THE HONOURABLE SRI JUSTICE M.S.RAMACHANDRA RAO

ELECTION PETITION No.40 of 2014

ORDER:

This Election Petition is filed under Sections 80, 80-a, 81, 100 r/w 101 and 123 of the Representation of People Act, 1951 **(for short 'the Act')** challenging the election of the 5th respondent as member of the Telangana Legislative Assembly from Korutla Assembly Constituency of Karimnagar District.

2. There is no dispute that notification for the said Assembly Constituency was issued on 02-04-2014, that the last date for filing nominations was 09-04-2014, scrutiny of nominations was held on 10-04-2014 and the last date for withdrawal of candidates was on 12-04-2014. Respondent Nos.6 to 15 also had filed their nominations along with petitioner and 5th respondent.

3. The petitioner had also filed his nomination to contest in the said election on behalf of the Shiv Sena party. The voting took place on 30-04-2014. The 5th respondent secured 58,890 votes while the petitioner secured 213 votes and the 5th respondent was declared as having been elected as Member of the said Assembly

Constituency on 16-05-2014.

THE PLEADING IN THE ELECTION PETITION

4. In the Election Petition, the contention of the petitioner is that he was a candidate set up by the Shiv Sena party to contest the said election, that the said party is a registered and recognized political party in the State of Maharastra and it had been reserved a symbol of "Bow and Arrow" by respondent Nos.1 to 3, but the symbol allotted to petitioner was not identical with the symbol allotted to the said party, that this caused a lot of confusion and doubts in the mind of the voters, and the petitioner therefore did not get adequate number of votes to get elected as Member of the said Assembly Constituency. Petitioner contends that this action of respondent Nos.1 to 3 is contrary to Section 10 of the Election Symbols (Reservation and Allotment) Order, 1968. According to petitioner, the symbol "Bow and Arrow" allotted to him was the symbol, which had been allotted by the Election Commission of India, to another political party by name Jharkhand Mukthi Morcha, to which the petitioner did not belong or contest from. Petitioner contends that during his visit at the time of polling at all polling stations, number of voters complained that they got confused because the symbol given on the Electronic Voting Machines **(for short, 'the E.V.Ms.')** as the symbol of the political party whom he represented was completely different from the symbol of the political

party Shiv Sena and which had been widely circulated by him during the time of his campaigning in the elections. Petitioner contends that he made a representation on 30-04-2014 to the 4th respondent asking him to stop the voting and also announcement of results to the said Assembly Constituency, but the latter did not respond. Petitioner alleged that he made another representation on 03-05-2014 to the 2nd respondent asking him to conduct re-polling to the said Assembly segment but it also did not respond and instead declared the 5th respondent as elected. He also stated that he filed W.P.No.14350 of 2014 before the High Court of Andhra Pradesh, but the same was dismissed on 08-05-2014 giving liberty to file an appropriate petition. He therefore sought a declaration that the election of the 5th respondent as the Member of the said Legislative Assembly pursuant to polling held on 30-04-2014 was void and to set aside the same; to direct re-polling to the said Assembly afresh ignoring the candidature of 5th respondent by allotting correct party symbol to the petitioner and declare the result based on such re-poll and to award costs.

THE COUNTER AFFIDAVIT OF RESPONDENT NO.4

5. Counter-affidavit was filed by 4th respondent asserting that the election to the said Assembly Constituency was conducted in proper manner. It is stated

