

**IN THE HIGH COURT OF HIMACHAL PRADESH, SHIMLA**

**EMP No. \_\_\_\_\_ : 5 of 2025 in  
Election Petition No. : 1 of 2024**

**Reserved on : 10.03.2026**

**Decided on : 10.04.2026**

---

Dr. Abhishek Manu Singhvi

...Petitioner/  
Applicant

Versus

Harsh Mahajan

...Respondent/  
Non-applicant

---

*Coram*

**The Hon'ble Mr. Justice Virender Singh, Judge.**

*Whether approved for reporting?<sup>1</sup> Yes*

---

For the petitioner/  
applicant :

Mr. Prashant Sen and Mr. Neeraj  
Gupta, Senior Advocates,  
assisted by Mr. Mudit Gupta and  
Mr. Ajeet Pal Singh Jaswal,  
Advocates.

For the respondent/  
non-applicant :

Mr. Satya Pal Jain, Senior  
Advocate, assisted by Mr.  
Davesh Moudgil, Mr. Virbahadur  
Verma, Mr. Vikrant Thakur, Mr.  
Aditya Singh Thakur, Mr.  
Shubham Singh Guleria and Ms.  
Prajwal Busta, Advocates.

---

<sup>1</sup> *Whether Reporters of local papers may be allowed to see the judgment? Yes.*

**Virender Singh, Judge.**

**EMP No. 5 of 2025**

The petitioner has moved the present application, under Section 87(1) of the Representation of The People Act, 1951 (hereinafter referred to as 'the Act'), with a prayer to strike off/delete the names of the proposed witnesses, as mentioned in the list of witnesses, furnished by the respondent/non-applicant.

2. Brief facts, leading to the filing of the present application, as borne out from the record, may be summed up, as under:

3. Petitioner-Dr. Abhishek Manu Singhvi has challenged the election of respondent-Harsh Mahajan to the Council of States, from Himachal Pradesh, as void and further declaring the petitioner, as, the elected candidate in terms of Section 84 read with Section 101 (a) of the Act.

4. After the completion of the pleadings, this Court has framed the following issues, on 2<sup>nd</sup> April 2025:

*"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.”*

5. Thereafter, the matter was listed before the Additional Registrar (Judicial) for recording the evidence of the petitioner. Subsequently, the matter was again listed before the Court, as, a request was made by the learned counsel appearing for the parties, to permit them to file additional documents. On 16<sup>th</sup> June, 2025, the learned counsel representing the petitioner has made a statement before the Additional Registrar (Judicial) that the petitioner does not want to file the additional documents, whereas, the learned counsel appearing for the respondent sought more time to file the additional documents. The said prayer of the learned counsel for the respondent was opposed by the learned counsel for the petitioner, as, such, the matter was listed before the Court on 11<sup>th</sup> July, 2025, where, the learned counsel appearing for the respondent has also made a statement that no additional documents were required to be filed. On 11<sup>th</sup> July, 2025, the learned counsel appearing for

the petitioner has also made a statement, depicting therein, the intention of the petitioner not to lead any evidence.

6. Since, the onus to prove issues No. 2 and 3 was on the respondent, as such, the respondent had reserved his right to lead evidence. In order to ascertain the effect of the petitioner's not leading the evidence, the matter had been listed on 6<sup>th</sup> August, 2025, when, the submissions of the learned counsel appearing for the petitioner were heard. Subsequently, on 14<sup>th</sup> August, 2025, the contentions, which were earlier raised by the learned counsel for the petitioner, were not pressed and the matter was, thereafter, listed for admission and denial of the documents. On the said date, i.e. 14<sup>th</sup> August, 2025, a composite order has been passed by the Court to conclude the admission and denial of the documents on 26<sup>th</sup> August, 2025 and thereafter, the respondent was directed to file the list of witnesses, alongwith the requisite process fee, and the matter was ordered to be listed before the Additional Registrar (Judicial) for 12<sup>th</sup> September, 2025, for fixing the date for recording the evidence of the respondent's witnesses, by directing the Registrar to record the evidence, as expeditiously as possible.

7. On 12<sup>th</sup> September, 2025, list of witnesses was submitted by the respondent and matter was ordered to be listed for 6<sup>th</sup> October, 2025, for recording the statements of RWs, mentioned at serial No. 1 to 5, in the list of witnesses.

