

IN THE HIGH COURT OF JUDICATURE AT PATNA
ELECTION PETITION No.17 of 2020

Bamshankar Chaudhary Son of Sri Manmohan Chaudhary Resident of Village- Uprama, Uprawan, Post- Uprama, Police Station- Rajaun, District- Banka, Pin- 813107.

... .. Petitioner

Versus

1. Bhudeo Chaudhary S/o Sri Banarsi Chaudhary Resident of Village- Tagepur, P.O. and P.S.- Jagdishpur, District- Bhagalpur.
2. Ashok Das Son of Anirudh Das Resident of Village- Kharmanchak 26, Akbari Godam, Bhimrao Ambedkar Nagar, D.N. Singh Road, Post- Kharmanchak, Police Station- Jogsar (Kotwali), District- Bhagalpur.
3. Dipak Kumar Paswan Son of Sri Jagdish Paswan Resident of Village- Baratkar, Post- Lilatari, P.S.- Barahat, District- Banka.
4. Shiv Shankar Son of Late Sital Das Resident of Village- Tilakpur, Post- Bamdeo, P.S.- Rajaun, District- Banka.
5. Amod Harijan Son of Basudeo Harijan Resident of Village- Hasan Chak, Post- Dariyapur, P.S.- Sajaour, District- Bhagalpur.
6. Prof. Bilkshan Ravidas Son of Bihari Ravi Das Resident of Village- Rakabganjsarai, Post- Bhagalpur, P.S.- Tatarpur, District- Bhagalpur.
7. Mritunjay Kumar Ray Son of Sri Bashudeo Ray Resident of Village- Makeshar, Post- Sripathar, P.S.- Dhauraiya, District- Banka.
8. Puja Devi Wife of Sri Ranjit Sharma Resident of Village/Mohalla- Brijmohan Thakur Lane, Barari, Post- Barari, Police Station- Barari, District- Bhagalpur.
9. Ranjeet Sharma Son of Sri Jagdish Sharma Resident of Village- Bhatuachak, Post- Makaita, P.S.- Dhankund, District- Banka.
10. Sadanand Tanti Son of Sri Shiv Narayan Tanti Resident of Village- Uprama, Post- Uprama, Police S.- Rajaun, District- Banka.
11. Manish Kumar Son of Sri Chotelal Mandal Resident of Village/Mohalla- RBI Colony, Bhootnath Road, Post- Lohianagar, Police Station- Agamkuan, District- Patna.

... .. Respondent/s

Appearance :

For the Petitioner	:	Mr. S.B.K. Mangalam, Advocate Mr. Ajit Kumar, Advocate
For the Respondent No.1:		Mr. Krishna Chandra, Advocate Mr. Nalin Vilochan Tiwary, Advocate Mr. P.K. Verma, Sr. Advocate Mr. Sanjay Kumar Ghosarvey, Advocate
For Respondent No.3	:	Ms. Divya Verma, A.C. to AAG-3 Mr. Sadanand Paswan, Advocate



For Respondent No.11 ; Mr. Avinash Kumar, Advocate
Mr. Siddhartha Prasad, Advocate

CORAM: HONOURABLE MR. JUSTICE SANDEEP KUMAR
CAV JUDGMENT
Date : 27-02-2025

The present election petition is filed under sections 80, 80A and 81 read with section 100 of the Representation of People Act, 1951 at the instance of one Bamshankar Chaudhary, who asserts himself to be a *bona fide* voter from 160 Dhauraiya (SC), Bihar Legislative Assembly Constituency in the District of Banka. The petitioner has prayed for declaring the election of the respondent no.01, Bhudeo Chaudhary (Returned Candidate), to the Bihar Legislative Assembly, as *null* and *void* on account of suppression of criminal antecedents, which according to the election petitioner, violated the fundamental right to know the full particulars of a contesting candidate and materially obstructed the complete exposure to the public scrutiny by the electors of the said 160 Dhauraiya (SC), Bihar Legislative Assembly Constituency.