that both the Shiv Sena party, who had asked the petitioner to contest from this Assembly Constituency as well as the Jharkhand Mukti Morcha Party had been reserved the symbol of “Bow and Arrow”, but there is a slight difference in the curve border of bow. According to 4th respondent, that the curve border symbol of bow was light in respect of the Jharkhand Mukti Morcha Party symbol, but the curve border was thick in respect of the Shiv Sena Party. He contended that the petitioner was allotted the symbol “Bow and Arrow” considering Form “A” and “B” issued in his favour by the Shiv Sena party; that the Jharkhand Mukti Morcha party did not nominate any candidate to contest in this Constituency; there were 12 contestants and petitioner was shown at Serial No.7 and the symbol of “Bow and Arrow” was allotted to petitioner; and the same was printed against his name in the ballot paper. He stated that this symbol was not allotted to any other contestants and did not exist on the ballot paper. He denied that the voters were put to confusion and cannot easily identify the “Bow and Arrow” symbol printed in the ballot paper against the name of petitioner. He asserted that the petitioner was properly allotted “Bow and Arrow” symbol reserved for the Shiv Sena party as he was nominated by the said party and accordingly “Bow and Arrow” symbol was printed in the ballot papers inserted in the E.V.Ms. According to him, the election was conducted in the manner prescribed by the Election Commission of

India, that the petitioner was supplied the notice dt.04.04.2014 relating to allotment of symbols besides other documents, and the petitioner had also executed a receipt dt.09.04.2014 acknowledging receipt of the papers from the 4th respondent. It is stated that the petitioner was well aware that he was allotted the symbol "Bow and Arrow" and that such symbol was not allotted to any other contesting candidate. He contended that on 30.04.2014, polling commenced at 7.00 a.m. but the petitioner made a representation to him at 3.00 p.m. while the election was in process and so he could not consider the representation of the petitioner to stay the polling since only two hours were left to conclude the polling.

THE COUNTER AFFIDAVIT OF RESPONDENT No.5

6. The 5th respondent filed a counter-affidavit stating that the petitioner did not set out concise material facts and failed to plead any grounds and ingredients for constituting the cause of action as required under Sections 83 and 100 of the Act and on that ground, the Election Petition was liable to the rejected. He contended that the petitioner had admitted that he was allotted his own party symbol of "Bow and Arrow" and it was reflected in the E.V.Ms. and even the petitioner does not dispute that no other person was allotted the same or similar symbol which was allotted to him. He pointed out that the petitioner also admitted that no person was set up by the

Jharkhand Mukti Morcha party, which had a party symbol similar to that of the petitioner. It was stated that in the absence of participation of the Jharkhand Mukti Morcha party, the petitioner would have benefited by getting votes which would have gone to the Jharkhand Mukti Morcha party since the petitioner himself has stated that the election symbol of both these parties are similar. It was asserted that no voter is there from the said Constituency having knowledge about the existence of the Jharkhand Mukti Morcha party or that the said party also has a same symbol similar to the Shiv Sena party, whom the petitioner represents. He contended that the petitioner did not bring to the notice of the Court what is the change or defect in the allotment of the party symbol or what is his right for allotment of a particular party symbol, how many voters have supported his candidature, how many votes were polled in support of his candidature, how many votes were polled in his support and how many votes were not polled on account of confusion due to alleged allotment of wrong party symbol, what is the difference of votes polled between the petitioner and 5th respondent and whether such difference can be associated with the alleged violation or allotment of wrong party symbol. Further he contended that petitioner had not raised any grounds or made up any charges against 5th respondent which constitute cause of action to set aside his election and the requirement of Sections 81 and 100 of the Act were not

fulfilled. He raised a contention that no ground for setting aside the election under Section 100 of the Act had been made out, that the allegations made by petitioner are vague and general, and the petitioner cannot seek fishing and roving enquiry. It was contended that without taking any objection or making a written protest during the process of election, the petitioner cannot maintain the Election Petition. It was contended that there is no material pleading as to how many number of votes were polled which were supposed to be polled in favour of petitioner but not polled due to the ambiguity specified in the Election Petition. He therefore prayed that the Election Petition be dismissed on the above grounds.

ISSUES FRAMED :

7. The following issues were framed on 20-04-2015 by this Court:

1) *Whether the petitioner's symbol was allotted to another person?*

2) *Whether there are sufficient grounds to declare the polling dt.30-04-2014 as void and set aside as prayed for?*

3) *Whether there are any irregularities in election conducted on 30-04-2014?*

4) *Whether the petitioner is entitled for the relief of re-polling?*

5) *To what relief?*

APPLICATION NO.86 OF 2015

8. The respondent filed an application No.86 of 2015 to delete the other respondents from the array of parties in the Election Petition. This application was allowed on 25-03-2015.

