

IN THE HIGH COURT OF JUDICATURE
AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
ELECTION PETITION No. OF 2009

In the matter of The
Representation of People
Act, 1951;

AND

In the matter of Section
100(1)(b), Section 100(1) (d)
(ii) and (iv) of The
Representation of People
Act, 1951.

Dr. Kirit Jayantilal Somaiya. son of)
Jayantilal Somaiya, residing at)
701/9C, Neelam Nagar Phase II,)
Gavanpada Road, Mulund (East))
Mumbai 400 081.)...Petitioner

Versus

1. Sanjay Dina Patil)
Sanjay Apartment, 3rd Floor)
Room No.13, Dina Patil Estate)
Station Road, Bhandup (W))
Mumbai 400 078.)

2. Ashok Chandrapal Singh)
Vidyalata Niwas, Khindipada,)
Mulund Goregaon Link Road,)
Mumbai 400 082)
3. Sanjay Dhaku Kokre)
K-7/10, Barve Nagar Colony,)
Ghatkopar (W), Mumbai 400 084)
4. Manisha Mukesh Gade)
24-B-304, Sahyadri Co-operative)
Hsg. Soc., Powai, MHADA,)
Hiranandani, Mumbai 400 076)
5. Vishvanath Dattu Patil)
Powai Cloretion Hsg. Socty.,)
J.V. Link Road, Opp.I.E.S School)
Powai, Mumbai 400 072)
6. Shishir Shinde)
1, Gulmohor, G.V. Scheme)
Road No.1, Mulund (E),)
Mumbai 400 081)
7. Jayesh C. Mirani)
Plot No16, Nimbkar Co-operative))
Hsg. Soc., Malbar Hill Road,)
Mulund Colony, Mulund (W),)
Mumbai 400 082)
8. Tatyasaheb Revdekar)
4/25, Peru Chawl,)
Dr. Ambedkar Road, Lalbaug,)
Mumbai 400 012)

9. Diksha Jitendra Jagtap)
 Plot No.18/H/8, Bainganwadi,)
 Shivajinagar No.2, Govandi,)
 Mumbai 400 043)
- 10.Dharampal Bhagwan Meshram)
 New Rahul Nagar, Guru)
 Govindsingh Marg,)
 Mulund Colony, Mulund (W),)
 Mumbai 400 082)
- 11.Namdev Tukaram Sathe)
 Ramabai Ambedkar Nagar,)
 Vasantnao Naik Mahamarg (E),)
 Behind Mun. School,)
 Ghatkopar (E), Mumbai 400 075)
- 12.Narayan Anand Rokade)
 Gautam Nagar, Dumping Road,))
 Amrapali Society, Mulund (W),)
 Mumbai 400 080)
- 13.Pankajbhai Somchand Shah)
 A/602, Vardhman Nagar,)
 Dr.R.P. Road, Mulund (W),)
 Mumbai 400 080)
- 14.Prakash D. Kamble)
 Ramanmama Wasahat,)
 Near Chhota Buddha Vihar,)
 Bainganwadi, Gowandi,)
 Mumbai 400 043)
- 15.Sunita Mohan Tupsoundarya)
 Dr. Babasaheb Ambedkar)
 Nagar Zopadpatti, Behind)
 Bldg.No.7/11, R.No.12,)
 Sion Koliwada, Mumbai 400 022)... Respondents

TO,

THE HON'BLE THE CHIEF JUSTICE AND
OTHER HONOURABLE JUDGES OF THIS
HON'BLE COURT.

THE HUMBLE PETITION OF THE PETITIONER
ABOVENAMED:

1. The Petitioner is a Citizen of India and is domiciled in the State of Maharashtra. The Petitioner resides at the address mentioned in the cause title of this Petition. The Petitioner is also a Chartered Accountant and holds a Ph.D degree. The Petitioner is an Ex-Member of Parliament, a member of the Bharatiya Janata Party (BJP) National Executive Committee and the Vice President of BJP Maharashtra. The Petitioner was the nominated candidate of the Bharatiya Janata Party in the Lok Sabha Elections of 2009 and his symbol was the "Lotus" flower. The Respondents are also Citizens of India and are residing at the addresses mentioned below their respective names in the cause title of this Petition. The Petitioner and the Respondents had contested the Elections to the Parliament (Lok Sabha-2009) from the Mumbai North-East Constituency No. 28 (hereinafter referred to as "the said Constituency") which was held on 30th April, 2009 (hereinafter referred to as "the said election").

2. The Respondent No.1 is the nominated Candidate of the Nationalist Congress Party, who contested the said election from the said Constituency and was declared the returned / elected candidate. The Respondents Nos. 2 to 15 are the remaining contesting candidates who contested the said election from the said Constituency.