2. The Election Commission of India vide notification under section 30 of the Representation of People Act, 1951 (for short “the R.P. Act, 1951”) announced the programme for holding the elections to the Bihar Legislative Assembly. The schedule of the Bihar Legislative Assembly



Elections and important dates for the present purpose, as culled out from the records, were as follows :-

Date of issue of Gazette Notification :	01.10.2020
Date of filing the nomination by the Returned Candidate namely Shri Bhudeo Chaudhary:	07.10.2020
Last date of filing Nomination Papers	08.10.2020
Scrutiny of Nomination papers:	09.10.2020
Last date for withdrawal of nomination papers:	12.10.2020
Date of Polling:	28.10.2020
Counting of votes cast :	10.11.2020
Results Declared :	10.11.2020

3. In the aforesaid election from 160 Dhoriaya, Bihar Assembly Constituency, altogether 11 candidates were found validly nominated to contest the said election. The respondent no.01 contested on the ticket from the *Rastriya Janta Dal* (RJD) and secured 78,646 votes and was declared to have been duly elected as the Member of the Bihar Legislative Assembly from the aforesaid Constituency.

4. It is submitted that the contesting candidates had to furnish details regarding their criminal antecedents while filing their nomination papers. In the instant election petition, it is alleged that the Returned Candidate-respondent no.01 has materially suppressed the fact that two criminal cases are pending against him, which he has failed to declare in his nomination papers. According to the petitioner, two criminal



cases which are pending against the respondent no. 01 and have been suppressed by him are as follows :-

(i) Rajaun P.S. Case No.121 of 2009 dated 31.08.2009 (G.R. No. 1371/2009) registered under sections 188, 171-F and section 34 of the Indian Penal Code pending before the Court of ACJM, Banka, wherein charge sheet being No. 42/2010 dated 30.05.2010 has been submitted.

(ii) Complaint Case No.468/2015 filed in Mojahidpur P.S. Case No.12 of 2014 pending before CJM, Bhagalpur, wherein cognizance under sections 323, 324, 379, 452 and 120-B of the Indian Penal Code has been taken by the learned Court below.

5. The election petitioner submits that the aforesaid cases are pending against the respondent no. 01 since the year 2009 and 2014 respectively and the offences are in the nature where the punishment is more than two years of imprisonment. The election petitioner in order to illustrate the gravity of the two aforesaid criminal cases submits that from the perusal of the FIR in Rajaun P.S. Case No. 121 of 2009, there is an allegation of violation of directions issued by public officials during the election period and violation of model code of



conduct by allegedly holding a meeting in the vicinity of a temple without taking due permission. The election petitioner emphasises that this act is unbecoming for a law-maker. With respect to the other case, i.e., complaint case no. 468 of 2015 filed in Mojahidpur P.S. Case No. 12 of 2014, the thrust of the allegation is regarding forceful dispossession and demolition of the house standing on the property described in the complaint petition. The election petitioner further alleges that by exerting pressure and influence the respondent no.01 was able to manipulate the police and a closure report/final form was submitted. It was only upon protest petition that the cognizance of the offences were taken by the Court and summon was issued. The election petitioner further alleges that the respondent no.01 had been adopting dilatory tactics in order to stretch and delay the proceedings in the aforesaid complaint case.

6. The petitioner has emphasised that the respondent no. 01 was fully aware of the pendency of the aforesaid two criminal cases, evidently, since charge sheet dated 30.05.2010 has already been filed in Rajaon P.S. Case 121 of 2009 whereas, in the other case, i.e., Complaint Case No. 468/2015, the respondent no.01 has preferred to file an



anticipatory bail application before the ADJ-1, Bhagalpur, which was rejected vide order dated 10.12.2015 passed in ABP No. 1823/2015 and subsequently the respondent no.01 even preferred a Criminal Misc. petition titled *Bhudeo Choudhary vs. The State of Bihar and Anr.* (Cr. Misc. No. 3499 of 2016) before this Court and this Court had granted anticipatory bail to the respondent no.1 vide order dated 21.01.2016. Furthermore, it is submitted that the wife of the respondent no.01 had also approached this Court in the case titled *Indrani Choudhary vs. The State of Bihar & Anr.* (Cr. Misc. No. 727 of 2016) seeking anticipatory bail in the very same case, which also came to be allowed.