9. Respondent Nos.2 to 5, 7 to 10, 11 and 12 were served. The other respondents were not served. But since their participation in this Election Petition is not necessary and their absence has no bearing on the result of the Election Petition, the matter was proceeded with since the contesting respondent Nos.4 and 5 had filed counter and also adduced evidence.

THE EVIDENCE ADDUCED BY THE PARTIES :

10. The petitioner examined himself as P.W.1 and marked Exs.P.1 to P.4. Ex.P.1 is the copy of the nomination Form-B submitted by petitioner. Ex.P.1.A is the copy of Form 7-A containing list of contesting candidates forming part of Ex.P.1 and bearing date 12.04.2014. Ex.P.2 is the copy of the reserved symbols downloaded by petitioner from the official Website of the Election Commission of India. This contained the symbol of 'Bow and Arrow' allotted to Shiv Sena party, which had issued Form–B to petitioner to contest the above election. Ex.P-3 is the order dt.08.05.2014 passed in W.P.No.14350 of 2014 by this

Court dismissing the Writ Petition filed by petitioner for allotting wrong party symbol to him in this election giving liberty to avail alternative remedy under Section 80 of the Act by way of filing an Election Petition before the Election Tribunal. Ex.P-4 is the copy of the result of the election to this constituency announced by the Election Commission of India and downloaded from its website.

11. The petitioner examined himself as P.W.1 and reiterated the contents of the Election Petition and contended that the symbol 'Bow and Arrow' which had been reserved by the Election Commission for his party, the Shiv Sena, was not the symbol on the E.V.Ms. as against his name and that the symbol of the Shiv Sena party was the symbol which had been widely circulated by him at the time of campaigning. In the cross-examination by the learned Government Pleader for General Administration (Telangana) on behalf of 4th respondent, the petitioner stated that although the symbol allotted to him was 'Bow and Arrow' and against his name in the ballot paper the figure of 'Bow and Arrow' was shown, this symbol of 'Bow and Arrow' was not identical with the party symbol of the Shiv Sena party. He stated that he received a notice dt.04.04.2014 issued by 4th respondent regarding allotment of election symbol (Form-7A) on 09.04.2014, that when he went to file nomination papers, the Returning Officer showed him a symbol of 'Bow and Arrow' of the

Shiv Sena party, but in the ballot paper, the symbol 'Bow and Arrow' was shown in a different manner from that which was reserved for the Shiv Sena party. He stated that on the date of election, he noticed this fact and complained to the Returning Officer about the discrepancy in the symbol on the ballot paper between 10-30 a.m. and 11 a.m. and requested him to stop the polling, but he did not receive it till 3-15 p.m. and acknowledged receipt of it only at 3-15 p.m. He admitted that the symbol 'Bow and Arrow' was not allotted to any other candidate who contested the said Assembly Constituency election and no candidate had been set up on behalf of Jharkhand Mukti Morcha party in this constituency for that election. He denied that there was no confusion caused to the voters of Korutla Assembly Constituency on account of wrong allotment of symbol to him. In the cross-examination by learned counsel for 5th respondent, the petitioner stated that in Form-7A letter forming part of Ex.P.1, his name was shown at Sl.No.7 against Shiv Sena party and it indicated that the symbol 'Bow and Arrow' was allotted to him but it used *the words* 'Bow and Arrow' without indicating the *symbol* there. He denied the suggestion that symbols allotted to various contesting candidates were displayed on the notice board of the Election Office and stated that even the notice put up on the notice board of Election Office only mentioned the symbols allotted *in words* and did not indicate the actual

symbol allotted to the contesting candidates. He stated that he campaigned for 18 days on his party symbol 'Bow and Arrow' on the belief that the said symbol was allotted to him and that therefore he did not give any complaint regarding symbol from 12.04.2014 and 30.04.2014. He again reiterated that the symbol 'Bow and Arrow' depicted on E.V.Ms. did not tally with the symbol of the Shiv Sena party causing confusion among the voters and he referred to the pamphlet at page No.44 forming part of Ex.P-2 as the one which was circulated at the time of campaigning.

