है कि, मतदान संपन्न होने के बाद निर्वाचन अधिकारी ने मतगणना के समय सभी की उपस्थिति में मतपत्र की पेटी खोली तथा मतपत्रों की गणना के बाद निर्वाचन अधिकारी ने उन्हें बताया कि, 9 मतपत्र प्रत्यर्थी क्र.1 नीतू परमार के पक्ष में हुये तथा 6 मतपत्र उसके पक्ष में हुये हैं। इस साक्षी का कहना है कि, मतपत्रों की गिनती के पश्चात् और किसको, कितने मतपत्र मिले हैं, इसकी घोषणा के पश्चात् उन्हें मतपत्र नहीं दिखाये गये तथा निर्वाचन अधिकारी ने उसी समय नीतू परमार को अध्यक्ष घोषित कर दिया तथा मतगणना के समय उन्हें मतपत्र दिखाये बिना उन्हें सीलबंद कर दिया।

12. इस साक्षी का कहना है कि, जब निर्वाचन अधिकारी ने प्रत्यर्थी क्र 1 नीतू परमार को नगर पालिका मुलताई का अध्यक्ष घोषित कर दिया, तब उसने तथा भारतीय जनता पार्टी के 7 अन्य पार्षदों ने निर्वाचन अधिकारी राजनदिनी शर्मा से पुनः सील खोलकर उन्हें मतपत्र दिखाये जाने का निवेदन किया जिस पर निर्वाचन अधिकारी ने पुनः बंद सील खोलकर उन्हें मतपत्र दिखाये। इस साक्षी का कहना है कि, जब उन्हें मतपत्र दिखाये गये, तब उसने और अन्य पार्षदों द्वारा मतपत्रों देखने पर यह पाया कि, प्रत्यर्थी क्र.1 नीतू परमार मिले चार मतपत्रों में क्रॉस के अलावा डॉट, ओवर राईटिंग, क्रॉस के उपर



डबल क्रॉस तथा क्रॉस के बाजू में कुछ लाईन जैसे चिन्ह अंकित थे, इसलिए उन्होंने उक्त चार मतपत्रों के संबंध में निर्वाचन अधिकारी से कहा कि, उक्त चारो मतपत्र उनके द्वारा चुनाव प्रक्रिया प्रारंभ होने के पूर्व मतपत्रों के संबंध में दिये गये निर्देशों का उल्लंघन करते हुए डाले गये, इसलिए उन्होंने उनसे उक्त चारो मतपत्रों को निरस्त करने का निवेदन किया तथा इस संबंध में उसने एवं अन्य पार्षदों ने प्रदर्श डी.33 की एक लिखित आपत्ति निर्वाचन अधिकारी के सामने प्रस्तुत की, किंतु निर्वाचन अधिकारी ने उनके द्वारा प्रस्तुत की गयी आपत्ति के पृष्ठ भाग पर ही उसका निराकरण करते हुए उनके द्वारा की गयी आपत्ति को निरस्त कर दिया।”

46. The pleading made to press the ground of corrupt practice was that since votes of the opposite party were procured, therefore, there is corrupt practice.

47. It is settled in law that corrupt practice is to be proved like criminal allegation in a criminal trial. Proof of corrupt practice requires strict proof and no inference as to corrupt practice can be made. The trial of election petition in allegation of corrupt practice is a quasi-criminal nature having burden of proof on election petitioner to prove ingredients of charges. In *Manohar Joshi v. Damodar Tatyaba* reported in (1991) 2 SCC 342 it has been held as under:-

“20. A reading of all the aforesaid provisions together would show that the proceedings pursuant to the notice issued by the High Court under Section 99 of the Act are of a quasi-criminal nature. It has also been held so by this Court in so many words, in some of the decision: See D.P. Mishra v. Kamal Narain Sharma [(1970) 3 SCC 558 : (1971) 3 SCR 257] and Rashim



Khan v. Khurshid Ahmed [(1974) 2 SCC 660 : (1975) 1 SCR 643] . Where, therefore, a corrupt practice is alleged, the trial of an election petition on such charge is of a quasi-criminal nature, and a heavy burden rests on the person alleging the corrupt practice to prove strictly all the ingredients of the charge. This is as it should be, since the naming of a person as having committed a corrupt practice has a serious consequence of disqualifying him from being chosen as or from being member of any House of the Parliament or of the Legislative Assembly or Council of a State for a period up to 6 years.”