7. It is further submitted that before contesting for the Bihar Legislative Assembly General Elections in 2020, the respondent no. 01 had contested the Lok Sabha General Elections, 2019 from the Jamuai Parliamentary Constituency and from the nomination papers, which is on record and annexed as Annexure-08 to this petition, it appears that the respondent no. 01 had disclosed the particulars of the Bhagalpur Complaint Case No. 468 of 2015 pending before the CJM, Bhagalpur however, it is alleged that for some oblique reasons and in order to infringe the rights of the voters of the



Dhoraiya (SC) Assembly Constituency, the respondent no. 01 had consciously and deliberately suppressed the same, which is in violation of the constitutional rights of the voters.

8. The petitioner submits that in terms of Rule 4A of the Conduct of Election Rules, 1961, a candidate is mandated to submit an affidavit with the detailed particulars as provided in the Form-26 appended to the said Rules. Paragraph 5 of the aforesaid Form 26, requires furnishing information about the details of the pending criminal cases against the candidate. It is emphasised by petitioner that the respondent no. 01 has failed to disclose the material information as required under sections 33 and 33A of the R.P. Act, 1951 in his nomination papers and therefore, a false affidavit regarding pending criminal cases against the respondent no. 01 has been filed.

9. The election petitioner submits that being a *bona fide* voter, the instant petitioner has constitutional right, enshrined under Article 19(1)(a) of the Constitution of India, to know about the social status and criminal antecedents of the contesting candidates, more-so, for a candidate who has been duly elected and therefore, it is mandatory for the candidates to disclose all such information in the nomination paper in order to



provide necessary information to the voters of the constituency for making an informed choice. The election petitioner, to support this contention, draws attention of this Court to the decision of the Hon'ble Supreme Court in the case titled ***Resurgence India vs. Election Commission of India and Anr.*** reported as ***AIR 2014 SC 344 = (2013) 9 SCR 260.***

10. The election petitioner adverting to section 36(2) of the R.P. Act, 1951 has further contended that the Returning Officer ought to have rejected the nomination of the respondent no.01 under section 36(2) of the R.P. Act, 1951 since the respondent no. 01 has intentionally omitted the important information in the affidavit in Form-26 filed by him and consequently, the said affidavit in Form-26 suffers from defects of substantial character. It is the contention of the petitioner that because of the non-rejection of the nomination papers, the respondent no.01 was allowed to contest the election and secured 78,646 votes and was consequently declared as the returned candidate and thus, the result of the aforesaid election insofar as it concerns the respondent no. 01 has been materially affected. Since the respondent no. 01 intentionally concealed the criminal cases pending against him, such failure to disclose would be contrary to provisions contained in section 33 and 33A



of the R.P. Act, 1951.

11. The election petitioner has relied upon the decision delivered by the Hon'ble Supreme Court in *Union of India vs. Association of Democratic Reforms & Anr.* reported in *(2002) 5 SCC 294* to draw strength for the contention that it is fundamental to receive complete information regarding the criminal activities of a candidate contesting for the election in order to make an effective and meaningful choice.

12. In light of the aforesaid, the election petitioner also points towards sections 33A and 33B which were inserted vide Representation of People (Third Amendment) Act, 2002 and Rule 4A of the Conduct of Election Rules, 1961. The election petitioner has reiterated and emphasised that Rule 4A mandates that a candidate has to submit detailed particulars as provided under Form-26 and paragraph 5 of the said Form-26 requires furnishing information about the details of pending criminal cases against the candidate.

13. The election petitioner has also relied upon the decision of the Hon'ble Supreme Court in *Lok Prahari, through its General Secretary S.N. Shukla vs. Union of India & Ors.* reported as *(2018) 4 SCC 699 = [2018] 2 S.C.R. 892*, to submit that right to know the full particulars of a candidate



which includes the right to know if the candidate is accused of any offence punishable with imprisonment for two years or more in a pending case in which a charge has been framed by the court of competent jurisdiction, is a vital part of Article 19(1)(a) of the Constitution of India and the deliberate non-disclosure of the information that the candidate is accused of any offence punishable with imprisonment for 2 years or more would amount to an undue influence and corrupt practice under Section 123 (2) of the R.P. Act, 1951 and consequently it is submitted that the election of the respondent no.01 would be *null and void* under section 100 of the R.P. Act, 1951.