8. On 6<sup>th</sup> October, 2025, the instant application has been filed, seeking striking off/deletion of proposed witnesses, from the list of witnesses, furnished by the respondent, contending that the petitioner has laid challenge to the election of the respondent, on the ground of erroneous application of Section 65 of the Act read with Rules 75 and 81 of the Conduct of Election Rules, 1961, by the Returning Officer.

9. Highlighting Rule 22 of the Rules of Procedure and Guidance in the Matter of Trial of Election Petitions, under Part VI of the Act, as well as, Order XVI Rule 1 of the CPC, it has been pleaded that it is mandatory for the parties to file the list of witnesses, not later than fifteen days, after the date, when the issues are settled, whereas, according to the petitioner, the list of witnesses has been filed by the respondent on 11<sup>th</sup> September, 2025 and issues were framed on 2<sup>nd</sup> April, 2025.

10. Further, highlighting the inbuilt safeguards, in the shape of Section 87 (1) of the Act, it has been prayed that although, the respondent has submitted the list of, as many as, eighteen witnesses, however, the inclusion of witnesses at serial No. 2 to 14, is nothing, but, delaying tactics, in order to delay the adjudication of the Election Petition.

11. According to the petitioner, there is no requirement to propose and examine certain witnesses for the mere purpose of producing/calling for records and the main intention of the respondent is to delay the proceedings.

12. Lastly, it has been pleaded that the list of witnesses, proposed by the respondent, is vague, unnecessary, frivolous and vexatious, which would cause prejudice to the petitioner.

13. Hence, a prayer has been made to delete/strike off the proposed witnesses, mentioned at serial No. 2 to 14.

14. The application is duly supported by the affidavit of the petitioner.

15. When put to notice, the application has been contested by the respondent, by filing reply, contending therein, that the application under consideration is wholly

misconceived, untenable in law and abuse of the process of law.

16. According to the respondent, the application proceeds on erroneous assumptions and seeks to prevent the respondent from leading material and relevant evidence, which directly pertains to the issues, framed by this Court, on 2<sup>nd</sup> April, 2025.

17. As per the stand of the respondent, the names of the witnesses have been proposed bonafidely and their testimonies are material and necessary for the just adjudication of the case.

18. It is the further case of the respondent that the scope of the evidence, in an Election Petition, is to be determined by the issues framed, not, on the basis of the petitioner's subjective understanding of what evidence ought to be led to prove the same. According to the respondent, his right to lead evidence is the substantive statutory and essential right and proviso to Section 87 (1) is a narrow exception, which is to be exercised sparingly and only when the evidence is demonstrably frivolous or irrelevant, or to delay the proceedings.

19. It has been contended on behalf of the respondent that he is entitled to fully establish the legality of the procedure adopted and draw of lots; the consent given by the petitioner amounts to waiver, acquiescence and estoppel; the factual proceedings that occurred on the date of election; and, the absence of any non-compliance with the Act or Conduct of Election Rules.

20. According to the respondent, the discretion, vested in the Court, under Section 87 (1) of the Act is to be exercised only when the evidence is wholly immaterial to the issues; or when the witness is tendered solely for causing delay in the proceedings.

21. Reasserting the fact that issue No. 1, framed on 2<sup>nd</sup> April, 2025, directly concerns with legality of the procedure adopted by the Returning Officer, upon the tie of votes and the consequent declaration of result and the witnesses, as mentioned in the list, have been proposed to be examined, for just and fair adjudication of the dispute, it has been pleaded, on behalf of the respondent, that his right to lead evidence, in support of the issues framed, cannot be curtailed or restricted.

22. According to the respondent, the evidence of the witness, mentioned at serial No. 2, is essential to identify what the recording depicts, including the conduct of the parties at the time of counting. So far as the stand taken by the petitioner qua the fact that the videography has been admitted, it has been pleaded that the same is incorrect and legally impermissible, as, during the process of admission and denial of documents, before this Court, the factum of videography has expressly been denied.

23. As per the stand of the respondent, once, a document is denied, he is legally required to prove the same through admissible evidence, as per the Indian Evidence Act.