12. The 4th respondent, the Returning Officer of this Assembly Constituency, examined himself as R.W.1 and the returned candidate/5th respondent examined himself as R.W.2. R.W.1 marked Ex.R-1, a letter dt.30.04.2014 addressed by petitioner to the Chief Electoral Officer, Government of Andhra Pradesh, Hyderabad and which had been handed over to 4th respondent by petitioner.

13. R.W.1 in his chief-examination stated that both the Shiv Sena party as well as the Jharkhand Mukti Morcha party had been reserved the symbol of 'Bow and Arrow', but there is a slight difference in the curve border of the 'Bow; which was light in respect of the Jharkhand Mukti Morcha party and thick in respect of the Shiv Sena party. He stated that Jharkhand Mukti Morcha party had not nominated any candidate to contest in the constituency, that the symbol of 'Bow and Arrow' was printed against

the name of petitioner in the ballot paper, that similar symbol was not allotted to any other contestants, and therefore there is no question of any confusion being caused to voters since they could easily identify the said symbol printed in the ballot paper against the name of petitioner. He reiterated that the representation was made by petitioner at 3 p.m. on
30.04.2014, that by that time most of the election process was completed since it had commenced at 7 a.m. on that day, that there were only two hours left for the voting to be completed and therefore the representation of the petitioner would not be considered. In the cross-examination by 5th respondent, he stated that on 18.04.2014 he had affixed the ballot papers on the E.V.Ms. in the presence of contesting parties and the ballot paper contains symbols of each of the contesting candidates, the names of the contesting candidates and the party they were representing. According to him, the petitioner was also present when this happened and at that time no objection was taken by anybody that the symbol allotted to petitioner was not the correct symbol. He also stated that even after completion of the election process, no voter complained that they could not exercise their franchise properly because the symbol of the candidate was incorrectly displayed on the ballot sheet. In the cross-examination by Counsel for the petitioner, he

stated that when the recognized political party puts up a candidate for contesting the election by giving B-form, the symbol allotted to that party by the Election Commission of India would be allotted to that candidate. He admitted that there cannot be any variation on the ballot paper between the symbol of the said recognized political party and the symbol shown in the ballot paper as allotted to the candidates set up by that political party. He admitted that there cannot be any variation in the size, the shape and position of the symbol shown in the ballot paper as against the candidates set up by a recognized political party and the symbol of that recognized political party allotted by the Election Commission. He also admitted that he did not file any document to show that on 08.05.2014 the ballot papers containing the symbols and the names of the candidates was pasted on the E.V.Ms. in the presence of the contesting candidates, but he pleaded that he had a document disclosing that petitioner had signed at the time of the above event and there is a video C.D. taken at that time indicating his presence, although they were not filed.

14. RW.2 reiterated the contents of his counter-affidavit. During cross-examination by petitioner, he admitted that every person who files nomination in the election would canvass using the symbol allotted to him either individually or that of the political party which gives

him the ticket and that the voters would also relate a candidate or the person who filed the nomination with the symbol which was allotted to him and which he used during his canvassing for votes in the election. RW.2 admitted that because most of the voters are illiterates, they would relate the candidate contesting with the symbols allotted to him alone. He also admitted that if a candidate had filed a nomination on behalf of the recognized political party, symbol allotted to that political party only will be allotted to the candidate contesting on that party's ticket. He admitted that Shiv Sena is a recognized political party in Maharashtra and had been allotted the symbol by the Election Commission of India. Although he claimed that he did not recollect the actual symbol, however, when the pamphlet containing the symbol at page No.44 of the papers filed along with the Election Petition forming part of Ex.P-2 was confronted to him, R.W.2 admitted that canvassing was done by petitioner on the symbol indicated in the document. He admitted that in the counter-affidavit filed by him, there was no mention of mock polling conducted on 18.04.2014 which was attended by the candidates who filed nominations. He denied the suggestion that petitioner was allotted wrong symbol by the 4th respondent and because of such allotment, the petitioner did not win in the said election.

