

(2016) 09 MP CK 0014

**MADHYA PRADESH HIGH COURT**

**Case No:** Writ Petition No. 16586 of 2015

Smt. Anushka Ray

APPELLANT

Vs

Additional Collector

RESPONDENT

**Date of Decision:** Sept. 14, 2016

**Acts Referred:**

- Constitution of India, 1950 - Article 226
- Madhya Pradesh Gram Panchayat Raj Evam Gram Swaraj Adhiniyam, 1993 - Section 122(1), Section 122(2), Section 3
- Madhya Pradesh Panchayat (Election Petitions, Corrupt Practices and Disqualificati

**Citation:** (2016) 3 JabLJ 284 : (2016) 4 MPLJ 687

**Hon'ble Judges:** Mr. Atul Sreedharan, J.

**Bench:** Single Bench

**Advocate:** Mr. Manikant Sharma, Advocate, for the Respondent No. 2; Mr. A.M. Trivedi, learned Senior Counsel with Mr. Aseem Trivedi, learned counsel, for the Petitioner

**Final Decision:** Disposed Off

**Judgement**

@JUDGMENTTAG-ORDER

**Mr. Atul Sreedharan, J.** - This is a petition which has been filed under Article 226 of the Constitution of India for issuance of a writ in the nature of Certiorari seeking the quash of the election petition filed in the Court of the appropriate authority which is the Additional Collector, Damoh. The petition is an election petition which has been filed under Section 122 of the Madhya Pradesh Panchayat Raj Act, 1993, by which the election Petitioner who is the Respondent No.2 had prayed for setting aside the election of Petitioner to the post of President of Janpad Panchayat, Hata.

2. On behalf of the Petitioner, it is submitted that the Petitioner was elected as a Member of the Janpad Panchayat, Hata from the Vinti Constituency. There are 17 constituencies in Janpad Panchayat, Hata and the Respondent No. 3 is the sole

contesting Respondent who stood for the post of the President of Janpad Panchayat, Hata, against the Petitioner. It is relevant to state here that the Respondent No.2, who is the contesting Respondent in this case is an elected member from the Constituency Sakor of Janpad Panchayat, Hata. The 17 elected members of Janpad Panchayat Hata would now vote for the election of the President of Janpad Panchayat, Hata, which was held on 09/03/15 in which the Petitioner was the returned candidate.

3. Learned counsel for the Petitioner states that the Respondent No.2 was not a candidate who stood for the election of President of the Hata Constituency and it was the Respondent No.3 who was the candidate opposing the Petitioner and who lost by one vote. The Petitioner has questioned the election petition filed by Respondent No.2 before the authority on the grounds of locus standi and on the merits. Learned senior counsel for the Petitioner has referred to Section 122 of the Panchayat Raj Evam Gram Swaraj Adhiniyam, 1993 (herein after referred to as "Act of 1993") which lays down the requisites for an election petition. Section 122 (1) of the Act of 1993 provides that the election under the Act can be called into question only by way of petition which is prescribed under Clause 1, 2 or 3 of subsection (1) to Section 122. Since the election related to the election of the President of the Janpad Panchayat, the same was to be presented before the Collector. Under sub-section (2), the petition had to be presented within 30 days from the date on which the election in question was notified and subsection (3) provided that such a petition shall be enquired into and disposed of in accordance with the procedure mentioned in the Act. Thereafter, the learned counsel for the Petitioner has referred to Rule 3 of the Madhya Pradesh Panchayat (Election Petition, Corrupt Practices and Disqualification for Membership) Rules, 1995 (hereinafter referred to as the "Rules of 1995"). Rule 3 provides for the presentation of an election petition according to which, the person making the petition or such person authorised in writing by a person making the petition can file an election petition. Rule 3 (2) of the Rules of 1995 lays down that such election petition shall be accompanied by as many copies as there are respondents mentioned in the petition and every such copy shall be attested by the Petitioner under his own signature, to be a true copy of the petition.