48. In the present case, the election petitioner has invited the Trial Court/Election Tribunal to draw an inference of corrupt practice only by pointing out that since the voters of INC had voted for the petitioner who had been elected on mandate of BJP, therefore, there was corrupt practice in procuring the votes of opposite party.

49. As already noted above and is an undisputed position, that the election to the post of Councillor was on party lines and the candidates were elected as Councillors on party mandates, but the election to the post of President was not on party lines but was on individual lines and though there was a letter of support by BJP in favour of the respondent No.1 but she did not contest election on party symbol. It was an indirect election wherein only Councillors were the voters and it was like election of Vice President or election of Rajya Sabha wherein only the elected members of the Council had the right to vote. In the present case, it is undisputed that both the petitioner



and the respondent No.1 were elected on the mandate of BJP as Councillors and no candidate who was elected on the mandate of INC was in the fray for the post of President and 6 Councillors had been selected on the mandate of INC in the election. Once no INC Councillor was in the fray for the post of President of Municipal Council, then these six INC Councillors had to vote and they were not expected to abstain from voting in the election. Once the INC Councillors had to vote, then their vote had to go in favour of either of the two candidates. It can be equated to a situation where for the post of Vice President, no candidate from a particular opposition party is in the fray, then whether its MPs would be expected to abstain from voting or whether if the MPs of that party from whom there is no candidate to the post of Vice President in the election, can the election of the Vice President be held to be illegal, the answer would be “no” but the Election Tribunal seems to be ignorant of the basic principles of parliamentary democracy. Only because the INC Councillors had voted in the election, then their vote had to be in favour of one or the other candidate and once there was no Councillor elected from INC symbol in the fray for the post of President, then if these candidates had voted for one or the other candidate, then it was something



between the Party and the Councillor but the votes of these Councillors are not invalid because they being voters were expected to vote for one or the other candidate. If they had violated the party whip, then their party could have taken action against them. As the election was not on party symbol, there was no question of cross-voting. Even if there was cross-voting, then it could have been a ground for INC to take action against their Councillors, but it was hardly a ground for setting aside the election. Even if the petitioner/returned candidate had rebelled and contested election as President, then for that, remedy lay elsewhere, but election as President could not be set aside.

50. The Election Tribunal seems to have done a moral policing inasmuch the winning candidate should not have taken the support of cross-voters. Though as the election was not on party lines, there was no question of cross voting, but even if there was cross voting, then also the votes were legal. The Election Tribunal could not stepped into the shoes of party authority of BJP and tried to remedy if something was wronged by cross-voting of INC Councillors.

51. That, there was no presumption that which of the Councillors had voted for the returned candidate. Only because two INC mandated



Councillors had been nominated as Presiding Officers of Advisory Committees, inference of corrupt practice has been made.

52. As the election of President is not on party line, the President could have appointed any of his confidant as member of President-in-Council ("PIC" for short), and that need not be the Councillor of BJP.

53. The Election Tribunal was not deciding a Public Interest Litigation against appointment of PIC members, or constitution of Advisory Committees.

54. Even there is no presumption that which voters have voted for the petitioner or have voted for respondent No.1, but only this much was established that they have voted. If the Councillors of that party have voted in the election to President, no candidate elected on mandate of that party was there in the fray for President, then they will not lose their voting rights and the election to the post of President of Municipality would not be declared illegal only because INC voters had voted. This was all which was the pleading for bringing home the allegation of corrupt practice.

55. There was no allegation in the election petition that subsequently some of the Councillors have been given lucrative positions of Presiding Officer (सभापति) in the Municipal Council and,



therefore, there has to be presumption of bribery of these Councillors.

This is a material fact which was required to be pleaded in the election petition but was not pleaded. Counsel for the respondent No.1 had argued that this is not a material fact but only material particular which need not be pleaded. However, this Court is not convinced with this argument because the fact that two Councillors have been given lucrative position of Presiding Officer (सभापति) in the Municipal Council, is something which is a material fact and it was required to be pleaded but it seems to be raised before the Election Tribunal only during the course of evidence by putting questions to the elected candidate that whether two of the INC Councillors have been given the post of सभापति or not, to which the returned candidate has answered in affirmative.