ISSUES (1) and (3) :

15. In my opinion, issue no.(1), having regard to the pleadings and evidence, needs to be re-cast as "*whether the respondent no.4 had correctly displayed on the ballot paper affixed on the E.V.M., the symbol which was allotted to the Shiv Sena Party by the Election Commissioner of India* ?"

16. Section 100 of the Act empowers the High Court to declare the election of the returned candidate void if the result of the election, insofar as it concerns a returned candidate, has been materially affected by any non-compliance with the provisions of the Constitution or the said Act or any rules or orders made under the said Act. [Section 100 (1) (d) (iv)]

17. Section 10 of the Election Symbols (Reservation and Allotment) Order, 1968 (framed under Article 324 of the Constitution r/w Section 29A of the Representation of People Act, 1951 and Rules 5 and 10 of the Conduct of Election Rules, 1961) mandates that if a political party, which is recognized as a State party in some State or States, sets up a candidate at an election in any other State or Union Territory in which it is not a recognized State party, then such candidate may, to the exclusion of all other candidates in the constituency, be allotted the symbol reserved for that party in the State or States in which it is a recognized State party subject to certain

conditions mentioned therein.

18. The importance of the symbol of a political party assigned to a candidate and the reasons which led to the introduction of symbols were explained by the Supreme Court in **Sadiq Ali and another v. The Election Commission of India, New Delhi**[1]. The Court observed :

> *"... ... ... it may be pertinent to find out the reasons which led to the introduction of symbols. It is well known that overwhelming majority of the electorate are illiterate. It was realised that in view of the handicap of illiteracy, it might not be possible for the illiterate voters to cast their votes in favour of the candidate of their choice unless there was some pictorial representation on the ballot paper itself whereby such voters might identify the candidate of their choice. Symbols were accordingly brought into use. Symbols or emblems are not a peculiar feature of the election law of India. In some countries, details in the form of letters of alphabet or numbers are added against the name of each candidate while in others, resort is made to symbols or emblems. The object is to ensure that the process of election is as genuine and fair as possible and that no elector should suffer from any handicap in casting his vote in favour of a candidate of his choice. Although the purpose which accounts for the origin of symbols was of a limited character, the symbol of each political party with the passage of time acquired a great value because the bulk of the electorate associated the political party at the time of elections with its symbol. It is, therefore, no wonder that in case of a split in a political party, there is a keen contest by each rival group to get the symbol of that party."*

19. The petitioner's case is that the symbol shown against his name on the ballot paper affixed to the E.V.Ms.

was not identical to the symbol allotted by the Election Commission of India to the Shiv Sena Party which issued B-Form to him to contest the election to the Korutla Assembly Constituency for which polling was held on 30.04.2014 and results declared on 16.05.2014 wherein 5th respondent was declared as the returned candidate. His further contention is that this act done by 4th respondent has materially affected the result of the election causing confusion in the minds of the voters and ruined his chances for getting elected as Member of Legislative Assembly from the said constituency.

20. The 4th respondent in the counter-affidavit filed by him denied the above allegation of petitioner and asserted that the petitioner was allotted the 'Bow and Arrow' symbol reserved to the Shiv Sena Party and the same symbol was printed on the ballot papers inserted in the E.V.M.s.

21. In his cross-examination he raised a plea that on 18.04.2014 he had affixed the ballot paper on the E.V.M.s in the presence of all contesting candidates including the petitioner and that the said ballot paper contained the symbols allotted to each of the contesting candidates, their names and the party he is representing. He claimed that at that time nobody complained that the symbol allotted to him was not correct. But no such plea was raised in the counter-affidavit about affixture of ballot paper on the E.V.M.s on 18.04.2014 in the presence of all

the contesting candidates including the petitioner. He admitted that he did not file any document in support of the said fact even though he had a document containing petitioner's signature at the time of the above event and also a video C.D. both of which were not filed. In the absence of any pleading to that effect and in the absence of any evidence to corroborate the said fact, this part of the evidence of R.W.1 cannot be believed.