4. In order to elaborate on the word "person" used in 3(1) of the said Rules of 1995, the learned Senior Counsel appearing on behalf of the Petitioner has stated that it is not all and sundry who could prefer an election petition but someone who is a person aggrieved. In short, the learned counsel for the Petitioner has emphasised that a wayfarer or an interloper would not have the right to prefer an election petition against the returned candidate, but someone who is "person aggrieved" in the eyes of law is the only person who can file such a petition and sustain the same. In order to buttress his contention, the learned counsel for the Petitioner has referred to the judgment of the Supreme Court reported in **(2013) 4 SCC 465** ♦ **Ayaaub Noor Khan Pathan v. State of Maharashtra & Others**. The Ld. Counsel for the Petitioners has drawn the attention of this Court to paragraph 10 of the

judgement in which the Supreme Court has held that a legal right would be one which gives right to an entitlement arising out of legal rules. It further holds that it is something which is an advantage or a benefit which is conferred upon a person by the rule of law. It further enunciates that the expression "person aggrieved" does not include a person who suffers from a psychological or an imaginary interest and that a person aggrieved must necessarily be one whose right or interest has been adversely affected or jeopardized. Thereafter, he refers to paragraph 17 of the said judgment wherein the Supreme Court arrives at a finding that a person who raises a grievance must show how he has suffered a legal injury and further goes on to hold that a stranger having no right whatsoever cannot be permitted to interfere in the affairs of others as a usual course. Paragraphs 19 and 23 have also been referred to, wherein the Supreme Court, while referring to its judgment in the **Ravi Yashwant Bhotra v. District Collector, Raigarh (2012) 4 SCC 407**, held that a legal right is an averment of entitlement arising out of law and that same is a benefit conferred upon a person by the rule of law and so a person challenging an act or omission must be someone who has suffered a legal injury from such act or omission and that a mere harm or loss that may not be wrongful in the eye of law as it does not result to an injury to a legal right cannot be agitated and finally in para 23, the Court comes to a finding that under ordinary circumstances, a third person having no concern with the case at hand cannot claim to have any locus standi to raise any grievance whatsoever. The Supreme Court however adds a caveat by holding that in exceptional cases, where the persons aggrieved on account of ignorance, illiteracy, articulation or poverty are unable to approach the Court, they can be represented by a person who has no personal agenda to represent such persons. Based on this judgment, the learned counsel for the Petitioner states that Respondent No. 2 did not contest the election for the post of President of the Janpad Panchayat, Hata and therefore she has not suffered any actual injury as she was not even a candidate in the said electoral process which selected the Petitioner as President of the said Janpad Panchayat.

5. Learned counsel for the Petitioner has referred to Rule 21 of the Rules of 1995 with specific reference to Rule 21(1)(d)(iv) wherein the grounds for declaring the election to be void were laid down as on account of any non-compliance with the provisions of the Act or any Rules or orders made therein which has materially affected the returned candidate. The learned counsel for the Petitioner states that this provision in the Rules of 1995 are in pari materia to Section 100 (d)(iii)(iv) of the Representation of Peoples Act, 1950, which relate to the grounds for declaring the election to be void, wherein the Legislature has laid down that the result of the election wherein so far as it concerns the returned candidate has been materially affected on account of improper reception, refusal of rejection of any vote or reception of any vote which is void or by any non-compliance with the provision of the Constitution or the Representation of Peoples Act, 1951 or of any Rules or orders made under that act. The point that the learned counsel for the Petitioner was

pressing is that the election petition does not disclose that the election of the Petitioner was "materially affected" by any act or omission on the part of the Petitioner. This is the second point on the basis of which the Petitioner has challenged the sustenance of the election petition before the authority.