3. The Petitioner resides at Mulund and is very well known in Mulund as well as in the whole of the said Constituency. The Petitioner has represented the Mulund Assembly Constituency as MLA during the period 1995 to 1999 and was also a Member of Parliament during the period 1999 to 2004. The Petitioner has been taking up various social causes and public grievances before the Hon'ble High Court, Human Rights Commission and Criminal Courts for the purpose of addressing the grievances of the public. The Petitioner is a Chartered Accountant, who has been awarded with a Doctorate by the Bombay University for his thesis on "Small Investors Protection in the Capital Market". The Petitioner has in the past filed several petitions in this Hon'ble Court relating to public issues and has succeeded in obtaining substantial reliefs in case of the desilting and cleansing of the Mithi River so as to avoid flooding in Mumbai, directing MMRDA and the Government of

Maharashtra to complete the constructions of subways in respect of 55 flyovers, obtaining relief and rehabilitation of victims of Mumbai Bomb Blast of 11th July, 2006 and 26th November, 2008 before the Human Rights Commission, obtaining relief for the protection to Small Investors of Non-Banking Finance Companies/CRB scams, and obtaining reliefs to small investors in respect of scams by Agro Plantation companies.

4. The Petitioner states that the elections to the Lok Sabha were to be held all over India in different phases. The Petitioner states that for the State of Maharashtra the elections were divided in three Schedules as listed below :

Maharashtra

Schedule No.	Date of Notification	Last Date for Nomination	Date of Scrutiny	Last Date for Withdrawal	Date of Poll	Date of Counting	No. of Constituencies
Schedule No.1	23/03/09	30/03/09	31/03/09	02/04/09	16/04/09	16/05/09	13
Schedule No.2 B	28/03/09	04/04/09	06/04/09	08/04/09	23/04/09	16/05/09	25
Schedule No.3 A	02/04/09	09/04/09	11/04/09	13/04/09	30/04/09	16/05/09	10

The Petitioner states that the Mumbai North–East Constituency No. 28 falls under the Schedule 3A. Accordingly, the aforesaid General Elections–2009 was officially notified on 2nd April, 2009. The last date for filing nomination was 9th April, 2009. The nomination was required to be scrutinized by 11th April, 2009. The last date for withdrawal of candidature was fixed on 13th April, 2009. The date of polling was fixed on 30th April, 2009, the counting of votes took place on 16th May, 2009 and the result was declared on 16th May 2009.

5. The Petitioner states that after the fresh delimitation of various Parliamentary Constituencies in Mumbai, including the said Constituency, following Assembly Segments were included in the said Constituency. The six Assembly Segments of the said Constituency are as under:

Sr. No.	Number given to the Assembly Segment	Assembly Area	No. of Booths/ Electoral Parts
1	155	Mulund	235
2	156	Vikhroli	177
3	157	Bhandup (West)	205
4.	169	Ghatkopar (West)	225
5.	170	Ghatkopar (East)	198
6.	171	Mankhurd Shivaji Nagar	218
Total 6 Assembly Segments			1258

6. The Petitioner states that voting took place on 30th April, 2009 and the counting took place on 16th May, 2009. The Respondent No.1 was declared elected by a slender margin of 2933 votes. Hereto annexed and marked as **Exhibit-A** is a copy the final result sheet issued by the Returning officer.

7. The Petitioner is filing the present Election Petition challenging the legality and validity of the said election of the Respondent No.1 from the said Constituency in the said election held on 30th April, 2009 as the Respondent No.1 and/or his election agent and/or other persons with the consent of the Respondent No.1 and/or his election agent, have committed corrupt practices as more particularly set out hereinbelow and/or have violated various provisions of law, including the Model Code of Conduct. The Petitioner is also challenging the action of the returning officer not granting recounting and, therefore, making a prayer to this Hon'ble Court that an Order of recounting should be passed. On such recounting being granted by this Hon'ble Court, if it is found that the Petitioner has got the highest number of votes, after setting aside the election of the Respondent No.1, the Petitioner be declared elected.