24. Similarly, the importance of the evidence of the other witnesses has also been highlighted, in the reply.

25. On all these submissions, a prayer has been made to dismiss the application.

26. Petitioner has filed the rejoinder to the reply filed, by denying the stand, by virtue of which, the application has been contested, by re-asserting that of the application.

27. Perusal of the record shows that when the matter was listed for admission and denial of the documents, the

pen drive, relied upon by the respondent, allegedly containing the video recording of the proceedings of the counting of votes and declaration of the result, which is in question, before this Court, has been denied by the learned counsel appearing for the petitioner. This was done on 26<sup>th</sup> August, 2025.

28. The onus to prove issues No. 2 and 3 is upon the respondent, as such, he has submitted the list of witnesses, containing 18 witnesses. By way of the present application, objection has been raised against the witnesses, mentioned at serial Nos. 2 to 14, by pleading that by mentioning the names of the above witnesses, in the list of witnesses, the respondent wants to delay and frustrate the proceedings.

29. In para 2 of the application, the applicant has used the terms '*have been proposed as witnesses on frivolous and vexatious grounds*' with the sole object to delay the proceedings. Except this, the application is totally silent as to how the evidence of the proposed witnesses falls within the definition of '*frivolous and vexatious*', as the purpose of examination of the witnesses has duly been mentioned in the list of witnesses.

30. The list of witnesses, as submitted by the respondent, is reproduced, as under:

<b>Sl. No.</b>	<b>Name of Witness</b>	<b>Full Address</b>	<b>Occupation/ Relationship (if any)</b>	<b>PURPOSE</b>
1.	Sh. Yash Paul Sharma	Village Panjorh (Digwali), P.O. Hallan, Sub Tehsil Ronhat, Distt. Sirmour, H.P.  C/o Secretary H.P. Vidhan Sabha, Shimla, H.P.	Secretary, H.P. Vidhan Sabha-cum-Returning Officer of Election of Rajya Sabha, 27.02.2024	With entire Record to explain procedure followed during counting, tie and declaration of final result
2.	Sh. Surat Panwar	Panwar House, Bhagwati Nagar, Near Ganga Public School Lower Khalini Shimla, H.P.	Official Videographer  Maintained videography of poll and counting	To prove videography record, authenticity and content
3.	Dr. V. Narasimha Charyula	Telangana Legislative Assembly, Public Gardens, Nampally, Hyderabad, Telangana - 500004	Secretary, Telangana Legislative Assembly	With entire record of selection of Sh. Abhishek Manu Singhvi to Rajya Sabha from State of Telangana
4.	Sh. Manish Garg	Senior Deputy Election Commissioner, Election Commission of India, Nirvachan Sadan, Ashoka Road, New Delhi 110001	CEO-cum-Election Observer	To depose regarding observation of counting process, tie of votes, and reference/correspondence made to Election Commission of India for approval.
				To call for the following records:

5.	<p><i>Representative Election /Nominee of Election Commission of India (ECI)</i></p>	<p><i>Election Commission of India, Nirvachan Sadan, Ashoka Road, New Delhi 110 001</i></p>	<p><i>Higher custodian authority of election record</i></p>	<p><i>i. Conduct of election Rules for Rajya Sabha</i></p> <p><i>ii. Instructions issued by Election Commission of India to R.O. for the counting of Rajya Sabha election in State of Himachal Pradesh as held on 27.02.2024</i></p> <p><i>iii. Communication/c orrespondence between R.O. and ECI, as well as between Observer-cum-CEO and ECI, with respect to Election of Rajya Sabha as held on 27.02.2024</i></p> <p><i>iv. Any Report submitted by observer as well as R.O. to ECI on 27.02.2024 and thereafter w.r.t. Election of Rajya Sabha as held on 27.02.2024</i></p> <p><i>v. Complaint, if any, against the process of counting or post counting till the declaration of final result by the petitioner or any other person against the</i></p>
----	--	---	---	--