6. Learned counsel for the Petitioner has argued that the election petition is devoid of "material particulars" and refers to para 2 of the election petition at page 15 and contends that there is no allegation against the Petitioner herein of having violated any rules and that the allegations are against the Presiding Officer/Returning Officer and in order to highlight the same, has drawn the attention of this Court to page 20, which is a part of the election petition filed by Respondent No. 2, wherein the election Petitioner/Respondent No. 2 has levelled allegations against the Presiding Officer. The main grouse of the Respondent No. 2 is that amongst the 17 members who had voted for the election of the President of the Janpad Panchayat, 13 of them had voted along with companions which was in gross violation to the electoral rules and that the same was permitted by the Presiding Officer on account of which the Respondent No. 3 had lost. Learned counsel for the Petitioner has referred to a judgment reported in **(2011) 2 SCC 532** ♦ **Kalyan Kumar Gogoi v. Ashutosh Agnihtori and Another** and has drawn the attention of this Court to paragraph 23 of the said judgment that the elections of the returned candidate to be set aside, it must be shown that the acts or omissions on the part of the returned candidate have "materially affected" the outcome of the elections. The Supreme Court held that if it is not proved to the satisfaction of the Court that the result of the election in so far as it concerns the returned candidate has been materially affected, the election of the returned candidate would not be liable to be declared void. Learned counsel for the Petitioner has also referred to paragraph 24 of the said judgment to show that the success of a winning candidate at an election cannot be lightly interfered with and all the more so, when the election of the successful candidate is liable to be set aside for no fault of his, but of someone else.

7. By bringing this view of the Supreme Court to the cognizance of this Court, learned Counsel for the Petitioner has stressed upon the point that the grouse of the Respondent No.2 is not on account of any act or omission on the part of the Petitioner herein which could have materially affected the outcome of the elections but on account of the role played by the Presiding Officer in allowing 13 of the 17 members to vote in the said election of the President of the Janpad Panchayat along with their companions which according to the Respondent No.2 was against the rules, could not be held as a factor to hold that the election of the Petitioner was materially affected by any act or omission on her part.

8. Learned counsel for the Petitioner thereafter has referred to a decision of the Supreme Court reported in **(2009) 10 SCC 541- Ram Sukh v. Dinesh Aggrawal**. The reference to this judgment is also on the same point of the election of the Petitioner not having been materially affected on account of her acts or omission. In

paragraph 12 of the said judgment, the Supreme Court has held that what the Court must see is whether the election petition lacked in "material facts" required to be stated in the election petition in terms of Section 83(1) of the Representation of People Act, 1950, and if the petition lacked in "material facts", whether same could summarily be dismissed without trial. The Supreme Court holds that it is mandatory that all material facts are set out in an election petition and that if such material facts are not stated then the election petition is liable to be dismissed on that ground alone. In paragraph 13 of the said judgment, the Supreme Court has held that "material facts" are facts upon which the plaintiffs cause of action or the defendants defence depends. In short, all primary or basic facts which are necessary either to prove the cause of action by the plaintiff or the defence by the defendants are "material facts." However, the Supreme Court sums up the said paragraph by saying that what could be said to be material facts would depend upon the fact of each case and no universal rule of application can be laid down. In paragraph 14 of the said judgment, the Supreme Court has referred to another judgment of the Three Judge Bench of the Supreme Court in **(1969) 3 SCC 238 ♦ Samant N. Balkrishna v. George Fernandez** wherein, it was held that the election petition first of all, must contain a concise statement of material facts and the fullest possible particulars and that the omission of even a single material fact leads to an incomplete cause of action. It further held that the function of particulars is to present a full picture of the cause of action and give an opportunity to the opposite party an understanding of the case that he would have to traverse. The Supreme Court further distinguishes between material facts and particulars by stating that they are distinct and that the material facts will mention statement of facts and particulars which set out the names of persons with date, time and place. Learned counsel for the Petitioner thereafter reads out Rule 5 of the Rules of 1995, which learned counsel for the Petitioner states is in pari materia with Section 83 of the Representation of Peoples Act, 1950, which basically deals with the contents of an election petition. In short, the purpose of the learned counsel for the Petitioner in stating the said judgment and Rule 5 is to show that the election petition filed by the Respondent No.2 before the Authority does not lay down the material facts explicitly and therefore ought to have been dismissed at the thresh hold itself and, the failure of the authority to do so calls for interference by this Court by exercise of plenary powers under Article 226 of the Constitution of India.

