

AFR

HIGH COURT OF CHHATTISGARH, BILASPUR**EP No. 3 of 2014**

Sameera Paikara D/o Late Gangaram Kanwar Aged About 31 Years
 R/o Umakhohi, P.O. Jogishar, Tah. Pendra Road, P.S. Gourella,
 Distt. Bilaspur Chhattisgarh --- **Petitioner**

Versus

1. Amit Ajit Jogi Amit Aishwarya Jogi S/o Ajit Jogi Aged About 35 Years
 R/o Anugrah Sagoun Bungalow, Raipur, P.S. Civil Line, Distt. Raipur
 Chhattisgarh
2. Suman Singh Wakare D/o Ramlal Wakare Aged About 48 Years R/o
 Bharridan, Tah. Marwahi, P.S. Marwahi, Distt. Bilaspur C.G., District :
 Bilaspur, Chhattisgarh
3. Tapeswar Marawi S/o Ramsingh Marawi Aged About 48 Years R/o
 Andi, Tah. Marwahi, P.S. Marwahi, Distt. Bilaspur District : Bilaspur,
 Chhattisgarh
4. Dr. Urmila Singh Marko W/o Ram Singh Marko Aged About 45 Years
 R/o Near S.E.C.L. Colony, Bandhwa Para, P.S. Sarkanda, Bilaspur,
 Distt. Bilaspur District : Bilaspur, Chhattisgarh
5. Smt. Gajmati Bhanu W/o Amar Bhanu Aged About 46 Years R/o
 Semra, P.O. Sanatorium, Tah. Pendra Road, P.S. Gourella, Distt.
 Bilaspur District : Bilaspur, Chhattisgarh
6. Ghasiram Wakre S/o Sukla Wakre Aged About 55 Years R/o
 Kotmikala, Tah. Pendra, P.S. Pendra Chouki, Kotmikala, Distt.
 Bilaspur District : Bilaspur, Chhattisgarh
7. Than Singh Otti S/o Ramcharan Otti Aged About 38 Years R/o Baror,
 P.O. Baror, Tah. Marwahi, P.S. Marwahi, Distt. Bilaspur District :
 Bilaspur, Chhattisgarh
8. Pancham Singh Masram S/o Maniram Masram Aged About 40 Years
 R/o Kotkharra, P.O. Lalpur, Tah. Marwahi, P.S. Gourella, Distt.
 Bilaspur District : Bilaspur, Chhattisgarh
9. Budhman Dhurve S/o Vikram Singh Dhurve Aged About 52 Years R/o
 Vijarwar, P.O. Lalpur, Tah. Pendra Road, P.S. Gourella, Distt.
 Bilaspur District : Bilaspur, Chhattisgarh --- **Respondents**

For the petitioner : Mr. S.C. Verma, Mr. Rajat Agrawal & Mr.
 Harsh Wardhan, Advocates.

for the respondents : Dr. N.K. Shukla, Sr. Advocate with Mr.
 Vikram Sharma & Madam A. Sen
 Gupta, Advocates

Hon'ble Shri Justice Goutam Bhaduri

CAV JUDGMENT

(Reserved on 13.12.2018)

(Pronounced on 30.01.2019)

1. The challenge in this election petition is to the election held for the Member of Chhattisgarh State Legislative Assembly of Area No.24 of Marwahi Constituency. The result of the election was declared on 09.11.2013 wherein the respondent Amit Ajit Jogi was declared as elected. One of the Candidate Sameera Paikra D/o Late Gangaram Kanwar who was a contesting candidate from BJP is the petitioner. Respondent no.1 Amit Ajit Jogi was contesting candidate of Indian National Congress. The returned candidate was Amit Ajit Jogi and secured total 82909 votes whereas Sameera Paikra was polled 38659 votes thereby respondent no.1 was declared elected.
2. The *inter-alia* ground of challenge is that on 28.10.2013 the petitioner filed an application for grant of social status (caste) certificate before the Tahsildar Pendra Road and Tahsildar Pendra Road without having any jurisdiction issued the caste certificate on the same day by completing enquiry. It was stated that respondent no.1 did not have valid caste certificate to contest the election as the seat was reserved for scheduled tribe. The further pleading is that Amit Ajit Jogi did not file any application in prescribed format 5A to get the caste certificate and on 31.10.2013 when the Act of The Chhattisgarh Scheduled Social Status (Cast) Scheduled Tribes and other Backward Classes (Regulation of Social

Status Certification) Act 2013 and Rules 2013 was enforced the caste certificate so held by respondent No.1 would be invalid as the procedure and rules were not followed.

3. The further pleading is that the returning officer and the officer who issued the caste certificate are one and the same, therefore, issuing authority was a judge of his own case and acceptance of the nomination form on the basis of social caste certificate would be bad in law.
4. It is further pleaded that respondent No.1 was born at Dallas Texas (USA) and was American citizen by birth but had filed his nomination as an Indian citizen, therefore, no dual citizenship is permitted, he could not have contested the election.
5. The further pleading was that the grand-father and grand-mother of respondent No.1 were not tribes as they have adopted the Cristian religion, so they do not continue to be tribe to contest the election to the said seat. It is further stated that the returned candidate (R-1) submitted wrong information before filing the nomination paper that his place of birth was at village Sarbahara whereas he was born at USA. Consequently, wrong averments were made by suppression of fact. The petitioner contended that the returning officer should not have accepted the nomination of candidate and illegally accepted the nomination and having objected to the same, without any justification the same was dismissed. The petitioner further pleaded that during the election they distributed money at the polling booth as such adopted the corrupt practice, therefore, the election required to be set aside.

6. The said pleading was denied by the returned candidate. No averments of the petition was accepted.

On the basis of the pleading, the following issues were framed by the Court :

1.	Whether the acceptance of nomination form of respondent by Returning Officer on the basis of provisional caste certificate was illegal ?	"Not proved"
2.	Whether respondent No.1 suppressed the material fact which would render the election to be declared void ?	"Not proved"
3.	Whether the respondent is guilty of committing corrupt practice ?	"Not proved"
4.	Whether the finding over caste certificate can be adjudicated in the instant election petition ?	"Yes"
5.	Whether respondent no.1 was entitled for contesting the assembly election of the State being American Citizen by birth ?	"Was Indian Citizen at the time of filing nomination"
6.	Whether the petitioner is entitled for any other relief which deems fit in the circumstances ?	"No"

7. Petitioner Sameera Paikra on her behalf examined herself as P.W.1 and further examined Smt. Reena Baba Saheb Kangale as P.W.2 the Special Secretary Adim Jati Kalyan Vibhag; Sarveshwar Narendra Bhure as P.W.3 who is Director National Rural Health Mission; Shri Prakash Patle, Patwari as P.W.4; Bhaskar Singh Markam, the SDO as P.W.5 and B.C. Joshi, employee of Central Home Ministry as P.W.6. During the course of trial, the petitioner exhibited as many as 22 documents from Ex.P-1 to P-22.
8. Respondent Amit Ajit Jogi himself was examined as D.W.1. One Shankar Singh was examined as D.W.2. One Janbhan Singh, Teacher, was examined as D.W.3 & Dil Prasad Paikra was examined as D.W.4 and the documents were exhibited

from Ex.D-1 to D-8.