14. It is contended by the election petitioner that once it has been established that the election of the respondent no.01 was materially affected then no other ground is required to set aside the election. The election petitioner has also contended that once it is established that there is failure on the part of the respondent no.01 to furnish the vital information as contemplated under section 33A of the R.P. Act, 1951, the question whether the result of the returned candidate was materially affected or not is not a relevant factor to set aside the election.

15. The election petitioner has relied upon the



judgment of Manipur High Court at Imphal in the case titled ***Mayanglambam Rameshwar Singh vs. Yengkhom Surchandra Singh and Another*** reported as ***2020 SCC OnLine Mani 312 = MANU/MN/0113/2020*** wherein vide order dated 05.11.2020 the High Court had set aside the election of the returned candidate therein on the ground that returned candidate has failed to disclose/provide vital information as mandated under section 33A of the R.P. Act, 1951. Relevant paragraphs of the aforesaid decision reads as under:-

“112. Thus, in order to get an election declared as void under the said provision, the petitioner must aver that on account of non-compliance with the provisions of the Constitution of India or of RP Act or of any rules or orders made under the Act, the result of the election, insofar as it concerned the returned candidate, was materially affected. As per the principle enunciated supra, in the instant case, in view of the foregoing discussions held, the petitioner has established that the result of the election, insofar as it concerned the returned candidate, was materially affected in order to set aside the same. As stated supra, if the petitioner establishes failure on the part of the returned candidate to furnish the vital information as contemplated under Section 33A of the RP Act, the question whether the result of the returned candidate was materially affected or not is not a



relevant factor to set aside the election of the returned candidate. Hence, the submission made by the learned counsel for the first respondent has no legs to stand.

113. It is reiterated that the right of the voters to know of the relevant particulars of the candidates is very important, as ultimately it is the voters who decide the fate of the candidates who will periodically exercise the political power. A citizen of this country has a fundamental right to receive information regarding the assets and liabilities of a candidate of the Parliament or the Lok Sabha or the Legislative Assemblies so as to make his choice effective and meaningful.”

16. It is the submission of the election petitioner that submitting false affidavit by the respondent no.01 has resulted in expression of unconsidered and uninformed choice of the voters of 160 Dhauriaya (SC) Constituency and as a result, the votes cast had become meaningless. Furthermore, it is submitted that the aforesaid cases originated in Banka and Bhagalpur districts and it is very likely that the voters of the aforesaid constituency might have been prejudiced and therefore, the respondent no.01 deliberately suppressed the information, which was only half-heartedly disclosed by the respondent no.01 while filing the nomination for the Lok Sabha General Elections at the time of contesting elections from the



Jamui Parliamentary constituency since the respondent no.01 might have been of the opinion that these cases might not hold importance for the Parliamentary General Elections.

17. The written statement has been filed on behalf of the respondent no.01, in reply to the instant election petition, raising various issues of non-maintainability necessitating summary dismissal of the election petition under section 86 of the R.P. Act, 1951 read with Order VII Rule-11 of the Code of Civil Procedure, for non-compliance of sections 81, 82 and 117 of the R.P. Act, 1951 as has been statutorily mandated under section 86 of the aforesaid Act. The respondent no.01 states that election petition did not accompany as many true copies as there are respondents arrayed in this petition. Moreover, it is stated that the copy accompanying the election petition which has been served on respondent no.1 is not the true copy of the election petition since several pages of the petition were different from the original one. The election petition also does not contain any proper attestation by the election petitioner as is required under section 83 of the R.P. Act, 1951 and therefore, non-compliance of the aforesaid provisions of the R.P. Act, 1951 has prejudiced the defence of the respondent no.1. It has also been stated that no affidavit in



Form-25 as required under proviso to section 83(1)(c) of the R.P. Act, 1951 in case of alleging corrupt practices was filed in the election petition. Hence, this election petition is fit to be dismissed under section 86 of the R.P. Act.