56. There is a world of difference in material fact and material particular. In *Anil Vasudev Salgaonkar v. Naresh Kushali Shigaonkar*, (2009) 9 SCC 310, it was held as under :-

“58. There is no definition of “material facts” either in the Representation of the People Act, 1951 nor in the Code of Civil Procedure. In a series of judgments, this Court has laid down that all facts necessary to formulate a complete cause of action should be termed as “material facts”. All basic and primary facts which must be proved by a party to establish the existence



of cause of action or defence are material facts. "Material facts" in other words mean the entire bundle of facts which would constitute a complete cause of action. This Court in Harkirat Singh case [(2005) 13 SCC 511] tried to give various meanings of "material facts". The relevant para 48 of the said judgment is reproduced as under: (SCC pp. 526-27)

"48. The expression 'material facts' has neither been defined in the Act nor in the Code. According to the dictionary meaning, 'material' means 'fundamental', 'vital', 'basic', 'cardinal', 'central', 'crucial', 'decisive', 'essential', 'pivotal', 'indispensable', 'elementary' or 'primary'. [Burton's Legal Thesaurus (3rd Edn.), p. 349.] The phrase 'material facts', therefore, may be said to be those facts upon which a party relies for its claim or defence. In other words, 'material facts' are facts upon which the plaintiff's cause of action or the defendant's defence depends. What particulars could be said to be 'material facts' would depend upon the facts of each case and no rule of universal application can be laid down. It is, however, absolutely essential that all basic and primary facts which must be proved at the trial by the party to establish the existence of a cause of action or defence are material facts and must be stated in the pleading by the party."

59. In the context of a charge of corrupt practice, "material facts" would mean all basic facts constituting the ingredients of the particular corrupt practice alleged, which the petitioner (the respondent herein) is bound to substantiate before he can succeed on that charge. It is also well settled that if "material facts" are missing they cannot be supplied after expiry of period of limitation for filing the election petition and the pleading becomes deficient".

57. In ***M. Chandra Vs. M. Thangamuthu, (2010) 9 SCC 712***, it was held as under :-

"79. It is a settled legal position that an election petition must clearly and unambiguously set out all the material facts which the petitioner is to rely upon during the trial, and it must reveal a clear and complete picture of the circumstances and should disclose a definite cause of action. In the absence of the above, an election petition can be summarily dismissed. To see whether



material facts have been duly disclosed or whether a cause of action arises, we need to look at the averment and pleadings taken up by the party.

81. *One cannot file an election petition based on frivolous grounds. The facts presented must be clear, concise and unambiguous. All the above cases and provisions, though do not deal directly with the issues in this case, they go on to emphasise that an election result, where the people elect their representatives cannot be taken lightly. For an election result to be annulled, there must be positive evidence to prove illegality of the election. The natural corollary is that the person who files an election petition, must have a clear and definite case, to prove that the election was illegal. Therefore the burden of proof shall lie on the petitioner filing the election petition.*

82. *An election petition challenging the election of a returned candidate on the grounds of corrupt practices is not a criminal proceeding; but it is no less than a criminal proceeding with regard to the proof required to be furnished to the court by the petitioner (see J. Chandrasekhara Rao v. V. Jagapathi Rao [1993 Supp (2) SCC 229]). Though, in the present case, the charges are not those of corrupt practices, they are not any lesser in terms of seriousness; hence the burden of proof is on the election petitioner to prove the charges he has made beyond reasonable doubt. This is done so that the purity of the election process is maintained.”*

58. In **Santosh Yadav v. Narender Singh, (2002) 1 SCC 160**, it was held as under :-

“15. *A word about the pleadings. Section 83 of the Act mandates an election petition to contain a concise statement of the material facts on which the petitioner relies. The rules of pleadings enable a civil dispute being adjudicated upon by a fair trial and reaching a just decision. A civil trial, more so when it relates to an election dispute, where the fate not only of the parties arrayed before the court but also of the entire constituency is at a stake, the game has to be played with open cards and not like a game of chess or hide and seek. An election petition must set out all material facts wherefrom inferences vital to the success of the election petitioner and enabling the court to grant the relief prayed for by the petitioner can be drawn subject to the averments being substantiated by cogent evidence. Concise and specific pleadings setting out all relevant material*



facts, and then cogent affirmative evidence being adduced in support of such averments, are indispensable to the success of an election petition. An election petition, if allowed, results in avoiding an election and nullifying the success of a returned candidate. It is a serious remedy. Therefore, an election petition seeking relief on a ground under Section 100(1)(d) of the Act, must precisely allege all material facts on which the petitioner relies in support of the plea that the result of the election has been materially affected. Unfortunately in the present case all such material facts and circumstances are conspicuous by their absence”.