9. The judgment of the Supreme Court in **(2012) 3 SCC 314 ♦ Manganil Mandal v. Bishnudeo Bhandari**, is also on the same point as (2009) 10 SCC 541, wherein the Supreme Court has reiterated in paragraphs 10, 11 and 13 that where material facts have not been pleaded, the election petition should be thrown out at the thresh hold. The judgment of the Supreme Court cited in **(2012) 4 SCC 194 ♦ Jitu Patnaik v. Sanatan Mohakud & others**, is also on the same effect where the Supreme Court in para 45 has held that it is imperative for an election petition to contain a concise statement of material facts on which the election Petitioner relies upon and

thereafter, it puts a question to itself as to what are the material facts and answers it by observing that material facts are all basic and primary facts which must be proved at a trial by a party of a cause of action or defence. It further states that bare allegations are not to be treated as material facts. In para 46, the Supreme Court referring to another judgment passed by it in **(2007) 3 SCC 617 ♦ Virender Nath Gautam v. Satpal Singh and others**, brings out the distinction between material facts and particulars and holds that material facts are primary or basic facts which must be pleaded by the plaintiff or by the defendant in support of the case set up by him whereas the particulars are details in support of material facts.

10. Learned counsel for the Petitioner has thereafter referred to the judgment of the Supreme Court in **(1988) 2 SCC 12 ♦ Shiv Charan Singh v. Chandrabhan Singh and others** and has referred to para 11 of the said judgment where the Supreme Court held that the Legislature has placed an onerous burden on the election Petitioner to prove that the election was materially affected by reasons of improper acceptance of nomination paper of a candidate. It has also been held that it is not permissible to set aside the election of a returned candidate on mere surmises and conjectures. With the aid of this particular judgment, the learned counsel for the Petitioner wants to demonstrate that the election petition filed by the Respondent No. 2 is based upon surmises and conjectures that had the 13 members who voted for the Petitioner not being accompanied by their companions, the outcome of the election would have been different.

11. Mr. Manikant Sharma, learned counsel for Respondent No.2 first of all has attacked the contention of the Petitioner that the Respondent No.2 is not an "aggrieved person". He has submitted that Respondent No.2 was an elected member of the Janpad Panchayat from the Sakor Constituency and that she had been elected by the voters to represent the Sakor Constituency in the election of the President of the Janpad Panchayat, Hata. He has also stated that she was entitled to vote for the President of the Janpad Panchayat and refers to the election petition, in particular page 21 of the election petition, wherein the prayer of the election Petitioner was to declare the election of the Petitioner No.1 as null and void. On the issue of locus standi, learned counsel for Respondent No.2 has firstly stated that she being an elected member from the Sakor Constituency and who was entitled to vote for the election of the President of the Janpad Panchayat, Hata, had an interest in the fair outcome of the election and where in her opinion the said election was against the rules, she was a person aggrieved in the eyes of law who could sustain the election petition in question. Learned counsel for the Respondent No.2 has referred to a decision of the Supreme Court in **A.I.R. 1958 SC 698 ♦ Inamati Mallappa Basappa v. Desai Basavaraj Ayyappa and others** and has drawn the attention of this Court to paragraph 10, where the Supreme Court has referred to a judgment delivered by it in *Kamaraja Thevar v. Kunju Thevar* in Civil Appeal Nos. 763 and 764 of 1957 and Civil Appeal No. 48 of 1958 reported in A.I.R. 1958 SC 687 wherein it was held that ♦ "an election contest is not an action at law or a suit in

equity but is a purely statutory proceeding unknown to the common law and the Court possesses no common law power." It further held that "An election petition is not a matter in which the only persons interested are candidates who strove against each other at the elections. The public also are substantially interested in it and this is not merely in the sense that an election has news value. An election is an essential part of the democratic process". Thereafter, it held "An election petition is not a suit between two persons, but is a proceeding in which the constituency itself is the principal party interested." By citing the said case, the learned counsel for the Respondent No. 2 has emphasised that a person aggrieved, especially when seen in the context of an election petition, cannot be construed in narrow terms and as the Supreme Court has laid down in Inamati Mallappa Basappa (supra) that the entire constituency is interested in the outcome of the elections.