8. Bribery

The Petitioner states that the Respondent No.1 is guilty of having committed corrupt practice of bribery as defined by Section 123(1) of the Representation of People Act 1951 (hereinafter referred to as "the said Act") in as much as the Respondent No.1 or his election agent or any person with the consent of the Respondent No.1 or his election agent, has distributed money to the voters seeking votes in bargain. The details of the said corrupt practice are as under:

(a) The Petitioner states that at about 12.50 a.m. of 30th April 2009, at the corner of Road No.4 and Road No.54 at Shivaji Nagar, Govandi, workers of NCP were found distributing cash. Later on, Police arrested three workers of the Respondent No.1 who were found to be distributing cash to the voters. The names of the three workers of the Respondent No.1 are (1) Habib Abbas Faki (2) Mangesh Narayan Sitekar and (3) Sanjay Baban Shedge;

(b) Mr. Anil Gajanan Thakur, Mumbai BJP Secretary, a resident of 402, Ankur Residency, Near Amarnath Patil High School, Khardev Nagar, Chembur, Mumbai-400071, on being informed of some suspicious movements of a couple of vehicles proceeding towards the Noorani Masjid area, immediately

rushed to the area and personally witnessed the distribution of cash to voters in exchange of their votes.

- (c) The said Anil Gajanan Thakur immediately and repeatedly contacted the Police Control Room and also the Shivaji Nagar Police Station and requested the Police to take immediate action. Thereafter, a Police Wireless van arrived at the Noorani Masjid area some 20 to 30 minutes after the call was made to the Police Control Room. The Police staff from the wireless van seized a vehicle and also prepared a Panchnama recording that cash had been seized from the occupants of the vehicle which was used for distribution of cash by the workers of Respondent No.1 to the voters in the Constituency in exchange of their votes.
- (d) In the Panchnama, it is recorded that the abovenamed three persons were seeking votes in favour of the Respondent No.1 while distributing the money. A vehicle, i.e. White Indigo car bearing Registration No. MH-04-DE-6284, was seized by the Police Officers of the Shivaji Nagar Police Station from which they seized a sum of Rs.2,47,450/- in cash. F.I.R. No.1481 of 2009 was registered and the

abovementioned three workers of the Respondent No.1 were arrested by Police Officers of the Shivaji Nagar Police Station, the car and the money was confiscated;

(e) It further appears that the aforesaid three workers of the Respondent No.1 were produced before the Learned Magistrate, Bhoiwada Court and were released on a cash bail of Rs.5000/- each. The Petitioner will crave leave to refer to and rely upon the said FIR No.1481 of 2009, the papers and proceedings pending before the Learned Magistrate, Bhoiwada Court as and when produced before this Hon'ble Court. The Petitioner does not have a copy of the F.I.R. or the proceedings filed before the Bhoiwada Court;

(f) In the afternoon of 30th April, 2009, i.e. during the polling, the Election Agent of the Petitioner, namely Mr. Bharat Himmatlal Parikh, a resident of c/301, Pranaysudarshan, Joshi Lane, Ghatkopar (West), Mumbai - 400077, addressed a letter to the Returning officer and amongst other complaints, made a complaint about the distribution of money at Shivaji Nagar.

Hereto annexed and marked as **Exhibit - B** is a copy of the said letter dated 30th April, 2009 addressed by the election agent of the Petitioner to the returning officer.

- (g) The Petitioner states that the Times of India in its 1st May 2009 English edition carried an article titled "NCP man arrested with 2.5L cash". The article states, that the Police stopped a white Indigo vehicle (MH-04/DE-6284) around 1 a.m. on Thursday 30th April, 2009 and seized the said vehicle and the cash amounting to Rs. 2.5 lakhs. The Article also states that NCP minorities cell leader Habib Abbas Fakir and two companions viz., Mangesh Shetty and Sanjay Shedge were arrested by the Shivaji Nagar police for carrying Rs.2.5 lakhs in cash in a car. The article further states that the Intelligence Bureau detectives had also come to the police station to gather information about the case. Hereto annexed and marked as **Exhibit - C** is a copy of the article titled " NCP man arrested with 2.5L cash" appearing in the Times of India in its 1st May 2009 edition.

- (h) The Petitioner states that Urdu Times dated 1st May, 2009 carried news item titled "NCP

man distributing money arrested”. Hereto annexed and marked **Exhibit – D** is a copy of the news item appearing in the Urdu Times of 1st May, 2009 edition along with its office translation.

- (i) Acting on various complaints lodged/filed by the Petitioner and/or his Election Agent, the Returning officer of the said Constituency vide his letter dated 14th May, 2009 addressed to the Petitioner, forwarded Photostat copies of various letters and investigation reports pertaining to the action taken by the Returning officer and the Police Officers concerned. Hereto annexed and marked as **Exhibit – E1 to E – 12** are copies of the letter dated 14th May, 2009 and the Annexures thereto along with their office translation.
- (j) The Petitioner states that a copy of the letter bearing No.876/2009 dated 18th May, 2009, addressed by the Returning officer to the Dy. Commissioners of Police of Zone VI and VII, was received by the Petitioner. The said letter of the Returning officer was in response to the Petitioner’s Advocate’s letter dated 15.5.2009 addressed to the Dy.