59. This Court then put a question to counsel for the rival parties that there has to be only one Presiding Officer in the Municipal Council to preside over the meetings of the Municipal Council, who would be called Presiding Officer/ सभापति as the word “सभापति” has been used by the Election Tribunal in the entire order. The counsel for the rival parties agreed to the proposition that there can be only one Presiding Officer to preside over meetings of the Municipal Council and there cannot be two Presiding Officers, though there can be one Presiding Officer and there can be one Deputy Presiding Officer but there cannot be two Presiding Officers.

60. To clarify the situation, the counsel for the rival parties have thereafter clarified that in fact these were the Presiding Officers of the Advisory Committees of the Municipal Council and the counsel for respondent/election petitioner placed for perusal of this Court, an



Civil Revision Nos.464 of 2023,
497 of 2023 & 499 of 2023

order issued by the Municipal Council appointing various Councillors

as सभापति of Advisory Committees. The said order is as under:-

कार्यालय नगर पालिका परिषद मुलताई जिला बैतूल (म0प्र0)
आज्ञा-पत्रक

विषय :- प्रेसिडेंट इन काउंसिल एवं सलाहकार समितियों के गठन के संबंध में		
म.प्र. नगर पालिका अधिनियम 1961 के तहत बने प्रेसिडेंट इन काउंसिल नियम 1998 में संशोधन करते हुए म.प्र. राजपत्र 4 जनवरी 2016 अनुसार निम्नलिखित विभाग बनाये गये हैं जिसके अनुसार प्रेसिडेंट इन काउंसिल का गठन किया जाना है ।		
अतः नगर पालिका अधिनियम 1961 की धारा 70 प्रेसिडेंट इन काउंसिल का गठन एवं प्रेसिडेंट इन काउंसिल के कामकाज संचालन तथा प्राधिकारों की शक्ति एवं कर्तव्य नियम 1998 में प्रदत्त शक्तियों का प्रयोग करते हुए मैं श्रीमति नीतू प्रहलादसिंह परमार अध्यक्ष नगर पालिका परिषद मुलताई निर्वाचित पार्षदों में से प्रेसिडेंट इन काउंसिल का सदस्य, विभागों के प्रभारी एवं धारा 71 के अंतर्गत सलाहकार समितियों के सदस्य की निम्नानुसार नियुक्ति करती हूँ ।		
प्रेसिडेंट इन काउंसिल धारा 70 के अंतर्गत		
क्र.	विभाग का नाम	सभापति
1	सामान्य प्रशासन विभाग	श्रीमति अंजली सुमीत शिवहरे
2	जल कार्य तथा सीवरेज विभाग	श्रीमति साजेदा बेगम जाकिर
3	लोक निर्माण उद्यान, विद्युत एवं यांत्रिकी विभाग	श्रीमति निर्मला रामा उबनारे
4	राजस्व वित्त एवं लेखा विभाग	श्री रितेश नारायण विश्वकर्मा
5	स्वच्छता एवं ठोस अपशिष्ट प्रबंधन विभाग	श्री सुरेश पौनीकर
6	योजना, यातायात, परिवहन एवं सूचना प्रौद्योगिकी विभाग	श्री पंजाबराव धिकाने
7	शहरी गरीबी उपशमन विभाग	श्रीमति वंदना नितेश साहू

61. The scheme of the M.P. Municipalities Act, 1961 is that there would be one elected Council and there would be a smaller body known as President-in-Council which is constituted under Section 70. Advisory Committees are constituted under Section 71. Sections 70 and 71 of the M.P. Municipalities Act, 1961 are as under:-

“70. Constitution of President-in-Council.-- (1) There shall be a President-in-Council for every Council which shall be constituted by the President from amongst the elected Councillors within seven days from the date of election of Vice-President under Section 43. (2) The President-in-Council shall consist of the President and seven members in case of Municipal