9. (i) Learned counsel for the petitioner would submit that the respondent returned candidate has wrongly submitted the place of birth as Sarbahara as also wrong date of birth was shown, therefore, by filing a wrong affidavit before the returning officer on the basis of false caste certificate, the nomination form was filed. It is further contended that by using false caste certificate of Scheduled Tribe, nomination was filed for the reserved constituency of Marawahi, therefore, fraud was played. It is also contended that when so called caste certificate was issued, *The Chhattisgarh Scheduled Social Status (Cast) Scheduled Tribes and other Backward Classes (Regulation of Social Status Certification) Act 2013* and the Rules were not followed nor the affidavit was filed in prescribed format as it described different coloured paper to be used at different stages. So by fraud, the result of the election was materially affected. It is stated that the returning officer and the person issuing the caste certificate were one and the same, consequently the bias can be very well arrived at by examining the fact itself.
- (ii) Referring to the statement of P.W.2, the Chairman of the Caste High Powered Scrutiny Committee and the order passed by the Committee it is contended that it was held that Ajit Jogi does not belong to Kanwar caste, it is contended that the said decision would answer the entire issue that the returned candidate though being not a Kanwar, the Tribe Community, has contested the election for the reserved seat. Referring to the statement of P.W.2 Sarveshwar Narendra Bhure, it is stated that the documents

filed by the returned candidate for issuance of caste certificate was not verified following the provisions of Chhattisgarh Scheduled Social Status (Cast), Scheduled Tribes and Other Backward Classes (Regulation of Social Status Certification) Act, 2013 (hereinafter referred to as the Act, 2013), therefore, the certificate so issued is null and void. By referring to Rules of Section 4 of the Act 2013, it is stated that once the complete procedure having been prescribed in the Act of 2013 and if the procedure is not followed then even if the caste certificate is issued would be non-est. It is stated that only provisional caste certificate was issued on the basis that the Tahsildar had forwarded the same to the SDO and without any enquiry, the caste certificate was issued in haste on the same date.

(iii) It is further contended that according to P.W.5 Bhaskar Singh, the place of birth of respondent no.1 was shown at village Sarbahara whereas respondent no.1 was born at Dallas Texas USA, as such, the false declaration was made. Referring to the statement of B.C. Joshi (P.W.6) it is stated that the document would show that the respondent was born at Dallas (USA) and apparent wrong submission of fact is on record. Counsel further referring to statement of D.W.1 would submit that rituals and customs of *Nawa Khai* is only performed by the Tribes and Amit Jogi being not a *Kanwar tribe* did not follow the rituals and customs which would show that he is not *Kanwar* though he contested as *Kanwar* Tribe. Therefore, though he contested on a reserved seat but in fact he was not entitled to contest the seat reserved for the ST.

(iv) Referring to issuance of caste certificate it is contended that the caste certificate was issued hurriedly on the same day without following the mandate of the Act, 2013, therefore, on the basis of false averments the election was contested. Reliance was placed in **1990 (4) SCC 526** and **AIR 2008 SC 632** and would submit that fraud on the constitution was played by the respondent no.1 and the certificate so issued is de-horse the Act and rules and loses its efficacy consequently the special privilege to contest a reserved seat cannot be allowed, therefore, the re-election may be set aside.

10. (i) Per contra learned counsel for the respondent submits that the entire averments and the allegations so made have not been categorically pleaded in the petition. It is stated that the evidence adduced by the petitioner would show that respondent No.1 had accepted the Indian citizenship and was major of more than 25 years of age, therefore, there was no bar to contest the election. It is further submitted that the place of birth do not discriminate for a person of Indian Citizen to contest the election, therefore, even if his place of birth was at Dallas Texas (USA), he was entitled to contest the election. It is stated that respondent No.1 has accepted the citizenship of India, therefore, he no longer remained to be citizen of USA and was entitled to contest the election. Counsel would further submit that the domicile by choice was accepted by respondent herein India, therefore, the place of birth of respondent No.1 would be of least significance to contest the election.

(ii) With respect to the corrupt practice, it is stated that

the verification has been made in the election petition which shows that the petitioner came to know from different sources, therefore, no categorical submission is made as to which information was based on her personal knowledge and which was from outside source as in the statement everything was attributed to the personal knowledge. It is stated that there was serious discrepancy in the manner of verification and the evidence exists in the case.

(iii) Learned counsel further submitted that the election petition is vague as it could be and general omnibus allegations have been made and in the election cases, the evidence has to be beyond reasonable doubt akin to the criminal cases and in the case on hand evidence do not lead to any proof of fact warranting any interference by this Court. He further submitted that by now the tenure of the election having been over, it is only academic and without prejudice to the averments, it is stated that even if the election is set aside, no relief could be granted.

11. Heard learned counsel for the parties at length and perused the record.

12. In the facts of this case considering the submission made by the petitioner issue No. 5 is answered first as it has bearing to the other issues. For the sake of convenience, Issue no. 5 is reproduced herein-below :

(v) Whether respondent no.1 was entitled for contesting the assembly election of the State being American Citizen by birth ?

13. Article 173 of the Constitution of India prescribes the qualification for the membership of the State Legislature. It

reads as under:

“173. Qualification for membership of the State Legislature.-- A person shall not be qualified to be chosen to fill a seat in the Legislature of the State unless he -

(a) is a citizen of India, and makes and subscribes before some person authorised in that behalf by the Election Commission an oath or affirmation according to the form set out for the purpose in the Third Schedule;

(b) is, in the case of seat in the Legislative Assembly, not less than twenty-five years of age and in the case of a seat in the Legislative Council, not less than thirty years of age; and

(c) possesses such other qualifications as may be prescribed in that behalf by or under any law made by Parliament.”

14. Reading of the Article 173 shows it prescribes that unless a person is citizen of India and if he is less than 25 years of age and unless he possesses such other requisite qualifications as per the law enacted by the Parliament, he shall not contest the election for the State Legislature. Therefore, in the instant case as against the averments made if the respondent No.1 was 25 years of age as on date of filing the nomination, he was entitled to contest the election or not to be examined apart of effect of birth which admittedly took place at USA. The nominations for election were filed from 26.10.2013 to 01.11.2013. The date of birth of respondent as per Ex.P-19 (application for cast certificate) is shown as 07.08.1978 and another document of citizenship Ex.P-22 proved by the petitioner shows the date of birth of R-1 is as 07th August 1977. Therefore one shows the year 1977 and another is 1978. So even if the date of birth is considered

qua either in the year 1977 or 1978 respondent no.1 appears to be more than 25 years of age as on the date of filing of the nomination. Therefore, even if two different dates of birth are shown i.e., 07.08.1978 in Ex.P-19 and 07.08.1977 in Ex.P-22, it would not make substantial difference for this election petition since respondent No.1 was aged about 36 years of age on that date.

- 15. The representation of people Act 1951, Chapter II Section 5 further lays down the qualification for membership of the State Legislatures.
- 16. Section 5(a) is relevant here which reads as under :

5. Qualifications for membership of State Legislative Assembly.- A person shall not be qualified to be chosen to fill a seat in the Legislative Assembly of a State unless -

- (a) in the case of seat reserved for the scheduled Castes or for the Scheduled Tribes of that State, he is a member of any of those castes or of those tribes, as the case may be, and is an elector for any Assembly Constituency in that State;
- (b)
- (c)

- 17. Reading of section 5 would show that he is to be an elector. The “elector” is defined in section 2(1)(e) of RPA Act 1951 which reads as under:

“2(1)(e) “elector” in relation to a constituency means a person whose name is entered in the electoral roll of that constituency for the time being in force and who is not subject to any of the disqualifications mentioned in section 16 of the Representation of th People Act, 1950 (43 of 1950)”

18. Reading of the aforesaid definition would show that irrespective of the place of birth if the name of person is entered in the electoral roll and if he is not disqualified otherwise, he may contest the election. There is no pleading of fact or evidence on record to show that respondent No.1 was not an elector of the constituency. Therefore, even though the submission of petitioner for prohibition of discrimination on the place of birth of respondent no.1 is correct, but the same will not be available to petitioner if respondent No.1 is an elector as defined u/s 2(1)(e) of the Act, 1951.
19. With respect to submission on the ground of religion, Article 15 of the Constitution of India would be relevant here. The said Article mandates that a person cannot be discriminated on on the ground of religion, race, caste, sex or place of birth which reads thus :

“15. Prohibition of discrimination on grounds of religion, race, caste, sex or place of birth.-- (1) The State shall not discriminate against any citizen on grounds only of religion, race, caste, sex place of birth or any of them.