Commissioners of Police. In the said letter, the Returning officer stated that the Returning officer has already sent several letters and reminders to the Police officials to take action. Hereto annexed and marked as **Exhibit - F** is copy of the letter dated 18th May, 2009 along with its office translation.

- (k) The Petitioner states that all the aforesaid three persons of the Respondent No.1 are the workers of the Nationalist Congress Party. Therefore, it is clear that all the said three workers named hereinabove, have distributed money with the consent of the Respondent No.1 and/or his Election Agent. Secondly, even after knowing about the said incident the Respondent No.1 has not disassociated himself with the incident of distribution of money. Therefore, it is clear that the money was distributed by the Respondent No.1 through the abovementioned three persons with the intention to gather votes for the Respondent No.1. Even otherwise, who else would be interested in distributing money with an appeal to vote for the Respondent No.1, but the Respondent No.1 himself.
- (l) The Petitioner states that in case if this Hon'ble Court comes to the conclusion that

the Petitioner has failed to prove that money was distributed by the above three persons with the consent of the Respondent No.1 and/or his election agent, then it is submitted that the aforesaid three persons have distributed money with an appeal to vote for the Respondent No.1 in the interest of the Respondent No.1. Due to such act of the aforesaid three persons, the result of the election has been materially affected. It is pertinent to note that in the area of Shivaji Nagar where money was distributed by the abovenamed three persons, the Respondent No.1 secured a lead of 21339 votes. Hereto annexed and marked **Exhibit - G** showing details of voting in the Shivaji Nagar area of Mankhurd Shivaji Nagar Assembly and in the Noorani Masjid area where cash distribution was done, the Respondent No.1 secured 5915 votes in that area while the Petitioner got only 378 votes which means Respondent No.1 got a lead of 5537 votes, which clearly shows that the result of the election is materially affected due to the distribution of money. Hereto annexed and marked as **Exhibit - H** is the statement showing the votes secured in the Noorani Masjid area.

9. Undue Influence

The Petitioner states that the Respondent No.1 and/or his Election Agent and/or other persons with the consent of the Respondent No.1 and/or his election agent, have directly or indirectly interfered or have attempted to interfere with the free exercise of the electoral right of the voters in the following manner:

- (a) At or about 5.05 a.m. on 30th April, 2009, i.e. on the polling day, one Rajubhai Udayshankar Pandya, President of the Ghatkopar BJP unit, residing at 201/5507, Kanchanganga B, Ram Narayan Narkar Marg, Pant Nagar, Ghatkopar East, Mumbai 400 075, received information that pamphlets/handbills in the name of the local BJP MLA, Shri Prakash Mehta, were being distributed by inserting the same in the newspapers at the Ghatkopar Railway Station. In the pamphlets/handbills, it was falsely and mischievously stated that the said Shri Prakash Mehta was appealing to the voters of the said Constituency to vote for the Respondent No.1.
- (b) The said Rajubhai Udayshankar Pandya immediately contacted Mr. Prakash Mehta, the local BJP MLA and informed him of the same. The said Rajubhai Udayshankar

Pandya himself rushed to the Ghatkopar Railway Station and was shocked to see thousands of pamphlets/handbills being inserted in the newspapers. The said pamphlets/handbills were printed back to back in Gujarati and Hindi language. Hereto annexed and marked **Exhibit – I** is the copy of the said pamphlet/handbill along with its office translation. He immediately phoned the Chirag Nagar Ghatkopar Police Station. Meanwhile, Shri Prakash Mehta, a resident of 9, Vasant Niwas, 4th Floor, Tilak Road, Vallabh Baug Lane, Behind HDFC Bank, Ghatkopar (East), Mumbai-400077, Shri Mangal Bhanushali, a resident of Room No. 4, Neelkanthdeep, Kama Lane, Kiroli Marg, Ghatkopar (West), Mumbai-400086 and other BJP activists also arrived at the spot. BJP activists and Shri Prakash Mehta continuously phoned and asked the Police to rush to the spot, to stop the said corrupt practice. The Police arrived at the spot after a long time, i.e. at 6.45 a.m.

- (c) The Police authorities seized thousands of such pamphlets and registered a FIR, being FIR No.156 of 2009. The Petitioner craves leave to refer to and rely upon the said FIR as

and when produced by the said Police Station.