Council and five members in case of Nagar Panchayat. (3) The members of the President-in-Council shall hold office during the pleasure of the President. (4) Each Council shall have such departments as may be prescribed and member of the President-in-Council shall be made incharge of such departments by the President. (5) The President shall be the Ex-Officio Chairman of the President-in-Council and shall over the meeting of the President-in-Council, if present. In the absence of the President, the members present in the meeting shall choose one of them to preside over the meeting. (6) Notwithstanding anything contained in this Act, the President-in-Council, Chairman and the members shall exercise such powers and perform such function, as may be prescribed. (7) The conduct of business of the President-in-Council shall be such as may be prescribed. In case the office of the President is declared vacant under the Act, the Councillors nominated by the Government under sub-section (2) of Section 37 to perform the duties of the President or a person who is elected for the office of the President, as the case may be, either allow the existing members of the President-in-Council to continue or appoint new members in place of them from amongst the elected Councillors.

71. Advisory Committees.- *After the first meeting of the Council under section 43 the President shall constitute the Advisory Committees for every department of the Council from amongst the elected Councillors other than the Councillors included as member in the President-in-Council to advise in the affairs of the department concerned. (2) Each Advisory Committee shall consist of five members in case of a Municipal Council and three members in case of a Nagar Panchayat. (3) The member of the President in-Council incharge of the Department shall convene and preside over the meeting of the Advisory Committee relating to the department concerned at least once in every two months. The member of the President-in-Council incharge of the department may take into consideration the suggestions made in the meeting of the Advisory Committee."*

62. In the case of Municipal Council, there has to be a President-in-Council comprising of seven members and then Advisory Committees have to be constituted in which one member of President-in-Council would head each of the Advisory Committees. Since there were seven



members of President-in-Council as per Section 70(2), therefore, seven Advisory Committees had been constituted and these seven Advisory Committees have one President-in-Council member as its Chairman. Therefore, it was not the case of Presiding Officer of the Council, but case of Presiding Officer of Advisory Committees and the Act in Section 71(3) mandates that one member of the President-in-Council shall preside over the meeting of one Advisory Committee, therefore, this was only as per the statutory mandate that one President-in-Council member would be Presiding Officer of one Advisory Committee and this is what has been done by the order which was placed for perusal of this Court by learned counsel for the respondent. The two members namely Punjabrao Chikane and Ritesh Narayan Vishwakarma though might be appointed on mandate of INC but once were made members of President-in-Council, more so when the post of office of President is not on party lines, then there cannot be any inference of corrupt practice in obtaining their votes, unless corrupt practice was otherwise proved.

63. What has been found proved by the Election Tribunal in holding that there are corrupt practices, is as under:-



“69. प्रस्तुत प्रकरण में स्वयं प्रत्यर्थी क्र.1 नीतू परमार अपने प्रतिपरीक्षण की कंडिका 9 में बिना किसी संकोच के यह स्वीकार किया है कि, रितेश विश्वकर्मा और पंजाबराव चिकाने ने उसे नगर पालिका अध्यक्ष बनाने में सहयोग प्रदान किया, इसलिए उसने उन्हें सभापति बनाया। यदि वास्तव में प्रत्यर्थी क्र.1 नीतू परमार द्वारा मध्यप्रदेश निर्वाचन अधिनियम 1961 की धारा 28 में वर्णित भ्रष्ट आचरण एवं अवैधता न की होती तो उसे इस बात की जानकारी होना असंभव था कि, नगर पालिका अध्यक्ष के चुनाव में पंजाबराव चिकाने तथा रितेश विश्वकर्मा ने उसे नगर पालिका अध्यक्ष बनाने में सहयोग किया तथा वह पंजाबराव चिकाने तथा रितेश विश्वकर्मा को सभापति नहीं बनाती।”

64. The definition of “corrupt practice” as per Section 28 of the Act of 1961 is as under:-

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

- (i) Bribery as defined in clause (1) of Section 123 of the Representation of the People Act, 1951 (43 of 1951);
- (ii) Undue influence as defined in clause (2) of Section 123 of the Representation of the People Act, 1951 (43 of 1951);
- (iii) The systematic 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 on grounds of caste, race, community or religion or the use of or appeal to, religious symbols, or the use of or appeal to, national symbol, such as the national flag or the national emblem, for the furtherance of the prospects of that candidate's election.
- (iv) The publication by a candidate or his agent or by any other person with the consent of the candidate or his election agent of any statement of fact which is false, and which he either believes to be false or does not believe to be true in relation to the personal character or conduct of any candidate, or in relation to the candidature, or withdrawal from contest of any candidate being a statement reasonably calculated to prejudice the prospects of that candidate's election.