12. Learned counsel for Respondent No. 2 has thereafter referred to the judgment of this Court in **2002 (1) M.P.L.J. 233 ♦ Hukum Singh Rajput v. Collector, Panna**, wherein at paragraph 9 of the judgment, this Court was pleased to hold that though the election Petitioner may belong to a different ward but was assailing the election of the writ Petitioner in that case who had been elected as Up-Sarpanch, it was held that the election Petitioner had a legitimate right to challenge the election of the elected candidate whose first step was to become a Panch. This Court therefore held that a voter who had voted for the election firstly as a Panch was a person aggrieved and the election petition at his instance was maintainable. Learned counsel for Respondent No. 2 has stated that the law laid down by this Court in Hukum Singh Rajput's case covers the factual matrix of the instant case as here also the Respondent No. 2 being an elected member from one of the constituencies of the Janpad Panchayat, Hata and who subsequently was one of the 17 voters by capacity of there being elected members, was a person aggrieved in order to file and sustain an election petition challenging the election of the Petitioner herein as the President of the Janpad Panchayat, Hata.

13. Learned counsel for Respondent No.2 has thereafter referred to Rule 16(5) of the Madhya Pradesh Panchayat (Up-Sarpanch, President and Vice President) Nirwahan Niyam, 1995, which provides for the presiding officer to permit a voter who on account of his illiteracy, blindness or other physical infirmity is unable to record his vote to take a companion who is not less than 18 years of age to record the vote of the member on his behalf and in accordance with his wishes. The proviso to Rule 16(5) is that the companion accompanying such a person shall be required to declare in Form 4-A that he will keep secret the vote recorded by him on behalf of the voter and that he has not already acted as companion of any member. Learned counsel for Respondent No. 2 has stated that this rule has undergone an amendment whereby it was made mandatory that the companion accompanying the voter should be a close relative from the family of the said voter. In order to show the relevance of the said rule, in the instant case, the learned counsel for Respondent No. 2 has drawn my attention to Annexure A/4 to the reply filed by the

Respondent No. 2 at page 17 and 18 of the said reply. The said annexure is a chart relating to the 13 voters who were accompanied by their companions. The said chart shows that the voter and the companion belonged to different communities in most cases and therefore could not be deemed to be close family relations and therefore violate Rule 16(5) of the Madhya Pradesh Panchayat (Up-Sarpanch, President and Vice President) Nirwahan Niyam, 1995. The contention of the learned counsel for Respondent No.2 is that the violation of the said rule has worked in favour of the Petitioner and therefore, the election petition before the authority was sustainable. Learned counsel for Respondent No.2 has also stated that 3 of the 17 members were actually related to the returned candidate.

14. By way of rejoinder, Mr. A.M. Trivedi, learned senior counsel for the Petitioner has referred yet again to Rule 3 of Rules of 1995 and stated that a person aggrieved under Rule 3 is not the same as a person under Section 81 of the Representation of Peoples Act, 1950, as under Section 81(1) of the Representation of Peoples Act, an election petition can be filed either by a candidate or by the elector/voter as it is so specifically provided. However, under Rule 3 of the Rules, 1995, it is only a person who is an aggrieved person who could sustain an election petition. In support of his contention, learned counsel for the Petitioner has placed before the Court the judgment of the Supreme Court reported in **(1980) 4 SCC 62 ♦ Thammanna v. K. Veera Reddy and others**, and in paragraphs 16, 17 and 18 of the said judgment, the Hon'ble Supreme Court has held that the expression "person aggrieved" though may vary according to the context of the statute and the facts of the case, the same would normally mean a person who has suffered a legal grievance, a man against whom a decision has been pronounced which has wrongfully deprived him of something. The Supreme Court has also held in paragraph 18 that merely because the election is in the nature of representative action and concerns the whole body of electors in the constituency, the failure on the part of the election Petitioner (in that case) to file an appeal against the order of dismissal of his election petition, any other elector can substitute him, was held to be an incorrect proposition. Learned senior counsel for the Petitioner states that here also the Respondent No. 2 was not the contesting candidate who stood for the post of President of Janpad Panchayat and therefore, could not be deemed to be a person aggrieved.

15. Heard learned counsel for the parties and perused the record of the case. At the very outset, I must refer to the judgments cited by the learned counsel for the Petitioner to see if the same are applicable, with specific reference to the fact circumstances of the instant case. The said judgments have to be appreciated in the backdrop of the undisputed facts that:-

- (a) that firstly the Respondent No. 2 along with Respondent No. 3 and the Petitioner in this case were firstly elected as members of the Janpad Panchayat, Hata;
- (b) secondly, it is not disputed that the Respondent No.2 was one of the 17 voters being the elected member from the constituency Sakor and therefore entitled to



vote to elect the President of the Janpad Panchayat, Hata;

(c) thirdly, it is undisputed that the Respondent No.3 was the only challenger to the post of the President of Janpad Panchayat, Hata who lost to the Petitioner;

(d) and lastly, that the Respondent No. 3 has not filed an election petition against the election of the Petitioner herein as President of Janpad Panchayat, Hata.