				counting, counting process, or the result as declared for the election of Member of Rajya Sabha
6.	Sh. Jitender Kanwar	Deputy Secretary H.P. Vidhan Sabha, Shimla, H.P.  G-II/41, Type II, NABHA ESTATE	Assistant Returning Officer	To explain procedure followed during counting and tie result.
7.	Sh. Sharma G.L.	Retd. Deputy Secretary H.P. Vidhan Sabha, Shimla, H.P.  VPO Pahal Tehsil Sunni Distt Shimla - 171 007, H.P.	Counting Supervisor	To depose regarding assistance in counting and procedure of election followed
8.	Sh. Prasad Veni	Ser Kaleen Near Sunny Sight Ward No. 13 Solan, H.P.	Counting Assistant	To depose regarding assistance in counting and procedure of election followed.
9.	Sh. Thakur Dorje	O/o Chief Electoral Officer, 38, SDA Complex, Kasumpti - Shimla-9, H.P.	Deputed by CEO for election duty	To depose regarding assistance in counting and procedure of election followed.
10.	Sh. Rajender Sharma	O/o District Election Office Shimla, H.P.  C/o O/o Deputy Commissioner Shimla, H.P. Designation : Tehsildar	Deputed by CEO for election duty	To depose regarding assistance in counting and procedure of election followed.

11.	Smt. Neelam Verma	Special Pvt Secy, H.P. Vidhan Sabha, Shimla, H.P.  O/O Secretary, H.P. Vidhan Sabha, Shimla, H.P.	On duty at Library Hall	To corroborate procedural compliance
12.	Sh. Avinash Kohli	Junior Assistant (Typing work) O/o Hon'ble Speaker, H.P. Vidhan Sabha, Shimla, H.P.	On duty at Library Hall	To corroborate procedural compliance
13.	Sh. Mehat Chand Khachi	Peon  O/o Secretary, H.P. VIDHAN SABHA, Shimla, H.P.	On duty at Library Hall, Assisted in preparation of slips, counting hall arrangement, signing of proceeding sheet	To corroborate procedural compliance
14.	Sh. Ram Dev	Clerk (previously peon)  O/O Secretary, H.P. Vidhan Sabha, Shimla, H.P.	On duty at Library Hall, Assisted in preparation of slips, counting hall arrangement, signing of proceeding sheet	To corroborate procedural compliance
15.	Sh. Harsh Mahajan	Iravati Niwas, Lower Panthaghati, Shimla, H.P.	Member of Rajya Sabha (Returned Candidate)	To corroborate facts relating to counting and declaration of result.
16.	Sh. Randhir Sharma,	Set No. 401 & 402, Block-A, Pt. Jawahar Lal Nehru Vidhayak Sadan, Shimla -	Election Agent of	To corroborate facts relating to

	M.L.A.	171 004 Village Guruka-Lahore, P.O. Bassi, Tehsil Naina Devi Ji, Distt. Bilaspur	Respondent	counting and declaration of result.
17.	Sh. Trilok Jamwal, M.L.A.	Set No. 107, Block -D, Pt. Jawahar Lal Nehru Vidhayak Sadan, Shimla - 171 004  House No. 14, Raura Sector - 2, Distt. Bilaspur, H.P.	Counting Agent of Respondent	To corroborate facts relating to counting and declaration of result.
18.	Sh. Sukh Ram Chaudhary M.L.A.	Set No. 409 & 410, Block-E, Pt. Jawahar Lal Nehru Vidhayak Sadan, Shimla - 171 004  Village Amargarh, P.O. Puruwala - Kanshipur, Tehsil Paonta, Distt. Sirmour, (HP) - 173 001	Counting Agent of Respondent	To corroborate facts relating to counting and declaration of result.

31. At the cost of repetition, the onus to prove issues No. 2 and 3 is upon the respondent. Issue No. 2, to the considered opinion of this Court, is based upon the factual position, which has been asserted by the respondent, in his reply and denied by the petitioner, in the rejoinder. In other words, it can be said that the same is the defence of the

respondent to protect his election to Rajya Sabha and the onus has been put upon him, to prove the said fact. As such, merely asserting the words that the witnesses have been proposed on *frivolous and vexatious grounds*, with the sole objective to delay the proceedings, cannot be accepted, at this stage, as, the petitioner firstly opted to lead evidence, after framing of the issues; thereafter, sought time to produce the documents and when opportunity was given, then, opted not to produce any document.