(d) The Petitioner states that the Mumbai Mirror newspaper in its 1st May, 2009 English edition carried an article title “Surprised Ghatkopar residents get ‘BJP pamphlet’ seeking votes for NCP man”. The article stated that the said pamphlets were distributed in Ghatkopar. The article further states that on conducting investigation, the Ghatkopar police recovered 10 bundles containing 2,000 pamphlets and detained around 35 vendors and hawkers in the area. The article further states that the police also arrested two suspects viz. one Bansi Korde and one Anil Awati who allegedly distributed the pamphlets. According to the article the police suspect that both the aforesaid persons belong to the NCP. Hereto annexed and marked as **Exhibit – J** is a copy of the article titled “Surprised Ghatkopar residents get ‘BJP pamphlet’ seeking votes for NCP man” appearing in the newspaper of the Mumbai Mirror newspaper in its English edition dated 1st May, 2009.

(e) The Petitioner states that similarly in Mulund area pamphlets/handbills printed back to back in Hindi and Gujarati language, were

distributed by the Respondent No.1 and/or his Election Agent and/ or other persons with the consent of the Respondent No.1 and/or his Election Agent in the name of the local BJP MLA, Shri Sardar Tara Singh, appealing to the voters to vote for the Respondent No.1. BJP leader and local MLA, Sardar Tara Singh also had strongly protested and intimated Mulund West Police Station officials against the said corrupt practice. Hereto annexed and marked **Exhibit - K** is a copy of one of such pamphlet/handbill distributed by Respondent No.1 along with its office translation. BJP activists Shri Chandresh Thakkar, a resident of Ramakunj, 3/4, M.G. Road, Mulund (West), Mumbai-400080 and Advocate Harshad Desai, a resident of Room No. 24/B, Ekta Co-op. Hsng. Society, Govardhan Nagar, Opp. Santoshi Mata Mandir, L.B.S. Marg, Mulund (West), Mumbai-400080, had submitted complaints/letters in this regard to the returning officer and to the Mulund Police Station. Hereto annexed and marked **Exhibit - L1 & L2** are copies of the complaint/letter.

- (f) The Petitioner states that the Mulund Police Station has registered a Non-cognizable Complaint No.1510 of 2009. The Petitioner craves leave to refer and rely on the said Non-cognizable Complaint as and when produced.
- (g) The Petitioner states that the false and mischievous pamphlets in the name of the local BJP MLAs were issued and distributed by the Respondent No.1 and/or his Election Agent and/ or other persons with the consent of the Respondent No.1 and/or his Election Agent fully knowing that the Petitioner is the official candidate of the BJP. An undue influence was exerted on the voters not to vote for the Petitioner and/or to vote for the Respondent No.1 by creating a false impression that the said two local MLAs, Shri Prakash Mehta and Shri Sardar Tara Singh are not happy with the Petitioner and/or there is a rift/ difference between the Petitioner and the said two MLAs. Such corrupt practice has interfered with the free exercise of the electoral right of the voters.
- (h) The Petitioner states that by the time the Police had seized the said pamphlets, more than one lakh such pamphlets were already distributed, due to which the Petitioner did

not get the votes from the voters who would have normally voted for the Petitioner. It is, therefore, submitted that in case this Hon'ble Court comes to the conclusion that the Petitioner has failed to prove that such pamphlets were distributed by the 1st Respondent and/or other persons with the consent of the Respondent No.1, then the same were distributed in the interest of the Respondent No.1, which has materially affected the result of the election in question.

10. Incurring and/or authorizing expenditure in contravention of Section 77

- (a) The Respondent No.1 had distributed 12 lakh coloured pamphlets in different languages, appealing to the voters to vote for the Respondent No.1. Hereto annexed and marked as **Exhibit "M - 1" to "M - 12"** are copies of few such pamphlets and handbills printed by the Respondent No.1

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"M1" – Multi-colour glossy paper pamphlet "Sanjay Dina Patil – Naye Jamane ka Josh, Peedhiyon ka Anubhav" – printed back to back in Hindi and Urdu

- “M2” – Multi-colour pamphlet “Sanjay Dina Patil – Naye Zamane Ka Josh Aur Peedhiyon Ka Anubhav” – printed back to back in Hindi;
- “M3” – Multi-colour pamphlet “Sanjay Dina Patil –Naveen Yugacha Josh Peedhiyaan Peedhicha Anubhav” – printed back to back in Marathi;
- “M4” – Multi-colour pamphlet “Sanjay Dina Patil – Naye Zamane Ka Josh, Peedhiyon Ka Anubhav” – printed back to back in English;
- “M5” – Multi-colour pamphlet “Sanjay Dina Patil –” – printed back to back in Urdu – Naye Zamane Ka Josh, Peedhiyon Ka Anubhav”;
- “M6” – Multi-colour pamphlet “Sanjay Dina Patil –Navaa Zamanano Josh, Peedhiyono Anubhav” – printed back to back in Gujarati;
- “M7” – Multi-colour glossy 3-fold back-to-back folder “Sanjay Dina Patil – Navin Yugacha Josh, Peedhiyan Peedyacha Anubhav” – printed

back to back in Hindi and in Marathi;