16. The first judgment that has been cited by the learned counsel for the Petitioner is (2013) 4 SCC 435. This judgment has been cited to show that Respondent No. 2 lacked locus standi as the Respondent No. 2 was not an aggrieved person as per the contention of learned counsel for the Petitioner. The Supreme Court in this case was dealing with a matter related to the issuance of a caste certificate. In this case the competent authority after following due procedure issued a caste certificate in favour of the appellant Ayaub Noor Khan Pathan (supra) on the basis of which the appellant was appointed as senior clerk in the Municipal Corporation at Aurangabad against a vacancy which was reserved for the candidate of Scheduled Tribe category. The Corporation is stated to have referred the said caste certificate of the appellant for the purpose of verification to the Caste Certificate Scrutiny Committee which upon conducting a vigilance enquiry found that the appellant did not in fact belong to "Bheel Tadvi" (Scheduled Tribe) and thereby verified the said certificate. After a lapse of 9 years, the Respondent No.5 is stated to have filed a complaint through an advocate before the Scrutiny Committee for the purpose of recalling the said validity certificate on the ground that the appellant had obtained employment by way of misinterpretation and that he does not actually belong to the Scheduled Tribe and in fact the appellant professed the religion of Islam. The Scrutiny Committee however rejected the application filed by the Respondent No. 5 stating that it has no power to recall or review the validity of the caste certificate. The Respondent No.5 thereafter challenged the order passed by the Scrutiny Committee rejecting his application in a Writ Petition before the High Court of Bombay (Aurangabad Bench) praying for the quashing of the order dated 13.3.2009. The High Court vide its impugned order disposed of the writ petition without going into the merits of the case but set aside the order of the Scrutiny Committee dated 13.3.2009 by which the application of the Respondent No.5 was rejected and directed the Scrutiny Committee to hear all the parties concerned in accordance with law. Before the Supreme Court, it was argued on behalf of the appellant that the Respondent No.5 does not belong to any reserved category and in fact he belongs to the general category and therefore he had no locus standi to challenge the appellant's certificate. It is in this backdrop of facts that the Supreme Court has given its finding in paragraphs 10, 11 and 17 in relation to a "legal right" as an entitlement arising out of legal rules and where it has held that a "person aggrieved" does not include a person who suffers from a psychological or imaginary injury. This finding of the Hon'ble Supreme Court is in relation of the fact that the Respondent No.5 being a member of the general category was in no way a person aggrieved by a caste certificate issued in favour of

the appellant which was verified and found to be fit by the Scrutiny Committee as the Respondent No.5 could not have availed of the benefit of reservation. The facts circumstances in which the expression "person aggrieved" has been interpreted by the Supreme Court in the said case is distinguishable from the facts circumstances of the case with which this Court is dealing in. In this petition, the Respondent No.2 cannot be said to be in identical position to that of Respondent No.5 in the case which was decided by the Supreme Court as here, the Respondent No.2 was an elected member from the Sakor constituency in Janpad Panchayat, Hata and after being elected as a member, was one of the 17 voters who had taken part in the election of the President of Janpad Panchayat. Under the circumstances, the judgment of the Supreme Court in (2013) 4 SCC 465 is inapplicable and cannot come to the aid of the Petitioner with regard to the locus standi. Therefore, on the point of locus standi, I am inclined to hold in favour of the Respondent No.2 by finding that she was a "Person Aggrieved" and was well within her rights to file the election petition before the Authority.