22. R.W.1 admitted that he was aware of Section 10 of the Election Symbol Reservation and Allotment Order, 1968 and also admitted that when a recognized political party puts up a candidate for contesting an election by giving him a B-Form, the symbol allotted to that party by the Election Commission alone would be allotted to that candidate and there cannot be any variation on the ballot paper between the symbol of the said recognized political party and the symbol shown in the ballot paper as allotted to the candidates set up by that political party. He also admitted that there cannot be any variation in the size, shape and position of the symbol shown in the ballot paper as against the candidates set up by a recognized political party and the symbol of that recognized political party allotted by Election Commission.

23. The respondents did not dispute Ex.P.2, copy of the reserved symbols downloaded from the official website of the Election Commission of India which has

been marked by the petitioner. The said Ex.P.2 shows the symbol allotted to the Shiv Sena Party in State of Maharastra by the Election Commission of India as well as the Jharkhand Mukti Morcha Party in Jharkhand. Although both the said parties are allotted the symbol 'Bow and Arrow', it is admitted by respondent no.4 that the curve border in the symbol of Bow is thin/light in respect of Jharkhand Mukti Morcha Party and it is thick in respect of the Shiv Sena Party. As part of Ex.P.2, the petitioner had also filed photograph of the ballot paper affixed on the E.V.M. in the subject election which shows the name of the petitioner, the name of the Shiv Sena Party in a column adjacent to his address, and the symbol allotted to the said party in the same row in the ballot paper. A perusal of this document shows that the symbol Bow and Arrow shown against the name of the petitioner as belonging to the Shiv Sena Party has a curve border of the Bow, which is thin/light. It resembles the symbol allotted to the Jharkhand Mukti Morcha Party in Jharkhand and it is not identical with the symbol allotted by the Election Commission of India to the Shiv Sena Party in the State of Maharashtra.

24. The 5th respondent in his evidence as R.W.2 admitted that every person who files nomination in the election would canvass using the symbol allotted to him either individually or that of his political party which gave

him the said ticket. The petitioner confronted to R.W.2 one of the pamphlets used by him during the course of petitioner's campaign with the symbol 'Bow and Arrow' (identical to the symbol allotted by the Election Commission of India to the Shiv Sena Party in the State of Maharastra) which is part of Ex.P.2 and R.W.2 admitted the fact that the petitioner canvassed with the said symbol indicated in the said document.

25. Having regard to the above evidence on record I am of the view that the symbol shown on the ballot paper affixed on the E.V.M.s by the 4th respondent against the name of petitioner and the Shiv Sena Party, he represents, was not identical with the symbol allotted by the Election Commission of India to the said party and that it is identical to the symbol allotted by the Election Commission of India to the Jharkhand Mukthi Morcha Party.

26. Therefore, Issue Nos.(1) and (3) are answered in favour of the Election Petitioner, and it is declared that the symbol reflected on the ballot paper affixed on the E.V.Ms. by the 4th respondent, as the symbol on which the petitioner and the Shiv Sena party he represents contested the said election, is not identical with the symbol allotted by the Election Commission of India to the said party and there is a violation of Section 10 of the Election Symbols (Reservation and Allotment) Order,

1968.

ISSUES (2) and (4) :

27. We have already noticed Section 100 (1) (d) (iv) of the Act which requires that the High Court should form an opinion that the result of the election, insofar as it concerns a returned candidate, has been materially been affected by any non-compliance with the provisions of the Constitution or the Act or any of the Rules or Orders made under the Act before declaring the election of the returned candidate to be void.

28. Therefore, unless the petitioner establishes that the irregularity committed by 4th respondent in not displaying on the ballot paper affixed on the E.V.Ms., the symbol of Shiv Sena Party identical with the symbol allotted by the Election Commission of India to it has '*materially affected*' the result of the election, the petitioner would not be entitled to any relief.