- (v) *The hiring or procuring whether on payment or otherwise of any vehicle or vessel by a candidate or his agent or by any other person with the consent of the candidate or his election agent for the conveyance of any elector (other than the candidate himself, and the members of his family or his agent) to or from any polling station provided in accordance with the rules made under this Act:*

Provided that hiring of a vehicle or vessel by an elector or by several electors at their joint costs for the purpose of conveying him or them to or from any such polling station shall not be deemed to be a corrupt practice under this clause if the vehicle or vessel so hired is a vehicle or vessel not propelled by mechanical power:

Provided further that the use of any public transport vehicle or vessel or any tramcar or railway carriage by an elector at his own cost for the purpose of going to or coming from any such polling station shall not be deemed to be a corrupt practice under this Clause.

Explanation -- In this clause the expression 'vehicle' means any vehicle used or capable of being used for the purpose of road transport whether propelled by mechanical power or otherwise and whether used for drawing other vehicle or otherwise.

- (vi) *The holding of any meeting in which intoxicating liquors are served.*
- (vii) *The issuing of any circular, placard or poster having a reference to the election or selection which does not bear the name and address of the printer and publisher thereof.*
- (vii-a) *the incurring of authorising of expenditure in contravention of Section 32-A.*
- (viii) *Any other practice which the State Government may prescribe by rules to be a corrupt practice. ”*

65. It is also placed on record before the Election Tribunal that various Councillors have subsequently resigned from their office. Once various Councillors have resigned from the Office, then President-in-Council has to be constituted from the available members



and as the post of President was not on party line, therefore, the President could have appointed even from a person elected from either of the parties or from any of the parties as Councillor. It would have been a different matter if the post of President had been on party line, but that is not so.

66. The Election Tribunal seems to be doing moral policing by holding that once the runner-up candidate had won by a heavy majority in her Ward, therefore, she should have been made member of President-in-Council and Presiding Officer of one Advisory Committee. In parliamentary democracy, a person elected from majority of votes cannot be expected to appoint his rival contender on any position in the Council because the person who is having confidence of the House would only appoint those persons from whose strength the person is having confidence of the House. He cannot be expected to appoint his rival contender in the election on any post of confidence.

67. The Election Tribunal had no business to guide the returned candidate that whom to appoint as member of President-in-Council and merely subsequently because some of the INC Councillors have been appointed members of President-in-Council, there cannot be any



inference of corrupt practices in the election because President-in-Council had to be constituted of 7 members and if the President has the confidence of some INC members, then there cannot be any presumption of corrupt practice in the election because the President is not holding the office on party line.

68. This Court is unable to uphold the order of the Election Tribunal to the extent of corrupt practices also for the reason that there was no allegation of corrupt practice by making appointment of Ritesh Narayan Vishwakarma and Punjabrao Chikane as PIC members and this is something that has been held by the Election Tribunal, is beyond the pleadings of the parties. Therefore, the findings as to the corrupt practices, is also set aside.

69. So far as CR No. 497 of 2023 and CR No. 499 of 2023 are concerned, these are filed by the electors who were voters to the post of President of the Municipal Council. The petitioners in these cases were not parties to the election petition. They did not challenge the election to the post of President by filing any election petition in their character as electors. They are now before this Court in their capacity as electors, challenging the order of the Election Tribunal whereby the election of the returned candidate has been declared void. The law



gives right to any elector to oppose the election of successful candidate. However, once the election of successful candidate has been set aside, then individual elector challenging the order of Election Tribunal, just to support the returned candidate, is something that is totally alien to law.

70. For this reason, the petitioners in C.R. Nos.497 of 223 and 499 of 2023 cannot be deemed to be persons aggrieved within the purview of Section 26 of the M.P. Municipalities Act, 1961. Therefore, ***CR Nos.497 of 2023 and 499 of 2023 are dismissed as not maintainable.***

71. In conclusion, C.R. No.464/2023 is **allowed** whereas CR No.497/2023 and CR No.499/2023 are **dismissed** as not maintainable. The impugned order passed by the Election Tribunal dated 13.06.2023 is set aside and the election of the returned candidate is upheld. She shall be allowed to re-assume charge as President.

(VIVEK JAIN)
JUDGE