(2) No citizen shall, on grounds only of religion, race, caste, sex, place of birth or any of them, be subject to any disability, liability, restriction or condition with regard to--

(a) access to shops, public restaurants, hotels and places of public entertainment; or

(b) the use of wells, tanks, bathing ghats, roads and places of public resort maintained wholly or partly out of State funds or dedicated to the use of the general public.

(3) Nothing in this article shall prevent the state

from making any special provision for women and children.

(4) Nothing in this article or in clause (2) of Article 29 shall prevent the State from making any special provision for the advancement of any socially and educationally backward classes of citizens or for the Scheduled Castes and the Scheduled Tribes.

(5) Nothing in this article or in sub-clause (g) of clause (1) of Article 19 shall prevent the State from making any special provision, by law, for the advancement of any socially and educationally backward classes of citizens or for the Scheduled Castes or the Scheduled Tribes insofar as such special provisions relate to their admission to educational institutions including private educational institutions, whether aided or unaided by the State, other than the minority educational institutions referred to in clause (1) of Article 30.”

20. Now turning to pleading, Section 83 of the Act, 1951 requires that the contents of the election petition shall contain a concise statement of the material facts. Section 87 of the Act says the procedure of CPC to be followed while deciding an election petition like that of a suit. The particular detailed pleading that how respondent was not entitled to contest election on the ground of place of birth is vague and not clear.

21. When the pleading and evidence to this fact qua Article 173 & Article 15 of the Constitution of India are examined, it reveals at Para 9 of the petition wherein it is stated that respondent No.1 was born at Dallas USA on 07.08.1977 and he was American by birth. Ex.P-5 the document of petitioner shows that the objection was made at Paras 5, 6, 7 & 10 wherein the petitioner contended that respondent No.1 was

born in USA and he is not an Indian citizen, however, he obtained the temporary caste certificate of Kanwar, a Scheduled Tribe. Ex.P-6 shows an objection made to the returning officer Marawahi constituency. Para 6.1 of the statement of the petitioner in affidavit under Order 18 Rule 4 of CPC is also on the same line. The petitioner at para 58 of statement admits the fact that the name of Amit Ajit Jogi was in the voters list but she is not in know of the fact as to when it was added. She further stated that while preparing to contest the election she came to know that his name is in the voters list. She has further stated that from the *internet* she came to know that Amit Ajit Jogi was born at America, therefore, he had to obtain the citizenship of India thereby this fact that the name of respondent No.1 was in the voters list as also the fact that he had applied for citizenship of India is admitted.

22. Para 60 of P.W.1 would show that she has not set up a case that respondent no.1 being not a citizen of India cannot contest, whereas the citizenship is proved by P.W.6 B.C. Joshi who is an employee of Central Home Ministry. According to him, Amit Jogi had applied for citizenship and his application was admitted on 26.07.2004. Ex.P-22 is a certificate of Registration issued by the Ministry of Home Affairs which shows that according to the provisions of Section 5(1)(a) of Citizenship Act 1955, Amit Aishwarya Jogi was registered as citizen of India. This too is proved by the petitioner herself.
23. Sameera Paikra the petitioner in her statement at para 60 has stated that in respect of citizenship of respondent no.1, application under the Right to Information was filed before

Home Ministry and there is no mention of such application in her election petition. She has further stated that though the application was not filed but this fact is admitted that the said information was sought after the instant election petition was preferred. At para 64, she admitted the fact that as on date, the respondent is citizen of India. The said statement of petitioner would be an admission u/s 58 of the Indian Evidence Act.

24. The Supreme Court in a case law reported in ***AIR 2001 3689*** has dealt with similar nature of issue wherein the argument was raised that a returned candidate being not citizen of India whether can be raised in election petition. The Supreme Court held therein the validity of certificate of citizenship issued u/s 5(1) can be gone into during trial of election.
25. Now coming to the legal implication, Part II Article 5 of the Constitution of India defined the “citizenship” which reads as under:

5. Citizenship at the commencement of the Constitution,- At the commencement of this Constitution every person who has his domicile in the territory of India and –

- (a) who was born in the territory of India; or
- (b) either of whose parents was born in the territory of India; or
- (c) who has been ordinarily resident in the territory of India for not less than five years immediately preceding such commencement,

shall be a citizen of India

26. In the subject matter, the Supreme Court in ***AIR 1966 S.C. 160 (Kedar pandey vs. Narain Bikram Sah)*** has laid

down the ratio to determine the domicile and what is to be proved. In such case, the objection was made by way of an election petition against the returned candidate that he was not duly qualified under Article 173 of the Constitution of India to contest the election as he was not the citizen of India claiming that returned candidate was born at Nepal. The election Tribunal then had initially held that the respondent Narain Raja was not citizen of India. The High Court on challenge made to it held that the respondent who was elected acquired the citizenship by “domicile of choice” in the Indian Territory, as such acquired the status of citizen of India under Article 5(a) & (c) of the Constitution. The Supreme Court while deciding the issue proceeded on presumption that the returned candidate Narayan Raja was not borne in India.

27. The Supreme Court at Para 8 after considering the submission held that the law attributes to every person at birth a domicile which is called a “domicile of origin” and the “domicile of origin” is received by operation of law at birth whereas the “domicile of choice” can also be acquired by a person by the actual removal of the individual to another country accompanied by his *animus manendi*. It held that domicile of origin of an individual is determined at the time of his birth, of the person upon whom he is legally dependent. The Court further held that a legitimate child who is born in a wedlock to a living father receives the domicile of the father at the time of birth; a posthumous legitimate child receives that of the mother at that time. As regards the change of domicile, any person who is not under

disability may at any time change his existing domicile and acquire for himself a domicile of choice by the fact of residing in a country other than that of his domicile of origin with the intention of continuing to reside there indefinitely. The court further pointed out that the purpose of residence is a mere physical fact and it means no more than personal presence in a locality, regarded apart from any of the circumstances attending it. If the physical fact is accompanied by the required state of mind, neither its character nor its duration is in any way material. The state of mind, or *animus manendi*, which is required demands that the person whose domicile is the object of the inquiry should have formed a fixed and settled purpose of making his principal or sole permanent home in the country of residence or in effect, he should have formed a deliberate intention to settle there.