29. In **Santosh Yadav v. Narender Singh**[2], a case dealing with an allegation of improper acceptance of nomination falling within Section 100 (1) (d) (i) of the Act, the Supreme Court laid down the parameters for setting aside an election on that ground as under :

> *"16. The law as regards the result of election having been materially affected in case of improper acceptance of nomination may be summed up as under:*

1. A case of result of the election, insofar as it concerns the returned candidate, having been materially affected by the improper acceptance of any nomination, within the meaning of Section 100(1)(d)(i) of the Representation of the People Act, 1951 has to be made out by raising specific pleadings setting out all material facts and adducing cogent evidence so as to enable a clear finding being arrived at on the distribution of wasted votes, that is, the manner in which the votes would have been distributed if the candidate, whose nomination paper was improperly accepted, was not in the fray.

2. Merely because the wasted votes are more than the difference of votes secured by the returned candidate and the candidate securing the next highest number of votes, an inference as to the result of the election having been materially affected cannot necessarily be drawn. The issue is one of fact and the onus of proving it lies upon the petitioner.

3. The burden of proving such material effect has to be discharged by the election petitioner by adducing positive, satisfactory and cogent evidence. If the petitioner is unable to adduce such evidence the burden is not discharged and the election must stand. This rule may operate harshly upon the petitioner seeking to set aside the election on the ground of improper acceptance of a nomination paper, but the court is not concerned with the inconvenience resulting from the operation of the law. Difficulty of proof cannot obviate the need of strict proof or relax the rigour of required proof.

4. The burden of proof placed on the election petitioner is very strict and so difficult to discharge as nearing almost an impossibility. There is no room for any guesswork, speculation, surmises or conjectures i.e. acting on a mere possibility. It will not suffice merely to say that all or the majority of wasted votes might have gone to the next highest candidate. The law requires proof. How far that proof should go or what it should contain is not provided by the legislature.

5. The casting of votes at an election depends upon a variety of factors and it is not possible for anyone to predicate how many or which proportion of the votes will go to one or the other of the candidates. It is not

permissible to accept the "ipse dixit" of witnesses coming from one side or the other to say that all or some of the votes would have gone to one or the other on some supposed or imaginary ground."

30. In my considered opinion, similar parameters ought to be applied to cases like the present one where it is alleged that the result of an election was materially affected on account of non-compliance with the provisions of the Election Symbols (Reservation and Allotment) Order, 1968 which falls within Section 100 (1) (d) (iv) of the Act.

31. Therefore, there has to be specific pleading setting out all material facts and cogent evidence has to be adduced. Such evidence should be positive and satisfactory so as to enable the Court to form a clear opinion that the election petitioner would have obtained a number of votes more than the returned candidate if the symbol had been correctly displayed on the ballot paper affixed to the E.V.Ms. It will not suffice merely to say that the petitioner would have got more votes than the returned candidate. There is no room for any guess work, speculation, surmises or conjectures. Thus, the burden of proof is very strict and the difficulty of proof would not obviate the need of strict proof or relax the rigour of the required proof.

32. The counsel for petitioner sought to rely on the

decision in **Roop Lal Sathi v. Nachhattar Singh Gill**[3] in support of his plea that the Election Symbols (Reservation and Allotment) Order, 1968 is an order made under the Representation of People Act, 1951. The said principle is not in doubt. The said decision arose out of a decision rendered by the High Court striking out certain averments contained in Election Petition. It does not deal with the burden of proof or the degree of proof necessary to make out a case for setting aside an election on the said ground. Therefore, the said decision cannot be of any assistance to the petitioner.