18. The respondent no.01, further stated that the election petition is not maintainable and is fit to be dismissed on the ground of non-compliance of section 83(1)(a) of the R.P. Act, 1951 since it is devoid of concise statement of the material facts so as to make any triable issue as contemplated under section 100(1) and 101 of the R.P. Act, 1951.

19. In response to the allegation made in the election petition regarding the non-disclosure of two criminal cases in Form-26 filed along with the nomination papers and the same having been improperly accepted, it has been stated in the written statement that section 100 (1) (d) (i) of the R.P. Act speaks of improper acceptance of nomination paper but the same is subject to the condition that the election of the returned candidate must have been materially affected. According to the respondent no. 01, there is no pleading to the effect as to which clause of Section 36 of the R.P. Act, 1951 was breached so as to contend that the nomination of the respondent no.1 was wrongly accepted and there is nothing in the pleadings to establish as to



how the result of the election was materially affected due to non-disclosure of the alleged cases in the nomination paper. Thus, the election petition is based on vague and unsustainable averments without disclosing the material facts as required under section 83(1)(a) of the R.P. Act, 1951.

20. It has further been stated in the written statement that that the election petition has been filed on the sole ground of non-disclosure of the criminal cases in Form-26 filed along with nomination papers by the respondent no.1 and alleging corrupt practice of undue influence but without complying the mandatory requirements as envisaged under Section 83(1)(b) of the R.P. Act, 1951 which stipulates setting forth full particulars of the corrupt practices with full statements, names of the party, date and the place of commission etc. Further, proviso of sub-clause (c) of section 83 of the Act stipulates that the election petition alleging such corrupt practices shall also be accompanied with an affidavit in the prescribed form which has been incorporated under the Conduct of Election Rules, 1961 as Form-25. Neither any full particulars nor a full statement as required has been stated nor affidavit under Form-25 has been sworn. Thus, the election petition is directly in violation of Section 83(1) (b) and (c) read



with Section 81(3) of the Act and hence, is fit to be dismissed.

21. Further, it is stated that upon perusal of Form-26 submitted by the respondent no.1 along with the nomination paper, it would be evident from para-5(ii) that the detailed reference of criminal cases pending against the respondent no.01 had been duly disclosed. Though the respondent no.1 is not an accused in Rajaun P.S. Case no.128 of 2009 but the aforesaid case has also been mentioned by the respondent no.1 in Form 26. Furthermore, it has been stated with considerable emphasis that the respondent no.01 had no reason for not disclosing any criminal cases pending against him.

22. It has further been stated in the written statement that due to clerical/typographical error instead of Rajaun P.S. Case No. 121 of 2009, Rajaun P.S. Case No. 128 of 2009 has been mentioned in Form 26, which cannot be construed as non-disclosure, however, it is stated that in Rajaun P.S. Case no.128 of 2009, respondent no.1 is not arrayed as an accused. In order to further strengthen this stand, it is submitted by the respondent no.1 that the aforesaid facts also stand corroborated from the Form-26 filed by the respondent no.01 in the year 2019 while contesting Parliamentary Election from 40,



Jamui (SC) Parliamentary Constituency wherein the said correct case i.e. P.S. Case No.121/2009 had been clearly disclosed. Thus, it clearly emerges that the error in disclosing the FIR number was neither deliberate nor intentional but only because of a clerical/typographical mistake. The respondent no.01 has vehemently denied that the offence alleged under section 188 and 171F IPC relate to meeting of workers during election without seeking prior permission during election campaign violating the model code of conduct. It is emphasised that the offences carry a maximum punishment of one year imprisonment.

23. It is also stated in the written statement that the error apparently occurred as both the aforesaid cases bearing nos.121/2009 and 128/2009 were registered at the same police station i.e. Rajoun Police Station and were of the same year. Further even the offences alleged were also more or less under the same sections. In Rajoun P.S. Case No. 121/2009, in which the respondent no.1 was made an accused was lodged under section 188/171(F) and 34 of Indian Penal Code whereas in Rajoun P.S. Case No.128 of 2009, in which respondent no.11, Sri Manish Kumar was an accused was lodged under Sections 188/171(F)/504/506 and 34 of the Indian Penal Code and



Section 130 and 131 of the R.P. Act, 1951. Even otherwise there was no occasion to suppress or not to disclose the FIR bearing Rajoun P.S. Case No. 121/2009 because the allegation referred therein basically related to election offences and carry a maximum imprisonment of one month or one year or fine or both. It is emphasised by the respondent no.01 that the contention of the petitioner that the punishment prescribed in the Rajaun P.S. Case 121/2009 registered under the aforesaid sections is more than 2 years of imprisonment is wholly incorrect and misconceived.