28. According to the petitioner, at Para-65 she admits that Amit Jogi's father Ajit Pramod Jogi and mother Smt. Renu Jogi are Indian citizens. Respondent Amit Jogi in his statement admitted that he was born at Dallas, Texas (USA) on 07th August, 1977. If the said statements are read along-with Ex.P-22 which is a certificate issued u/s 5(1)(a) of the Citizenship Act 1955 whereby the citizenship was granted to respondent No.1 would show that he has obtained the citizenship of India. If the facts are looked into from another angle it would show that after birth, minor child came with the father and mother to India. In such state of affairs, the ratio laid down in case of *Kedar Pandey AIR 1966 S.C.160 (supra)* would clearly apply and by fiction it can be inferred

that the person who is dependent on his parents comes back and settles herein India then it would be considered that he has obtained the domicile by choice. In view of such principle, issue no.5 that whether the petitioner was entitled to contest the election being American citizen by birth at India is answered in favour of respondent No.1 and it is held that merely because of birth of respondent No.1 at U.S.A., respondent no.1 could not have been stopped to contest the election when he has chosen the “domicile of choice” by accepting the citizenship, settling and expressed his mind to settle and continue in India.

29. The Statement of P.W.6 B.C. Joshi of Central Home Ministry, New Delhi shows that he has stated that respondent No.1 has surrendered his citizenship of USA and the application was preferred before the Home Ministry. The Home Ministry after due enquiry issued the certificate. He has stated that the certificate under section 5(1)(a) will be issued to those foreign citizens who have surrendered their earlier country citizenships. Section 5 of the Citizenship Act 1955 postulates that it grants citizenship by registration and sub-section (5) of section 5 contemplates that a person registered under this section shall be a citizen of India by registration as from the date on which he is so registered and would be considered to be a citizen. In paras 9 & 10 petitioner has only stated that respondent No.1 is citizen of USA. In the pleading except the fact that he was born at USA, nothing has been pleaded. Here in the instant case the certificate Ex.P-22 is not under challenge, therefore, the said issue is answered in favour of respondent No.1.

30. Now the findings are given on Issues 2 & 3 which are reproduced here-in-below:

- (ii) Whether respondent No.1 suppressed the material fact which would render the election to be declared void ?
- (iii) Whether the respondent is guilty of committing corrupt practice ?

Issues no. 2 & 3 are interlinked to each other, therefore, are decided together. A reading of petition would show that from Para 12 to 17, the petitioner has averred about the corrupt practice. The verification of the main petition would reveal that contents of paras 1 & 2 and Paras 18 & 19 have been stated to be true to the personal knowledge of the petitioner and Paras 3 to 11 are said to be believed to be true based on records and paras 12 to 17 are believed to be true based on information received.

31. In the affidavit all the averments of corrupt practice from Paras 12 to 17 have been stated which are believed to be true on the information received by her. When the Statement of the petitioner is traversed through, at Para 49 it is stated that on 15.11.2013 a complaint was given by Santosh Tiwari to the election returning officer. The complaint was made about a particular incident, which is said to have taken place on 15.11.2013. This is a hear-say evidence as it was not to the knowledge of the petitioner. At para 13 of the petition, it was stated that liquor and Saris were distributed by the workers of respondent No.1 which was informed by Santosh Pandey and a written complaint was made to the returning officer about the incident of 17.11.2013. Santosh Pandey has not been examined before the Court. Therefore, it is also hear-say only to the effect that Santosh Kumar has informed

to the petitioner.

32. Likewise at Paras 15, 16 & 17 averments of corrupt practice have been made on the basis of information given by Santosh Pandey which is corroborated by para 34 of the Statement of the petitioner that the information was given by Santosh Pandey. At para 17 of the petition, the allegation of corrupt practice has been made for distributing money, liquor and Saris and it has been stated that two Government workers had canvassed for the returned candidate, which was witnessed by various persons and was informed by Dharamlal Yadav and Surendra Singh Paikra. Both these persons who are said to have supplied the information have not been examined. At para 14 of the petition, it was stated that certain money and liquor were distributed to the voters and having been objected by the petitioner's workers Inder Singh Dhurvey and others, they were abused. Inder Singh Dhurvey was also not examined before the Court. Though the petitioner discloses that various incidents of corrupt practice were reported by Santosh Pandey, Dharamlal Paikra, Surendra Singh & Indersingh Dhurve but none of them were examined before the Court. Therefore, these facts would show that facts pleaded were not in her personal knowledge as such the said statement of fact cannot be accepted being inadmissible in evidence.
33. The corrupt practice is defined u/s 123 of Representation of People Act read with section 100 sub-section (2) which makes mandatory u/s 100 sub-section (2) that it was to be pleaded and proved that corrupt practice was committed at the election by the candidate or his election agent.

Therefore, it was the primary duty of the petitioner to prove those facts that corrupt practice which was stated to be done by few persons whether the election agent or the respondent.

34. The Supreme Court in case of ***Jeet Mohinder Singh vs. Harminder Singh Jassi (1999) 9 SCC 386 in para 40*** held that “the success of a candidate who has won at an election should not be lightly interfered with. Any petition seeking such interference must strictly conform to the requirements of the law. The Court further held that setting aside of an election involves serious consequences not only for the returned candidate and the constituency, but also for the public at large inasmuch as re-election involves an enormous load on the public funds and administration.
35. Further in ***(2010) 1 SCC 466 – Kattinokkula Murali Krishna v. Veeramalla Koteswara Rao*** the Supreme Court has held that it is a settled principle of law that evidence beyond the pleadings can neither be permitted to be adduced nor can such evidence be taken into account. As such the standard of proof was emphasized in such case law. Similar view was adopted in ***(2000) 8 SCC 191 – Ravinder Singh Vs. Janmeja Singh*** wherein it was also held that “it is an the established proposition that no evidence can be led on a plea not raised in the pleadings and that no amount of evidence can cure defect in the pleadings.”
36. Further in case law reported in ***(2014) 1 SCC 46 – Regu Mahesh alias Regu Maheswar Rao Vs. Rajendra Pratap Bhanj Dev*** the importance of setting out the

sources of information in affidavits came up for consideration and it was held that the sources of information should be clearly disclosed. It was also held that real importance of setting out the sources of information at the time of presentation of the petition is to give the other side notice of the contemporaneous evidence on which the election petition is based and that will give an opportunity to the other side to test the genuineness and veracity of the sources of information.

37. Herein the present case, the pleading and evidence on corrupt practice is too vague and it is only based on hear-say evidence. The petitioner though stated that certain goods were distributed in such case, it was also upon the petitioner to prove that the workers against whom the charges of distribution of money and liquor, Saris etc., have been made were the agents/workers of the returned candidate. The person who informed the petitioner about those corrupt practices or malpractices are not examined. Though the personal knowledge has been pleaded in the petition and affidavit but evidence would show that it is all hear-say. As such the petitioner failed to prove corrupt practice of distribution of money and various goods.

38. It is further alleged by the petitioner that the respondents suppressed the material fact so as to render the election invalid. The petitioner in her statement under Order 18 rule 4 of CPC had stated that as per Ex.P-9 which is report of the Patwari the place of birth of respondent No.1 was at village Sarbahara and the date of birth is 07.08.1978. The Patwari who prepared this document is P.W.4 Prakash Patle. P.W.4

has deposed that in the year 2013 Amit Jogi had filed an application before him to prepare the family tree and one Kamal Singh who was Patel of village Jogishar came to him along-with application. The statement of witnesses and photocopies of the affidavits were attached and Kamal Singh is the Government Servant, working in the Revenue Department as village Patel. The said document Ex.P-9 was not confronted with this witness though the same is exhibited by the petitioner. Para 30 of the statement of the petitioner (P.W.1) shows that while such exhibits were marked it was objected that it is not a certified copy as per the provisions of Section 76 of the Indian Evidence Act. The Court thereon allowed to mark the said document as Exhibit and observed that admissibility of the document would be considered at the time of evidence.