“M8” – Multi-colour glossy 3-fold back-to-back folder “Sanjay Dina Patil-Navaa Zamanano Josh, Peedhiyono Anubhav” – printed back to back in Gujarati and in English;

“M9” – Multi-colour glossy 3-fold back-to-back folder “Sanjay Dina Patil – Naye Zamane Ka Josh, Peedhiyon Ka Anubhav” – printed back to back in Urdu and Hindi;

“M10” - Multi-colour glossy 3-fold back-to-back folder “Sanjay Dina Patil – Naye Zamane Ka Josh, Peedhiyon Ka Anubhav” – printed back to back in English and Marathi;

“M11” – Multi-colour glossy 3-fold back-to-back folder “Aapan Konhasobat Aahot?” in Marathi printed back to back;

“M12” – Multi-colour pamphlet “Sanjay Dina Patil – Inko Bhaari Bahumat se Vijayi Banaye” – printed back to back in Marathi and Hindi.

The Petitioner has in his custody only one set of Exhibits M1 to M12. Therefore the Petitioner is filing the available one set of Exhibits M1 to M12 along with the election petition and is annexing coloured Photostat copies to all 32 copies including the 2 extra ledger copies.

- (b) The Respondent No.1 has shown in his expenditure accounts and also on the pamphlets that the Respondent No.1 had printed only 5000 pamphlets of each of Exhibits “M1” to “M11” and 10,000 pamphlets of Exhibit “M12”. In fact Respondent No.1 had printed 1,00,000 Pamphlets of each of Exhibits “M1” to “M12”, which had been distributed/inserted in the newspapers through newspaper vendors and/or private persons between 15th April to 28th April 2009. Respondent No.1 and/or his election agent while submitting accounts to the returning officer, have shown that

only 5000 Pamphlets of Exhibits "M1" to "M11" and 10,000 pamphlets of "M12" were printed and distributed by him. Meager expenses had been shown while submitting official accounts to the Returning officer. The cost of such pamphlets is more than Rs. 20 lacs.

(c) The Respondent No.1 while submitting the accounts to the returning officer has shown that the Respondent No.1 had printed 5000 Pamphlets each of Exhibits "M1" to "M11" and 10,000 pamphlets of Exhibit "M12" printed at a cost of Rs.32,500/-. However, in fact, the Respondent No.1 had distributed 1,00,000 each of such Pamphlets, which can be printed at a cost of Re.1/- to Rs.2.50 per pamphlet.

(d) The Respondent No.1 had also issued Voter's Slip, which is normally distributed to all the voters informing them about their Election Roll Number, Election Part Number, address of booth where they are required to vote, etc. The Respondent No.1 had printed and distributed such Voter's Slip to the total number of voters, i.e.

15,80,000. Hereto annexed and marked as **Exhibit – N** is a copy of one such Voter's Slip.

- (e) Firstly, as per the guidelines issued by the Election Commission of India, a candidate is prohibited from publishing his name, photograph or the symbol, etc. on such Voter's Slip. In violation of such guidelines, the Respondent No.1 had printed and distributed to the voters colourful voter's slips/cards bearing his photo, his name, name of the party and election symbol. The Respondent No.1 has, therefore, violated the model Code of Conduct. As against that, the Petitioner had adhered to the guidelines issued by the Election Commission by not publishing his name, photograph and symbol on the Voter's Slip. Hereto annexed and marked as **Exhibit – O** is copy of the Voter's Slip of the Petitioner. Due to the breach committed by the Respondent No.1, more than 10,000 voters (approx.) voted for the Respondent No.1. Therefore, it is submitted that the result of the said election is materially

affected due to the violation of the said Model Code of Conduct.

- (f) The Respondent No.1 has, while submitting the accounts to the returning officer, shown that the said Voter's Slip were printed and distributed by the Respondent No.1 at a cost of Rs.1,47,888/- However, the Respondent No.1 had printed and distributed the said Election Slip, the actual printing cost of which would be Rs.4,74,000/- calculated at the rate of Rs. 0.30 paise (approx) per voter's slip multiplied by the total number of voters in the said Constituency being 15,80,000.
- (g) The Petitioner states that if the cost of the Pamphlets at Exhibits "M1" to "M12" and the Voter's Slip, as more particularly set out hereinabove, and several other campaign expenses which are understated by the Respondent No.1, are included in the amount actually spent by the Respondent No.1, the same would exceed the sum of Rs.25 lakhs, which is more than the permitted amount under Section 77 of the Representation of the People Act, 1951.

