

Bharatiya Janata Party

भारतीय जनता पार्टी



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DR. KIRIT SOMAIYA'S ELECTION PETITION NO.4 OF 2009

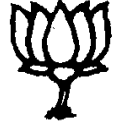
SALIENT POINTS

Dr. Kirit Somaiya, BJP candidate for Mumbai North East Constituency, filed Election Petition against NCP's Shri Sanjay Patil. The Petition is mainly on :

- i) Corrupt practices
 - ii) Bribery
 - iii) Recounting
 - iv) Over expenditure
 - v) Counting/EVM/election management chaos/connivance
1. Dr. Somaiya lost by thin margin of 2933 votes (0.4% of votes polled).
 2. Election Petition is under Section 100(1)(b), Section 100(1)(d)(ii) and (iv) of The Representation of People Act, 1951.
 3. Election Petition filed as per guideline of Sec.81 in the Representation of People Act, 1951
 4. Along with Shri Sanjay Patil, there are 15 Respondents (all candidates).
 5. The Petition has been allotted Election Petition No.4/2009.
 6. The Chief Justice will now allot/send this Petition to a single member Bench.
 7. Likely to come up at Mumbai High Court in July 2009.
 8. **Bribery –**
 - (a) NCP candidate be held guilty for committing corrupt practice of Bribery as defined by Section 123(1) of the Representation of People Act 1951 (hereinafter referred to as "the said Act").
 - (b) NCP leaders were caught red-handed by Police while distributing cash at Noorani Masjid area of Shivaji Nagar
 - (c) Police arrested (1) Habib Abbas Faki (2) Mangesh Narayan Sitekar and (3) Sanjay Baban Shedge
 - (d) Others ran away/scot free?
 - (e) The incident took place on the night of 29th April 2009, i.e. 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
 - (f) Police arrested/seized White Indica bearing registration No.MH-04-DE-6284 and seized a sum of Rs.2,47,450/- in cash.
 - (g) Police charged them under the Representation of People Act – Corrupt Practices – FIR No.1481 of 2009.
 9. **Corrupt Practices/Undue Influence**
 - (a) Mischievous pamphlet in the name of BJP MLAs Shri Prakash Mehta and Sardar Tara Singh were distributed in Ghatkopar and Mulund to vote for NCP candidate, Shri Sanjay Patil.
 - (b) The pamphlets were inserted in the newspapers in the early morning of the polling day, i.e. 30th April 2009.

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- (c) Lakhs of pamphlets were inserted/distributed and reached the voters.
- (d) Such corrupt practice affected polling and confused the voters.
- (e) Police arrested 4 people, produced before the Court under Representation of People Act – Corrupt Practices.
- (f) FIR No.156 of 2009.

9. Over expenditure

- (a) Incurring and/or authorizing expenditure in contravention of Sec. 77
- (b) Petitioner charged that 12 lakh coloured pamphlets in different languages were distributed, appealing to the voters to vote for the NCP candidate, Shri Sanjay Patil.
- (c) The cost of such pamphlets will go beyond Rs.20 lacs while the NCP candidate has shown only Rs.32,500.
- (d) Election slip, the actual printing cost of which would be Rs.4,74,000 shown only Rs.1,47,888.

10. Violation of Code of Conduct

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, Respondent No.1, i.e. NCP candidate, Shri Sanjay Patil had printed and distributed to the voters colourful voter slips/cards bearing his photo, his name, name of the party and election symbol.

10. Polling, counting, EVM chaos/connivance

- (a) Records of polling and counting published by the Returning Officer does not tally.
- (b) As per the information made available by the Election Commission to the Petitioner on 14th June 2009, total votes polled in EPS No.40 of Ghatkopar West Assembly is shown as 298 while in the counting sheet the total number of votes counted/reflected is 545. Similarly, in EPS 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/cast is shown as 319 while in the counting sheet, it has been reflected as 401.

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

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11. **Recounting**

Recounting application rejected arbitrarily.

- (a) Lost by thin margin of 2933 votes.
 - (b) Total chaos in the counting area.
 - (c) Guideline of Election Commission for counting violated totally.
 - (d) Violation of counting guideline stated in Para 24(1), 24(2), 24(3) of Handbook for Returning Officers
 - (e) Recounting application by the Election Agent, Shri Bharat Parikh (of Dr. Kirit Somaiya) rejected arbitrarily.
 - (f) The Returning Officer/Observer did not implement the procedure mentioned in Sec. 26(3) of the Guideline.
 - (g) Recounting application rejected only in 10 minutes and final result declared hastily.
12. Dr. Kirit Somaiya has urged the Court to set aside the election of NCP candidate, Shri Sanjay Patil.

2.7.2009