39. A perusal of Ex.P-9 would show that it is a photocopy. P.W.4 was the witness of petitioner but the document Ex.P-9 was not confronted to P.W.4, the Patwari. Section 74 of the Indian Evidence Act defines the public document which is reproduced here-in-below:

74. Public documents.-- The following documents are public documents :

(1) Documents forming the acts, or records of the acts--

(i) of the sovereign authority,

(ii) of official bodies and tribunals, and

(iii) of public officers, legislative, judicial and executive of any part of India or of the Commonwealth, or of a foreign country;

(2) Public records kept in any State of private documents.

40. Likewise, section 76 defines the certified copy of the public document which reads as under:

“76. Certified copies of public documents.-

Every public officer having the custody of a public document, which any person has a right to inspect, shall give that person on demand a copy of it on payment of the legal fees therefor, together with a certificate written at the foot of such copy that it is true copy of such document or part thereof, as the case may be, and such certificate shall be dated and subscribed by such officer with his name and his official title, and shall be sealed, whenever such officer is authorised by law to make use of a seal; and such copies so certified shall be called certified copies.”

41. The certified copy as defined in Section 76 contemplates that it is to be issued on payment of legal fee thereof together with a certificate written at the foot of such copy that it is a true copy of such document or part thereof, as the case may be, and such certificate shall be dated and subscribed by such officer with his name and his official title and shall be sealed. A perusal of Ex.P-9 do not show that certain fee was paid. However, at the foot of the document, the words *Satya Pratilipi* and signature of Tahsildar Pendra Road are shown. Bhaskar Singh, the Tahsildar Pendra Road was examined as P.W.5. The said officer was not confronted with the document Ex.P-9 though he was witness of the petitioner. As such the facts as to whose signature Ex.P.9 bears and who has issued the same and when the legal fee was deposited ought to have been explained to comply the provisions of Section 76 of the Indian Evidence Act so as to take within the ambit of certified copy as defined in the Evidence Act.

42. Further it is not clear by examination of Ex.P-9 that who had issued the same. In order to accept a document it must satisfy the ingredients of section 76 of the Evidence Act. A perusal of Ex.P-9 shows that requirements of section 76 i.e., payment of legal fee and who has issued the same have not been made clear and the Tahsildar was called upon to show that by whom it was issued ? Therefore under the circumstances it do not conform to the requirements of Section 76 so as to accept the same in the evidence. In the result, though the document was exhibited but it cannot be read in evidence as it is not admissible in evidence.
43. The other witness of Plaintiff Bhaskar Singh who is the SDO (Revenue) was examined as P.W.5. In his statement he has deposed that he had taken the statement of respondent no.1 wherein respondent No.1 has stated that his place of birth was Sarbahara and his statement was recorded on oath and respondent No.1 stated that after birth, he was residing at Sarbahara. The order sheet of proceeding to grant the caste certificate is marked as Ex.P-2. A perusal of the entire order sheets shows that it do not record the fact that respondent no.1 made a statement that he was born at Sarbahara. Therefore, the oral evidence of P.W.5 is not supported by order sheet of the proceeding which he himself recorded. The order sheet do not record that he was borne at Sarbahara. Ex.P-20 was the statement of Amit Jogi. If his statement is read as a whole it do not reflect that he made a statement that he was born at Sarbahara instead he stated that after birth he was residing along-with his mother and father at village Sarbahara and thereafter the particulars of

grand-father etc., have been stated.

44. Now coming to the statement of P.W.3 Sarveshwar Narendra Bhure, at para 4 he stated that he had not recorded any statement but it was recorded by Tahsildar. At para 7, he further made a hearsay statement that as told by respondent No.1, his place of birth was written as Sarbahara in Patwari Report. Patwari P.W.4 was not confronted with the statement Ex.P-20 of the respondent nor was confronted with Ex.P-9 though these documents were exhibited by the petitioner and they were witnesses of the petitioner. As such, the petitioner himself has failed to prove the substantial fact that the statement was made by Amit Jogi that he was born at Sarbahara. When Amit Jogi was confronted with his statement as D.W.1 in respect of Ex.P-20 he admitted to have made such statement. As averred herein-below, the statement Ex.P-20 do not categorically say so that he was born at Sarbahara. Therefore, the petitioner has failed to prove this fact that such wrong statement was made by respondent No.1.
45. The petitioner has further averred that the returning officer namely P.W.3 Sarveshwar Narendra Bhure was the SDO at the time of issuance of the caste certificate. The petitioner stated that the objection though was raised in respect of caste certificate, the same officer rejected the objection and bias was pleaded on the ground that the person cannot be judge of his own case.
46. Now coming to the statement of P.W.3 at Para 8 he deposed that the petitioner Sameera Paikra had objected to the nomination on 3 grounds. One was about citizenship of Amit

Jogi. Second was the caste of Amit Jogi and the third was that Amit Jogi has shown two date of births. This witness has deposed that such objection was decided after hearing both the parties and examination of the document. Admittedly the evidence shows that the same person SDO has issued the caste certificate Ex.P-4 and subsequently decided the objection with respect to cast certificate.

47. Now the question is whether there was bias caused. Admittedly P.W.3 issued the caste certificate in the capacity of SDO and thereafter has decided the objection raised by the petitioner as a returning officer. If the SDO was discharging the duty of Returning Officer then he was under the statutory obligation to deal with the objection and decide the same as also at the time of issuance of certificate. Likewise, when the caste certificate was issued by him, he was under the obligation either to issue the certificate or to reject the same.
48. The Oxford Administrative Law 8th Edition (Page 452) has interpreted such situation on the topic "THE RULE AGAINST BIAS". It is the principle which has been followed when the individual authorities qua case of necessity, bias cannot be inferred for the reason when there is no substitution is possible and no-one-else is empowered to act. Natural justice then has to give way to the necessity; for otherwise there is no means of deciding and machinery of justice or administration will break-down. It further says that in administrative cases, the exigency of like nature may easily arise. Where the statute empowers a particular minister or official to act, he will usually be the one and only one person

who can do so. There is then no way of escaping the responsibility, even if he is personally interested and transfer of responsibility is, indeed, a recognized type of ultra-vires.

49. Considering the point of bias and in the light of the aforesaid principles, statement of P.W.3 Sarveshwar Narendra Bhure, who was the S.D.O (Revenue) had stated that in the year 2013, he was appointed by the election commission as a Returning Officer of Marawhi Assembly Election. At para- 8 this witness he deposed that Sameera Paikra, petitioner, has objected to the caste of respondent. The said objection was decided by him on 02.11.2013 which has been marked as Ex.P-7. The witness further deposed that after hearing both the parties, he has adjudicated the objection and the objection was decided according to the statute of RP Act. Reading of the said statement would show that Sarveshwar Narendra Bhure who was appointed as Returning Officer could not have refused the responsibility and in the alternative if such responsibility was not discharged, it would be a recognized type of ultravires.

50. Further the petitioner in her statement at para 72 had referred caste certificate of Ajit Pramod Jogi, father of respondent no.1 and stated that the caste certificate was issued to Ajit Jogi on the basis of forged document and she has received the said information from one Nand Kumar Sai. The said Nand Kumar Sai has not been examined. It is a hearsay evidence. She has further averred that Ex.P-6 wherein the objection with respect to the application preferred by the respondent was raised that it was not in format and the competent person has not issued the

certificate. However, in order to prove the same it has not been substantiated. Ex.P-21 the order dated 27.06.2017 was referred which was passed by the High Powered Committee against father of R-1 wherein it was declared that the father of R-1 Ajit Pramod Kumar was not able to establish that the caste certificate issued to him was valid.