17. The next judgment cited by learned senior counsel for the Petitioner is (2011) 2 SCC 532. This judgment was cited by the learned counsel for the Petitioner with specific reference to paragraphs 23 and 24 of the said judgment in order to highlight that the election of a returned candidate can only be questioned where the acts or omission of the returned candidate are stated to have materially affected the outcome of the election in favour of the elected candidate. In this case, the facts which emerge from the record are that the appellant was one of the candidates in the election and he had filed an election petition before the Guwahati High Court seeking a declaration that the election of Respondent No. 3 (in the case before the Supreme Court) be declared void and an order directing re-polling in the polling station be notified. The said election petition was finally dismissed by the High Court and thereafter the matter went before the Supreme Court in which the said judgment has been passed. The next judgment which has been cited by the learned counsel for the Petitioner is (2009) 10 SCC 541. In this case also, the learned counsel for the Petitioner has relied on para 13 of the judgment wherein the Court has held that a petition which is deficient in material facts should be dismissed. On the basis of this judgment, learned counsel for the Petitioner wanted to demonstrate that likewise, the election petition preferred by the Respondent No. 2 before the authority was also deficient in material facts and therefore the same ought to be quashed. Ongoing through the said judgment of the Supreme Court, I find that in this case also, there was an election petition first filed before the High Court of Uttranchal in which the impugned order of the High Court upheld the preliminary objection raised by the Respondent and dismissed the election petition mainly on the ground that it did not comply with the mandatory requirement of furnishing facts so as to disclose cause of action. The next judgment that has been relied upon is **(2012) 3 SCC 314 - Manganilal Mandal** (supra). The reliance on this judgment is to buttress the contention that where material facts have not been pleaded, the

election petition should be thrown out at the thresh hold. Learned counsel for the Petitioner has stated that in the instant election petition before the authority the material facts having not been pleaded, the authority ought to have dismissed it at the very outset and that having not been done, this Court ought to quash the election petition pending before the authority. The fact circumstances in this case also go to show that the appellant before the Supreme Court had first filed the election petition before the High Court and the High Court had set aside the election of the appellant to the 15th Lok Sabha. Aggrieved from which order, the appellant had approached the Supreme Court. Thereafter, the learned counsel for the Petitioner has referred to **(2012) 4 SCC 194 ♦ Jitu Patnaik** (supra) wherein at paragraphs 45, 46, 47 and 50, the Supreme Court has once again made a distinction between material facts and particulars and has held that in the absence of material facts, an election petition cannot be sustained. In this case also, the appeal before the Supreme Court was to determine the correctness of an order dated 21.6.2011 passed by the Orissa High Court. Before the High Court, the returned candidate who was the Respondent in the election petition who had moved an application under Order 6, Rule 16 read with Section 151 and Order 7, Rule 11 of the C.P.C. read with Section 86(1) of the Representation of Peoples Act, 1951 with a prayer to strike out/reject paragraphs 7(A), 7(B), 7(C), 7(D), 7(E), 7(F) and 7(G) of the election petition and reject the election petition. The High Court considered the above application made by the returned candidate and struck out the said paragraphs. However, the High Court ordered that the election petition shall proceed in respect of the remaining pleadings. In other words the High Court permitted the trial of the election petition on the pleading set out in paragraphs 7(A) and 7(D). The returned candidate was aggrieved by the fact that the High Court did not dismiss the election petition and so he preferred an appeal before the Supreme Court in which the said order was passed.

18. As regards the judgment of the Supreme Court in **(1988) 2 SCC 12 ♦ Shiv Charan Singh** (supra), the same too arose from appeals under the Representation of Peoples Act whereby the trial under the Representation of Peoples Act, 1950 was first held before the High Court of Rajasthan and thereafter, the appeal was preferred before the Supreme Court.

19. The purpose of filing the instant writ petition is to truncate the election petition filed by Respondent No.2 before the authority where the trial had commenced which was subsequently stayed by the order of this Court on 4.8.2016. The Petitioner has sought to circumvent and avoid the jurisdiction of the authority which is the trial Court or the Court of first instance for the election petition and has sought to invoke the plenary powers under Article 226 of the Constitution of India and quash the proceeding before the authority by placing reliance on the various judgment of the Supreme Court. However, each and every one of those judgments which have been passed in election petitions have been passed after the trial Court in those cases had given a finding in the election petitions which were filed before it

one way or the other, and in those cases, it was the High Court which was the trial Court or the Court of first instance which had decided the rights between the returned candidate and the election Petitioner and it is only thereafter that the matters went to the Supreme Court. If the same situations are applied analogously in this case, then the Authority before whom the Respondent No. 2 filed the election petition, is the trial Court. All the grievances that have been raised by the Petitioner herein can be looked into by the Authority in the course of trying the election petition and it is for the Authority to decide after drawing evidence in the case to decide one way or the other.