11. RECOUNTING

- (a) The Petitioner states that the Counting of votes is done Assembly area wise. Every Assembly segment has 14 tables for counting and there are 14 counting Personnel working under the returning officer. All machines are numbered serially. The Counting of 2nd round / next round takes place only after counting of 1st/previous round is over.
- (b) The Petitioner states that the Counting process of each round was done so fast that the additional assistant returning officer of respective Assembly segment could not compile / complete the data sheets available from the 14 counting agents of the Assembly segments and therefore, it was very difficult for the Additional assistant returning officer of respective Assembly segments to submit the working sheets to the assistant returning officer for the entire Constituency. In a number of cases, the data sheets were compiled after 2 to 3 rounds of counting were over. The delay in the compilation of the working sheets led to a delay in submission of the final

sheet and as such there was absolute chaos on the day of the counting. The Petitioner submits that on the basis of sheets received from respective assembly assistant returning officer, the returning officer would prepare a final working sheet in Form No.20 and announce the result.

- (c) The Petitioner submits that even the central observer failed to recount 2 EVM machines in presence of the election agent in each round randomly, as per guidelines laid down by the Election Commission of India. The details about the counting and recounting procedures have been mentioned in the “Handbook for the Returning Officers” published by the Election Commission of India. It is mandatory for the returning officer and the central observer to cross check. As stated in Para 24.1, 24.2 and 24.3 of the handbook, the Officer in charge has to compile, check and cross-check various forms including the compilation of voting and counting forms. In Para 24.3, it is stated that, to cross-check the correctness of counting, the election commission has directed the observer to randomly select 2

EVMs in a round and cross-check the counting/result.

- (d) In the circumstances, an application for recounting of votes polled, was made by Mr. Bharat Himmatlal Parikh, election agent of the Petitioner/Candidate Dr. Kirit Somaiya, before the declaration of the final result. The application was received by the returning officer, but no written order has been passed till today. On receipt of the application for recounting of votes, the returning officer announced that matter will be discussed with the central observer and appropriate decision will be taken. However, after 10 minutes, the returning officer orally announced that all data received from respective assistant returning officers of each assembly were checked and found to be correct and announced the final result.
- (e) As per handbook for returning officers issued by Election Commission of India, at Sr. No. 26.3, the returning officer should have recorded the reasons on application of recounting, which has not been done. In the "Handbook for Returning Officers" issued by the Election Commission of

India – 2009, in Para 26.3 it is stated that, when an application for recount is made, it is mandatory on the returning officer to record a brief statement of the reasons for the decision. Secondly, correctness of the data received from the assistant returning officers for all 6 assemblies could not have been done by him within 10 minutes and that too in absence of any authorized representatives / election agents of the Petitioner.

- (f) The Petitioner states that on verification of the working sheets of the counting agent in respect of booth No. 122 at Ghatkopar, the sheet available with the Petitioner shows that Respondent No. 2 secured one vote while Respondent No.1 secured 7 votes whereas the official vote sheet shows that Respondent No. 2 secured 4 votes and the Respondent No.1 secured 75 votes. Hereto annexed and marked **Exhibit – P1** is a copy of the sheet available with the Petitioner and **Exhibit – P2** is the copy of the official vote sheet.
- (g) The Petitioner states that variations/discrepancies can be seen in the various data made available to the

Petitioner by the Returning officer/Mumbai Suburban District Election Officer. e.g. as per the information made available by the Election Commission to the Petitioner on 14th June, 2009, total votes polled in polling station No. 40 of Ghatkopar West assembly, is shown to be 298, while in the counting sheet the total number of votes counted is shown to be 545 as setout in a tabular statement below. Similarly, in polling station No.136 of Ghatkopar West Assembly, as per the records made available to the Petitioner by the Mumbai Suburban District election officer/returning officer, total votes polled is shown as 319 while in the counting sheet, it has been shown to be 401. Hereto annexed and marked **Exhibit - Q1** is the sheet made available by the Deputy Collector vide e-mail and downloaded from the internet. Hereto annexed and marked **Exhibit - Q2** is Form 20 - final result sheet made available by the deputy Collector vide e-mail and downloaded from the internet.

Assembly Constituency	P.S No.	Polling Station Name	Shown as Votes polled	Votes found in counting	Difference
169 Ghatkopar West	40	Vikhroli Parksite High School No.5	298	545	247
169 Ghatkopar West	136	New Sarvajanik Edu.Soc. K.V.K. Eng., Gujarati School	319	401	82

- (h) In view of the above facts, it is just and proper that this Hon'ble Court should order the recounting of all the votes polled in the present election in question. On such recounting and on ascertaining that the Petitioner has secured highest number of votes, the Petitioner should be declared to be an elected candidate.