32. In the absence of any attempt made by the petitioner to get the issue re-framed, the list, proposing the witnesses to be examined on behalf of the respondent, cannot be said to be the act of delaying the proceedings. There is nothing on the file to demonstrate, at this stage, that the evidence of the proposed witnesses is not material for the decision of the petition.

33. Only 18 witnesses have been proposed by the respondent and majority of them are from Shimla itself. Even otherwise, the matter is to be seen from the perspective of the party, upon which, the onus has been put to prove the issues and a party cannot be compelled/dragged by the

Court to lead the evidence, in a particular manner, to prove a particular issue, onus of which has been put upon the said party.

34. The list of witnesses was filed on 11<sup>th</sup> September, 2025, by supplying the copy to the learned counsel for the petitioner. Thereafter, the matter was listed on 6<sup>th</sup> October, 2025, before the learned Registrar (Judicial), for recording the statement of witnesses at serial Nos. 1 to 5. On that day, the petitioner has sought time to raise objection to the said list of witnesses. Even, on 6<sup>th</sup> October, 2025, the witness, mentioned at serial No. 5, was present and discharged, in view of the request made by the learned counsel appearing for the petitioner, to first examine the witnesses at serial Nos. 1 to 4. In addition to this, it was also pointed out by the learned counsel appearing for the petitioner that the present application has been moved.

35. The primary purpose of the admission and denial of the documents, is to narrow down the controversy between the parties. When, at the time of admission and denial, the pen drive, containing the video recording of the proceedings, has been denied, thereafter, the issues were framed, by

putting the onus upon the respondent, to prove issues No. 2 and 3, then, there is no occasion for this Court to accept the contentions, as raised in the application, with regard to the deletion of the names of the proposed witnesses at serial Nos. 2 to 14.

36. So far as the case laws, relied upon by the petitioner, i.e. **Mange Ram versus Brij Mohan, (1983) 4 SCC 36**; and **Quamarul Islam versus S.K. Kanta, 1994 Supp (3) SCC 5**, are concerned, with due respect to the law laid down by the Hon'ble Supreme Court, in the above cases, the same, in no way, help the case of the petitioner, as, the purpose of the examination of the witnesses has duly been mentioned in clear terms, in the list of witnesses submitted by the respondent.

37. At the cost of repetition, when the admission or denial of the documents was done, the pen drive, containing the proceedings, which were conducted, during the election, has specifically been denied and in the application, the petitioner has adopted a novel way to admit the document, whereas, the same has been denied by the petitioner, at the

relevant time, i.e. at the time of admission and denial of the documents.

38. The very purpose of admission and denial of the documents has been sought to be nullified by asserting the fact that now, the petitioner has admitted the genuineness of the pen drive, containing the videography of the polling/ counting process.

39. The petitioner has raised the objection against the proposed witnesses at serial Nos. 2 to 14, merely on the ground that they are not material, for the purpose of the adjudication of the Election Petition. At the cost of repetition, the onus to prove issues No. 2 and 3 has been put upon the respondent and as per the list of witnesses, the purpose for examination of the witnesses has specifically been mentioned, by asserting that the witnesses will depose about the counting process.

40. Even, in **Mange Ram's** case (supra), advance filing of the list of witnesses has been held to be mandatory and, in the present case also, the respondent has submitted the list of witnesses in advance, in order to comply with the directions of the Hon'ble Supreme Court in the said case.

41. In view of the above, without giving an opportunity to the respondent to examine the witnesses, proposed in the list of witnesses, it cannot be said that the witnesses have been mentioned just to delay the proceedings. There is nothing on the record to demonstrate, at this stage, as to how the evidence of the above witnesses is frivolous or vexatious.

42. Consequently, the application under consideration is dismissed.

43. Nothing observed hereinabove shall be taken as an expression of opinion, on the merits of the case, as, these observations, are confined, only, to the disposal of the present application.

**Election Petition No. 1 of 2024**

44. List before the Additional Registrar (Judicial) on **20<sup>th</sup> April, 2026**, for fixing a date for recording the evidence of the witnesses, on behalf of the respondent.

Needless to say that unnecessary adjournments shall not be sought by either of the parties.

**( Virender Singh )  
Judge**

**April 10, 2026**  
( rajni )