51. During the course of arguments the order of the Division Bench of this Court dated 30.01.2018 passed in W.P(C). No.2104/2017 was produced. A perusal of the said judgment would show that the finding of Ex.P-21 wherein it was held that the father of respondent was not having a valid caste certificate was set aside and therefore the enquiry was ordered with certain observations. The fact remains that the order Ex.P-21 has been set aside and it loses its efficacy and Ex.P-21 will merge into the order of Division Bench.

52. Further the argument which is made by the petitioner that the petitioner was not Kanwar and was Christian. The pleading and evidence in this regard are considered. The petitioner in her deposition at Para 87 stated that in *Kanwar* Tribe, the festival of *Hareli*, *Cherchera*, *Sua*, *Karma* are celebrated. With respect to *Nawakhai*, he stated that it is not a festival. She further stated that *Nawakhai* programme is not a collective programme. It is entirely a family programme wherein the members of the family perform worship (*Puja*) at their home only. She has further voluntarily stated that Ajit Jogi and Amit Jogi celebrate *Nawakhai* at the temple of Jogishar village and all the near-by villagers are invited and they perform *Nawakhai* whereas *Kanwar tribe* community do not follow such rituals. She has

further stated that the said programmes are done by the Ajit Jogi, father of returned candidate Amit Jogi, Renu Jogi wife of Ajit Jogi and Richa Jogi wife of R-1 Amit Jogi to show that they are Kanwars.

53. She has further stated that in programme of *Nawakhai* which is celebrated by Ajit Jogi and Amit Jogi, large number of people from the entire area participate and even from Bilaspur, people go to participate. The said statement would go to show that *Kanwar Tribe* community participates in the programmes conducted by the respondent family. She has further stated that *Kanwar* community in their marriage, uses to call the other persons also and with respect to respondents, she has stated at Para 91 that respondent Amit Jogi had adopted Christianity. As for documents Ex.P-10 to P-18 she has stated at Para 93 that the said documents were given to Vigilance Committee Raipur in the year 2014 and she stated that in the school living certificate, they are shown as Christian (Isai). She has stated that since the respondent was a Christian, he cannot be held to be *Kanwar*.
54. The evidence as is on record gives a clear picture that Kanwar community of village participates in the functions of Nawakhai, Puja etc., conducted by the respondents and therefore what would be the effect if the person is accepted as a *Kanwar* though he is a Christian. This aspect whether he loses his right or whether the Christian cannot be a Kanwar has to be examined. Admittedly the fact that respondent No.1 is a Christian is not disputed.
55. In a book captioned as ***Law and Society in Modern India*** written by Marc Galanter, 1997 edition, Third Impression at

Page 105 the legal conception of social structure has been described. The said author has referred to Judgment rendered in *Kartik Oraon V. David Munzni AIR 1964 Patna 201* wherein a challenge in the election petition was with respect to a candidate for member of Oraon family but he had been a Christian since his grand father's time. Therefore, the question was whether a particular person was eligible to contest the seat reserved for Scheduled Tribe being Christian.

56. It was ground of challenge that once a person became a Christian, he cannot be no longer a Oraon. The High Court found that the candidates active participation in the civic life of tribe belied the charge of lack of common interests and aspirations. In the instant petition, the manner and custom and the evidence shows that though the respondent has adopted Christianity, but they still continue observance of tribe religion. The relevant part of judgment reported in *Kartik Oraon V. David Munzni AIR 1964 Patna 201 (supra)* is quoted herein-below :

(14) "Tribe" has been defined in Encyclopaedia Britannica, Volume 22, 1961 edition, at page 465, by W.H. R. Rivers as "a social group of a simple kind, the members of which speak a common dialect, have a single government, and act together for such common purposes as "warfare". Other typical characteristics include a common name, a contiguous territory, a relatively uniform culture or way of life and a tradition of common descent. Tribes are usually composed of a number of local communities, e.g., bands, villages or neighborhoods, and are often aggregated in clusters of a higher order called nations. The term is seldom applied to societies that have achieved a

strictly territorial organization in large states but is usually confined to groups whose unity is based primarily upon a sense of extended kinship ties. It is no longer used for kin groups in the strict sense, such as clans.”

As already observed, the case of the appellant is that two respondents have nothing to do with the animistic faith and tribal way of life and they did not follow the manners and customs of the tribes and have no affinity nor any common interest, defence or aspirations with or for the tribal people and that, in order to be classed as a scheduled tribes, problems of common interest, aspirations and defence and must profess the tribal religion (animism) and follow the tribal way of life. In reply to the above allegation, the respondent, in his written statement, stated that both the respondents were and are members of the Oraon tribe which has been specified as a scheduled Tribe in the State of Bihar under the Constitution (Scheduled Tribes) Order, 1950 and that having anything to do with the animistic faith and tribal way of life was no ingredient of membership of Scheduled Tribes within the meaning of the said Order. It was further stated that many members of various Scheduled Tribes, professing the Christian faith, have contested Parliamentary and Assembly seats which were reserved for members of Scheduled Tribes in the first, second and third general elections in this country and the successful contestants among them served their full terms as members of the respective legislature without any challenge, and that, as a matter of fact, respondent No.2 had successfully contested his particular reserved seat in the general election held in for the full term till its dissolution on the eve of the general election of 1962.

Assam Page 128, the election Commission had rejected nomination papers for a Scheduled Tribe seat from a candidate, whose father was English and mother was a *Khasi Tribe*. In such case in pre-independence days he had accepted for himself and his children (his wife was a Khasi) privileges restricted to Anglo-Indians. But he was accepted as a *Khasi* by the tribes people, the group being matri-lineal and anyone born of a *Khasi* mother being regarded as a member of Tribe; he had followed 'the customs and the way of life of the tribe', was treated by them as one of themselves and had been active in *Khasi* politics. The Assam High Court found that even though he was an Anglo-Indian within the Constitutional definition, this did not prevent him from being a member of this tribe or some other community. Whether he was in fact a *Khasi* depended not on purity of blood but on his conduct and on the acceptance of the community.

58. In exercise of power conferred by Clause (1) of Article 341 of the Constitution of India, the President after consultation with Governor and *Rajpramukhs* of the State concerned has issued the Order which is called as "The Constitution (Scheduled Tribes) Order, 1950. Another Order called as "The Constitution (Scheduled Castes) Order 1950" was also issued by the President before issuance of the said S.T. Order. Clause (3) of Scheduled Castes Order 1950 speaks that Notwithstanding anything contained in Paragraph 2, no person who professes a religion different from the Hindu, the Sikh or the Buddhist religion shall be deemed to be member of a Scheduled Caste. The said restriction is absent in the S.T. Order which may be called as Constitution (Scheduled

Tribes) order, 1950. Therefore, necessary inference is that if the tribe converted to Christianity, the said Tribal status shall continue.

