

**Dr. Abhishek Manu Singhvi Vs. Shri Harsh Mahajan**

**Election Petition No.01 of 2024**

06.08.2025 Present: Mr. Prashanto Sen, Sr. Advocates, with M/s Aman Panwar, Muddit Gupta, and Yash Johri, Advocates through VC and Mr. Neeraj Gupta, Sr. Advocate with M/s. Ajeet Pal Jaswal, Pranjal Munjal, Harshit Sharma, Advocates, for the petitioner.

Mr. Satya Pal Jain, Sr. Advocate with M/s Daresh Maudgil, Virbahadur Verma, Vikrant Thakur, Prajwal Busta, Ankit Dhiman and Mukul Sharma Advocates, for the respondent.

In sequel to the previous order dated 11.07.2025, consequences, if any, on account of not leading evidence in the case at hand by the petitioner were to be considered today.

At the very outset, learned Senior Counsel for the petitioner has drawn the attention of this Court to the issues framed on 02.04.2025, the same read as follows:

*"1. Whether in view of the tie of votes, the candidate on whom the lot fell, i.e., the petitioner, ought to have been declared as the Returned Candidate in terms of the provisions of Section 65 of the Representation of People Act, 1951 and the Conduct of Election Rules, 1961? OPP*

*2. Whether the petitioner consented to the election procedure and, if so, whether he is estopped from maintaining the present election petition? OPR*

*3. Whether the election petition is not maintainable in terms of the provisions of the Representation of People Act, 1951? OPR*

*4. Relief."*

The learned Senior Counsel contends, petitioner's case is that some other provisions of the Representation of People Act, 1951 ('R.P. Act, 1951'), were

required to be applied and not the Rules, which were actually applied. According to the petitioner, the Returning Officer ('RO') ought to have determined the result as per the provisions of Section 65 of the R.P. Act 1951 and ought to have declared the petitioner as the successful candidate. According to the petitioner, the election result is materially affected by non-compliance with Section 65 of the R.P. Act 1951 and the flawed invocation of Rule 75(4) & Rule 81(3) of the Rules by the RO.

He further contends that petitioner having allegedly consented to the application of procedure as per Rules 75 and 81 of the Rules, is a fact pleaded by the respondent. It is not the case set up by the petitioner. For demonstrating the aforementioned admitted position, attention has been invited to order dated 16.09.2024, passed in EMP No.2 of 2024, whereby an application filed under Order 7 Rule 11, Section 151 CPC read with Sections 81, 83, 86 and 87 of the RP Act 1951, seeking rejection of the Election Petition No.1 of 2024, had been dismissed. No challenge to the same has been laid by either of the parties.

Learned Senior Counsel for the petitioner submits that the issue which arises for consideration in the case at hand is with respect to the applicability of the correct provision of R.P. Act, 1951. According to the learned Senior Counsel, Section 65 of the R.P. Act, 1951,

should have been applied and invocation of Rule 75(4) and 81(3) of the Rules is incorrect.

According to the learned Senior Counsel the same needs to be tried as a preliminary issue as it is purely a question of law. Attention in this respect has been invited to Order 14 Rule 2 CPC and judgment reported as **2022 (9) SCC 225**, titled ***Jamia Masjid Vs. Sri K.V. Rudrappa (since deceased) by legal representatives and Others***, the relevant extract is reproduced herein below:

*"27. We are unable to accept the submission of the appellants that res judicata can never be decided as a preliminary issue. In certain cases, particularly when a mixed question of law or fact is raised, the issue should await a full-fledged trial after evidence is adduced. In the present case, a determination of the components of res judicata turns on the pleadings and judgments in the earlier suits which have been brought on the record. The issue has been argued on that basis before the Trial court and the first appellate court; followed by two rounds of proceedings before the High Court (the second following upon an order of remand by this court on the ground that all parties were not heard). All the documentary material necessary to decide the issue is before the court and arguments have been addressed by the contesting sides fully on that basis."*

Other than the aforesaid, learned Senior Counsel for the petitioner contends that in the case at hand by invocation of the wrong provisions of law, an illegality has been committed in which both the parties to the *lis* have participated. In such a case, in consonance with the public interest, the Court must not act in favour of a party, whereby the same would result in affirming an act, which is contrary to law. In this respect, attention has been drawn

to a judgment, reported as **2019 (19) SCC 42**, titled as ***Narayanamma and Another Vs. Govindappa and Others***, the relevant extract is being reproduced herein below:

*28. Now, let us apply the another test laid down in the case of Immani Appa Rao (1962 AIR 370). At the cost of repetition, both the parties are common participator in the illegality. In such a situation, the balance of justice would tilt in whose favour is the question. As held in Immani Appa Rao (supra), if the decree is granted in favour of the plaintiff on the basis of an illegal agreement which is hit by a statute, it will be rendering an active assistance of the court in enforcing an agreement which is contrary to law. As against this, if the balance is tilted towards the defendants, no doubt that they would stand benefited even in spite of their predecessor-in-title committing an illegality. However, what the court would be doing is only rendering an assistance which is purely of a passive character. As held by Gajendragadkar, J. in Immani Appa Rao (supra), the first course would be clearly and patently inconsistent with the public interest whereas, the latter course is lesser injurious to public interest than the former.*

Learned Senior Counsel for the petitioner submits that there can be no estoppel against the Statute; It is not for the parties to agree out of the Statute; The RO also cannot act contrary to the Statute. Hence, according to the learned Senior Counsel consent to an illegal procedure, as alleged by the respondent, is immaterial and of no consequence.

Last but not the least, attention has been invited to Section 86(7) of the Representation of People Act, 1951, wherein the legislative mandate of an

expeditious disposal of an election petition has been laid down.

Faced with the aforesaid, learned Senior Counsel for the respondent seeks time to respond to the same.

In view of the aforesaid, list the matter for consideration on **14.08.2025**.

**(Bipin C. Negi)**  
**Judge**

06<sup>th</sup> August, 2025  
(Gaurav Rawat)