20. The judgments of the Supreme Court cannot be interpreted as statutes or as Euclid's theorems and apply across the board on the principle of one shoe which fits all sizes. Every judgment of the Supreme Court has to be answered in the fact circumstances of the case in which the said ratio was passed. Here it would be beneficial to refer to the judgment of the Supreme Court in **Union of India and another v. Major Bahadur Singh (2006) 1 SCC 368**, wherein at paragraph 7 it was held that "the courts should not place reliance on decisions without discussing as to how the factual situation fits in with the fact situation of the decision on which reliance is placed. Observations of the courts are neither to be read as Euclid's theorems nor as provisions of the statute and that too taken out of their context. These observations must be read in the context in which they appear to have been stated. Judgments of the courts are not to be construed as statutes. To interpret words, phrases and provisions of the statutes, it may become necessary for judges to embark into lengthy discussions but the discussion is meant to explain and not to define. Judges interpret statutes, they do not interpret judgments. They interpret words of statutes; their words are not to be interpreted as statutes". The said judgment was followed by this Court in **Dheer Singh Yadav v. State of M.P. and another, 2013 (3) M.P.L.J. 126**, wherein at para 5, it was held - "..... it is noteworthy that the basic principle to consider the judgment/precedent is that a judgment has to be examined in the facts and circumstances in which it is passed. This is settled in law that a judgment is an authority on a question which has been decided by it and is not a precedent on something which is logically flowing from it". The judgments that have been cited by the Petitioner were all passed by the Supreme Court where the election petitions had reached their conclusive end before the trial Courts, which in those cases were the High Courts. The High Court, being the Court of first instance for an election petition in all those cases had drawn evidence and thereafter come to a finding which was subsequently challenged before the Supreme Court. However, in the instant case, the Petitioner has sought to circumvent the trial Court, or the Court of first instance where the election petition is filed and has sought this Court to exercise its jurisdiction under Article 226 of the Constitution of India. Under the circumstance, all the judgments which have been referred to by the Petitioner are not applicable to the facts of this particular case.

21. Though its trite law that the mere availability of alternate remedy is by itself no bar to this Court exercising its jurisdiction under Article 226 but where the litigant seeks to bypass the alternate remedy, which in this case is a statutory remedy, then in such cases the Petitioner must establish prima facie, the existence of such extraordinary circumstances where pursuing the statutory or alternate remedy would not be efficacious and the same would defeat his cause. In the instant case, all the grounds taken by the Petitioner are all which can be, and ought to be considered by the Authority while trying the election petition filed by the Respondent No.2 and if the Petitioner is aggrieved by the final outcome of the election petition, then he has relief of going up against that order in appeal.

22. Therefore, bearing in mind that the election petition is pending before the Authority which happens to be the Court of first instance or the trial Court where all the grievances which have been raised by the Petitioner can be adjudicated upon after adducing evidence of both the election Petitioner, who is Respondent No.2 herein and the Petitioner, who is the Respondent before the Authority, and in the absence of any compelling circumstances shown by the Petitioner before this Court to intervene using its authority under Article 226 of the Constitution of India, I am of the considered opinion that the writ petition which has been preferred seeking the quash of the election petition pending before the authority is misplaced both in law and on facts and the deserves to be same is dismissed.

23. The interim order dated 04/08/16 staying the proceeding in the election petition No.4-A/89/2014-15 pending before the Respondent No. 1 stands vacated and the Respondent No. 1 is directed to proceed with the said trial in accordance with law. The Petitioner's right to take all the defences before the Respondent No. 1 is protected and nothing stated in this order shall prejudice or come in the way of the Petitioner, while opposing the election petition pending before the Respondent No. 1. The findings of this Court shall not influence the Respondent No. 1 in any manner and he shall proceed with the trial uninfluenced by the observations made herein.

24. With the aforesaid observations, the writ petition is dismissed. There shall be no order as to costs.