59. In the instant petition, respondent No.1 has deposed that he is a *Kanwar*. The petitioner also says that she is a *Kanwar* but both of them adopted Christianity which is not in dispute. The entire reading of the petition shows that there is no allegation that respondent No.1 is not a Kanwar but as against this, it is stated that the certificate so issued to respondent showing him to be a Kanwar is fake or it is not correct. Therefore, necessary ingredients are missing in respect of the same to appreciate the argument of petitioner.
60. In view of the aforesaid discussions, the argument advanced by the petitioner that the petitioner having adopted the Christianity has lost his status of *Kanwar Tribe* do not find support from settled law and the S.T. Order 1950 and it can be presumed that even if the respondent adopted the Christianity, his right of status of *Kanwar Tribe* cannot be taken away.
61. Now further argument has been advanced that issuance of caste certificate to the respondent was not according to the Chhattisgarh Scheduled Social Status (Cast), Scheduled Tribes and Other Backward Classes (Regulation of Social Status Certification) Act, 2013 or Rules made thereunder. At para 5 of the Petition, the petitioner has made the pleading about the procedure. The pleading is silent as to what provisions of Act, 2013 was violated. No particulars thereof have been given. Only omnibus averments have been made. On going through the principles laid down by authoritative

pronouncements of different Courts, it is clear that in election petition, the particulars have to be very much clear and distinct. There cannot be any presumptive inference.

62. Rule 2 of Chhattisgarh Scheduled Social Status (Cast), Scheduled Tribes and Other Backward Classes (Regulation of Social Status Certification) Rules, 2013 prescribes definitions. Rule 2(k) thereof refers to “Presidential Notification”, which means order issued by the President under Article 341 and Article 342 of the Constitution of India with respect to the State of Chhattisgarh, and as amended by the Parliament from time to time.

63. Likewise 2(L) defines the “Provisional Social Certificate” which reads thus:

“2(l) Provisional Social Status Certificate means a Social Status Certificate issued in FORM-4B under Rule 10”

64. Rule 10 of the Rules, 2013 provides for Provisional Certificate which is quoted below;

“10. Provisional Certificate.-- (1) For the purpose of granting admission to educational institutions upto tenth standard or for granting scholarship or stipend at such level or for such other purposes, where large numbers of Certificates are necessary and it is not feasible to issue such Certificate well in time, the Competent Authority, may issue a provisional certificate in FORM-4B on the basis of affidavit given by the applicant in FORM-2A within fifteen days from the date of application :

Provided that the Competent Authority shall maintain the details of provisional certificates issued in FORM-5B.

(2) The provisional Certificate shall be valid only for a period of six months or till the date of issue of permanent Certificate, whichever is earlier.”

65. Further Social Status Certificates is defined under Rule 9

which reads as under:

“9. Social Status Certificate,- The Competent Authority after receiving application under sub-rule(1) of Rule 3 and conducting an inquiry under Rule 8 and in case where himself is not an inquiry officer, after satisfying himself with the annexed documents and Report of the inquiry officer, within one month from the date of receipt of application, shall issue the certificate in FORM-4A(1) to the Applicant of Scheduled Castes, in FORM-FA (2) to the Applicant of Scheduled Tribes and in FORM-4A (3) to the applicant of Other Backward Classes.”

66. The form of Affidavit which is to be given is found in 2-A which is as under:

FORM-2A

[See Rule 3(3)(a)]

Affidavit for issue of Social Status Certificate

I Mr./Mrs./Ms.....,son/daughter of.....
....., aged..... Year....., occupation.....,
resident of....., Tehsil....., District.....,
State..... hereby solemnly affirm the following :-

1. That I have applied for the issuance of Social Status Certificate before the Competent Authority in FORM-1A.
2. That I have, according to the prescribed form, attached the copy of.....documents along-with the application letter before the Competent Authority. The document mentioned above has been obtained lawfully by the person(s) authorized by me and I have not made any unauthorized amendment/omission/change whatsoever of any kind in the document mentioned above or its original copy by me or my well-wishers and according to the best of my knowledge, the above-mentioned document/documents have not been concocted with any malicious intention.
3. That I have attached the family tree showing relation with those relatives whose validity certificates have been attached with this application.
4. I hereby declare that, in pursuance of obtaining the Social Status Certificate, the information rendered by me in the Application presented in the prescribed form before the Competent Authority, is true to the best of my knowledge and belief and if such information is found false or incorrect, then proceedings in accordance with Section 8-13 of Chhattisgarh Scheduled Castes, Scheduled Tribes and Other Backward Classes (Regulation of Social Status Certification) Act, 2013 shall be initiated against me.

Signature
Name of the Applicant.....

Verification

I, Mr/Mrs/Ms.....son/daughter of.....hereby verify that the statements mentioned in Clause 1 to 4 of this affidavit are true to the best of my knowledge and belief, and I verify them in full consciousness.

Signature
Name of the Applicant.....

67. In the context of aforesaid provisions, the evidence which is on record is examined. Ex.P-2 is proved by the petitioner. In respect of the Revenue Order Sheet of Case No.44/0-121/13-14. This is an order sheet of Tahsildar, Pendra Road. Reading of Ex.P-2 as a whole shows that the Tahsildar examined the documents i.e., (a) Affidavit (b) copy of land holding certificate; (iii) Patwari Report, Family Tree, certified copy of resolution of Gram Sabha; (d) Educational Certificate/ Marks Sheet (e) the Caste Certificate of the applicant's father and her sister. The said Ex.P-2 records that the statement of witness was recorded and the land revenue records, affidavit in its entirety was considered and the Tahsildar came to conclusion that the provisional caste certificate may be issued and thereafter, it was forwarded to the SDO, Pendra Road for permanent caste certificate. Subsequent to that, provisional caste certificate was issued vide Ex.P-3. Further Ex.P-3 is the order sheet of the SDO, Pendra Road which shows that all the documents, affidavit, the certificate issued in favour of the family members of the respondent were duly considered by the SDO and thereafter, the permanent caste certificate was issued vide Ex.P-4.
68. The aforesaid documents have been proved by Bhaskar

Singh Markam (P.W.5). According to his statement, different documents as has been described in the order sheet were produced and after recording the statement of respondent, the certificate was issued. Ex.P-9 is Patwari Report wherein it is stated by the applicant that village Sarbahara is the place of birth of respondent. Patwari Prakash Patel (P.W.4) who prepared the report (Ex.P-9) was not confronted with such document. Instead, at Para 30 of her statement, the petitioner has exhibited the document Ex.P-9 with the objection. Ex.P-9 the original was not brought on record before this Court.

69. The certified copy of the documents are necessarily need to be confronted with Section 74. Therefore, as averred it would not satisfy the ingredients of sections 74 & 76 of the Evidence Act. Further more, if the Statement of P.W.5 Bhaskar Singh Markam at Para-5 is considered he has stated that he recorded the statement of respondent wherein he stated that his place of birth was at Sarbahara whereas the Order Sheet Ex.P-2 do not record such fact and it contains other details of facts. As such, that part of oral evidence which did not find place in the order sheet contradicts and cannot be accepted as against the contents of order sheet dated Ex.P-2.
70. Ex.P.20 the statement of respondent Amit Aishwarwa Jogi would show that he has deposed that after his birth, he was living at village Sarbahara along-with father and mother. The said statement do not contain the fact that he was born at Sarbahara. P.W.3 Sarveshwar Narain Bhure who was SDO at the relevant time in his statement has narrated the entire

procedure. The SDO P.W.3 at Para 10 of his statement has stated that he had issued the caste certificate. The said certificate was filed during the nomination.