12. The Petitioner states that for all the aforesaid reasons the Elections of the Respondent No.1 to the Lok Sabha-2009 from the Mumbai North East Constituency No. 28 held on 30th April, 2009, is liable to be declared void and set aside. The Respondent No. 1 and/or his election agent and/or his supporters with the consent of the Respondent No. 1, have indulged in corrupt practices illustrated hereinabove. The Petitioner submits that the Respondent No. 1 and his supporters named earlier hereinabove have with the consent of the

Respondent No.1, acted and committed corrupt practices in furtherance of the prospects of the election of the Respondent No. 1 and for prejudicially affecting the results of the said election.

13. The Petitioner submits that the election in question was held in Greater Mumbai, which is within the jurisdiction of this Hon'ble Court. This Hon'ble Court therefore, has jurisdiction to entertain, try and decide this election petition.

14. The Election in question was held on 30/04/2009, the counting of the votes had begun on 16/05/2009 and the result was declared on 16/05/2009 itself. This Election Petition is therefore, filed within time prescribed under section 81 of the said Act, i.e. within 45 days from the date of election of the returned candidate i.e. from the date of declaration of results which were declared on 16/05/2009.

15. The Election Petition is accompanied by an Affidavit of the Petitioner in Form 25, prescribed by Rule 94A of the Conduct of Election Rules, 1961, referred to under the proviso to sub-section 1 of section 83 of the said Act.

16. This Election Petition is filed along with 2 (two) extra ledger copies for the purpose of record of this Hon'ble Court and 30 (thirty) extra copies for the purpose of serving them on the respondents by registered post and by hand delivery. Each copy is the exact True Copy of the Original filed in this Hon'ble Court, duly signed as a True Copy by the Petitioner.

17. The Petitioner has paid Rs. 100/- as fixed Court fees on this Petition. The Petitioner has also deposited a sum of Rs. 2000/- (Rupees Two Thousand Only) in cash being the security amount.

18. The Petitioner will rely upon documents, a list whereof is hereto annexed.

THE PETITIONER THEREFORE, PRAYS:

- (a) That the election of Respondent No. 1 to the Lok Sabha – 2009 from the Mumbai North-East Constituency No. 28, Mumbai, Maharashtra, held on 30th April, 2009, the result of which was declared on 16th May, 2009, be declared void and/or be set aside.
- (b) That the recounting of all the votes polled in the election in question be ordered and

on recounting and ascertaining that the Petitioner has secured highest number of votes, the Petitioner be declared to have been elected in the election in question.

- (c) That the cost of this Election Petition be provided for.
- (d) That such other and further reliefs be granted as this Hon'ble Court may deem fit and proper in the facts and circumstances of the case.

Divya Shah Associates

Partner
Advocates for the Petitioner

Petitioner

VERIFICATION

I, Dr. Kirit Jayantilal Somaiya, son of Jayantilal Somaiya, the Petitioner abovenamed, residing at 9C/701, Neelam Nagar Phase II, Gavanpada Road, Mulund (East), Mumbai 400 081, do hereby solemnly declare that what is stated in paragraph Nos. 1 to 7, 8 (f) to 8 (j), 9 (d), 11 (a) are true to my personal knowledge and what is stated in paragraph Nos. 8, 8(a) to 8(e), 8(k), 9, 9 (a) to 9(c) and 9 (e) to 1st sentence of 9 (h), 10 (a) to 10 (g),

11(b) to 1st sentence of 11(c) and 11 (d), 11(f), 11(g) is stated on information given to me, which I believe to be true and paragraphs Nos. 8 (l), 2nd sentence of 9 (h), from 2nd to last sentence of 11(c), 11 (e), 11 (h), 12 to 18 are stated by way of legal submissions and I believe the same to be true.

Solemnly declared at Mumbai)

On this ____day of June, 2009)

Before Me

Divya Shah Associates

Partner
Advocates for the Petitioner

IN THE HIGH COURT OF JUDICATURE
AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
ELECTION PETITION No. OF 2009

Dr. Kirit Jayantilal Somaiya ..Petitioner
Versus
Sanjay Dina Patil & Ors. ..Respondents

ELECTION PETITION

Dated This __ Day of June, 2009

DIVYA SHAH ASSOCIATES

6, Bhagyoday Building,
N. M. Road, Fort,
Mumbai.
Advocates for the Petitioner