33. In **Smt. Lata Devi (Mali), v. Haru Rajwar**[4], it was alleged that the symbol allotted to a candidate set up by a party was changed to a different symbol at the time of the election. The Supreme Court held that the election petitioner cannot get relief if he fails to establish by satisfactory evidence that the result of the poll had in fact been materially affected by such a violation. It held that it has to be demonstrated that the votes would have been diverted in such a way that the returned candidate would have been unsuccessful. In that case, there was no evidence to demonstrate that the returned candidate had derived any benefit from the change of symbol of the election petitioner. The court observed that the election petitioner was required to show that such number of votes had gone in favour of the successful candidate instead of

in his favour, simply because of the change of symbol as would without that number of votes, make the successful candidate unsuccessful. It observed that there could be no proposition or contention that a candidate with a particular symbol would always be successful at the hustings or that a particular voter or a number of voters would always vote for a symbol irrespective of the candidate to whom it is allotted.

34. In the present case, it is not disputed by the petitioner that he secured only 213 votes while 5th respondent secured 58,890 votes. Therefore the margin of victory of the 5th respondent is very large.

35. Except the plea of the petitioner and his own evidence that on account of affixture of ballot papers on the E.V.Ms. containing the symbol 'Bow and Arrow' which is not identical with the symbol allotted by the Election Commission of India to Shiv Sena party which gave him the B-form, confusion arose in the minds of the voters and he was deprived of votes of a number of such voters ruining his chances of winning the election, there is no evidence of any independent witness or voters. The petitioner failed to prove that display of incorrect symbol on the ballot paper affixed on the E.V.Ms. by 4th respondent deprived him of any votes on that count and that such voters supported 5th respondent who ultimately

won the election. Mere assertion by the petitioner alone is not enough. There has to be satisfactory evidence on record to enable the Court to come to a conclusion that the result of the election was materially affected by the non-compliance by respondent No.4 of Section 10 of the Election Symbols (Reservation and Allotment) Order, 1968. As laid down by the Supreme Court in **Smt. Lata Devi** (4 supra) there could be no proposition or contention that a candidate with a particular symbol would always be successful at the hustings or that a particular voter or a number of voters would always vote for a symbol irrespective of the candidate to whom it is allotted.

36. Therefore, I hold that the petitioner failed to discharge the burden cast on him to establish by adducing positive, satisfactory and cogent evidence that the election held on 30.04.2014 was materially affected on account of the irregularity in displaying on the ballot paper affixed to the E.V.Ms. a symbol different from that allotted to the Shiv Sena party which had given him B-Form.

37. Therefore Issue No.2 is answered against the petitioner holding that there are no sufficient grounds to declare the polling held on 30.04.2004 as void. Issue No.4 is also answered against the petitioner holding that the petitioner is not entitled for the relief of re-polling.

Issue (5) :

38. For the aforesaid reasons, the Election Petition is dismissed. No costs.

39. As a sequel, miscellaneous petitions pending if any, in this Election Petition shall stand closed.

JUSTICE M.S.RAMACHANDRA RAO

APPENDIX OF EVIDENCE

Witnesses Examined

For Petitioner:

P.W.1 Mr.Karijjengla Naresh Kumar

For Respondents:

R.W.1 Mr.A.Shankar Kumar
R.W.2 Mr.K.Vidyasagar Rao (R-5)

Exhibits Marked

For Petitioner:

Ex.P-1 Copy of the Nomination Form-B submitted by P.W.1 along with list of candidates.

Ex.P-1-A Copy of form-7-A containing list of contesting candidates forming part of Ex.P-1 and bearing date 12-04-2014.

Ex.P-2 Copy of reserved symbols downloaded from the official website of the Election Commission of India.

Ex.P-3 Copy of the order passed by the High Court in W.P.No.14350 of 2014 along with representations dt.30-04-2014 and 03-05-2014.

Ex.P-4 Copy of the result declared of General Elections, 2014 downloaded from the Election Commission website.

For Respondents:

Ex.R-1 Letter dt.30-04-2014 addressed by the petitioner to the Chief Electoral Officer, Government of Andhra Pradesh, Hyderabad given to 4th respondent.

JUSTICE M.S.RAMACHANDRA RAO

Date: 12-04-2016
Vsv/ndr/gra/*

[1] AIR 1972 SC 187
[2] (2002) 1 SCC 160
[3] (1982) 3 SCC 487
[4] AIR 1990 SC 19