71. It is not the case of the petitioner that respondent contested the election on the basis of the false caste certificate. Instead, it is the case of the petitioner that he did not belong to *Kanwar Tribe*. The said caste certificate Ex.P-4 was not cancelled. While dealing with similar facts situation of the case, i.e., E.P No.60/2014 (*Dr. Thaneshwar Patela vs. Sarojani Banjari decided on 18.05.2017*) this Court has held that with respect to power conferred to issue the caste certificate, a notification was made by the State of Chhattisgarh on 24.09.2013 which has been placed for perusal. The notification bears No.F13-22/2012/ A.P/ 1-3 dated 24.09.2013 wherein the power has been given as per Direction No.4.2 even to issue the certificate on filing of affidavit when the documents are not available for caste certificate and after enquiry the caste certificate can be issued. Further Direction 2.1 requires the list of documents which includes the affidavit, the family tree issued by the Patwari, the documents of cut-off date to show that the person seeking caste certificate is residing at Chhattisgarh before the notification and after Reorganization of the State of Madhya Pradesh on 1st November, 2000 and any of the documents i.e., family tree (Mishal), revenue records etc. Further, the direction 5.3 contained in the notification would show that the SDO has also been given power to issue the caste certificate. In this case the document Ex.P-2 the order sheet and the statement of Patwari and the SDO P.W.3 &

P.W.4 would show that the SDO issued the certificate. Therefore, it would be according to the direction 5.3 contained in the notification wherein the SDO is also given power to issue the caste certificate.

72. With respect to issuance of caste certificate, the petitioner at Paras 3, 4 & 5 had contended that the objection to the caste certificate was decided on the same day. The application was submitted to Tahsildar and he forwarded it to the SDO. He was not having a jurisdiction and virtually without any enquiry, the report was submitted. In statement of the petitioner at Para 5, it is stated that one Shankar Singh Kanwar has filed the objection whereas in the verification of the petitioner it is stated that the statements are believed to be true and based on records. The affidavit would show that the petitioner contended that the objection was filed through Shanker Singh Kanwar, therefore, it contradicts the verification clause of the petition. With respect to filing of petition for the caste certificate before the Tahsildar, para 71 of the deposition would show that she too had filed an application for caste certificate before the Tahsildar Pendra. The entire procedure has been described in that para. She further disclosed that all the averments which were disclosed to the Advocate over the same do not find place in the petition. Therefore, it will show that the procedure which was adopted by the respondent is also supported by the petitioner. She further fortified the fact that after the application is filed to the Tahsildar, it has to be attached with the family tree, Missal B-1 Khasra, income certificate etc., and thereafter the Tahsildar after examining the said

records, issues the caste certificate, therefore, the procedure which is being challenged by the petitioner quo the respondent it shows the petitioner herself had adopted the same procedure to obtain the said certificate.

73. The format which has been prescribed in Rules Form 1A, application for social status certificate do not prescribe the place of birth. When the same form is considered as per Ex.P-19 which is an application given by the petitioner, it runs parallel except certain minor deviation. Therefore, what would be important to contest the election is that as per Article 173(b) of the Constitution, a person can be qualified to contest the election for the State Legislative Assembly if he is not less than 25 years of age. Section 100 of the RP Act also do not contain any statutory requirement about the place of birth, therefore, in the facts of this case, though the petitioner has failed to prove that respondent has given a wrong place of birth, even if it is accepted as otherwise, the same would be of no consequence.
74. Section 100 (c) of the R.P. Act, 1951 gives certain grounds to declare an election to be void when any nomination has been improperly rejected and section 100(d) mandates that the election can be declared void if it is proved that result of election in so far as it relates to a returned candidate has been materially affected by improper acceptance of any nomination. Now reverting to the petition, nothing is on record to prove those facts. In para 10, it has been stated that the petitioner was born at USA and in Para 7, the petitioner has stated the nomination was illegally accepted. Except those, no pleading is on record. In *Mahdeo v. Babu*

Udai Pratap Singh AIR SC 1966 824 the Supreme Court with legislative history has explained and held that the petitioner in election petition has to prove the improper acceptance of nomination paper and how it had materially affected the election petition. The difference of votes in this case between the petitioner and respondent No.1 is about 44,000. Therefore, how acceptance of nomination paper of respondent has materially affected has not been proved. The pleading is completely silent. The principle has been laid in ***AIR 2001 SC 905 Tek Chand v. Dile Ram*** and ***AIR 2016 2016 SC 4700 Rajendra Kumar Meshram v. Vanshmani***, that unless and until it is proved that acceptance of nomination has materially affected the result of election, no relief can be granted.

75. Further more, the facts would show that the permanent caste certificate was issued on 31.10.2013 vide Ex.P-4. The returned candidate in its reply stated that at the time of scrutiny, the permanent caste certificate was filed. As per the election petition, scrutiny was done on 02.10.2013. The order of the returning officer Ex.P-7 is dated 02.11.2013 which would show that when the scrutiny was made on that date, the original caste certificate was already produced. The same fact was corroborated by P.W.3 Sarveshwar Narendra Bhure at Para 10 that all the documents were considered and accordingly objections were decided. As such no doubt can be created.
76. Lastly, the prayer of the petitioner to declare the election of respondent No.1 to be void whether can be granted ? The term of the legislative assembly had already expired as the

challenge in this petition is in respect of the election held in the year 2013.

77. Learned Senior Counsel Dr. N.K. Shukla, appearing on behalf of respondent No.1 who is the author of book captioned as ***Discretionary Nature of Opinion Judgments (written by Dr. N.K. Shukla)*** has narrated similar situations and issues therein based on legal principles enunciated by the Supreme Court. It is settled proposition that the Court should not decide an issue unless it is a living issue between the parties. The said proposition is supported by the decision of Supreme Court in ***AIR 1987 SC 1577 – Dhartipakar Madan Lal Agrawal Vs. Shri Rajiv Gandhi*** wherein it has been held that even if the election petition is allowed and the election cannot be set aside after trial of the election petition, then the relief claiming for setting aside of election would be rendered infructuous by lapse of time. Accordingly, apart from the issue raised this fact also becomes point of prime consideration.
78. During the course of cross examination of witness Smt. Reena Baba Saheb Kangale, a publication was made against her by the respondent. Subsequently, the application was filed by counsel for the petitioner u/s 151 of CPC read with Article 215 of the constitution of India and Section 12 of the Contempt of Courts Act to draw contempt proceeding against respondent No.1 for releasing a press note by respondent no.1. Therefore, during the course of proceeding prima facie, this Court was of the opinion that the pressure was exerted over the witnesses while she is being cross examined and on 14.09.2017 this Court has issued show cause notices as to why criminal proceedings be not drawn against them for uploading the statements of witness though they were not certified and for making statement to media. Subsequently show cause notices were issued to

respondent no.1 and also the counsel representing him.

79. The response to the show cause issued by the court was filed. In the reply, unconditional apology has been tendered assigning reasons and it is stated that no interpolations were made in the statement of witnesses and further no misreporting was made in newspaper. It was further stated that neither there was malice nor the respondent or their counsel had any remote knowledge which may give rise to such proceeding. The reply of the concerned advocates is also perused. They have also tendered unconditional apology and stated that there is no intention to over reach authority of Court and pressurize the witnesses. The reply is supported by the affidavit.
80. After reading of the entire explanation made by respondent no.1 and his counsels and considering the unqualified and unconditional apology, the Court accepts the same and expects that in future they would be cautious. As a result, no direction is made to initiate any contempt or criminal proceeding against them pursuant to show cause.
81. In view of the aforesaid discussion, the court is of the opinion that the petitioner has failed to prove the very fact with respect to allegations raised in the election petition and no relief can be granted to the petitioner.
82. In the result, the petition sans merit and is dismissed.

**Sd-
GOUTAM BHADURI
JUDGE**