24. It has also been stated in the written statement that the complaint case bearing no.45 of 2014 was filed by one Permanand Sharma on 31.01.2015 with respect to a land purchased by way of a registered deed in the year 2006 by the wife of respondent no.1. Subsequently the complaint was referred to Mojahidpur Police station under section 156(3) of Code of Criminal Procedure. In pursuance thereof, Mojahidpur P.S. Case No.12/2014 was registered and after due investigation Final Form was submitted on 31.01.2015 by the police finding the allegations to be untrue. Thereafter, upon protest of the complainant, a separate complaint case bearing no.468/2015 was instituted by the learned CJM, Bhagalpur. The summons



was issued to the accused persons including respondent no.1. After appearance of all the accused persons, the Court below placed the matter for evidence before charge on 11.04.2017. After part evidence of only one witness, the case was fixed for 23.05.2017 for cross examination. It is stated by the respondent no.01 that the complainant defaulted in bringing the witness and so next date was fixed on 22.06.2017. Even on that date, no witness was produced and continuously several dates were fixed for examination of the rest of the witnesses and even an order for personal appearance of the complainant was passed and last chance was given to adduce the evidence but the complainant kept on defaulting and virtually abandoned the case, which would be evident from the order sheet of the said case. Lastly, the evidence was closed by the order of the learned Court below on 03.07.2019.

25. It is stated that under these circumstances there was nothing left in the case and it virtually came to an end and therefore the details of the aforesaid complaint case was not given in Form-26 filed along with the nomination paper. It has further been submitted that while contesting the parliamentary elections the respondent no.01 had filed the nomination paper on 25.03.2019 from 40 Jamui (SC) parliamentary constituency



and in Form-26 the aforesaid compliant case no.468 of 2015 was duly disclosed since the same was pending and evidence was not closed till the filing of the nomination and the evidence was closed vide order dated 03.07.2019.

26. It has also been stated in the written statement that this was a civil dispute on account of previous land dispute and the same is pending before the D.C.L.R, Bhagalpur, in which an order was passed for removal of the encroachment. In retaliation, Mojahidpur P.S. Case no.12/2014 was instituted against several persons including the respondent no.1.

27. It is stated on behalf of the respondent no.01 that his nomination paper was valid in all respect and no error has been pointed out by the election petitioner in the present election petition. Even, the affidavit in Form-26 which has been separately filed accompanying with the nomination paper, disclosed the required facts including the pending criminal cases except for a typographical/clerical error of mentioning the P.S. Case No.128/2009 instead of 121/2009. Any such clerical error cannot be construed as an intentional omission. Further it is submitted that Section 36 (2) of the R.P. Act does not mandate rejection of nomination paper for any unintentional clerical



error hence there was no occasion for the Returning Officer to have rejected the nomination paper of the respondent no.01. Furthermore, it has been submitted that during the course of scrutiny of nomination papers held on 09.10.2020 there was no objection raised.

28. The respondent no.01 adverting to section 125A of the R.P. Act, 1951 submits that even as per the averments of the election petitioner the present petition under section 81(1) of the R.P. Act is not maintainable. It is emphasised that the remedy for the allegations made in the instant election petition would lie under section 125A of the R.P. Act, 1951 and not by way of the present election petition.

29. Next, it is submitted by the respondent no.01 that no wrongful gain would occur by erroneously mentioning the criminal case bearing Rajaun P.S. Case 128 of 2009 in paragraph-5 of the said affidavit when admittedly the respondent was not an accused in that case and more so when the allegations made in this case was more grave than the case, i.e. Rajaun P.S. Case 121 of 2009 which ought to have been mentioned.

30. The respondent no.01 had preferred to move an Interlocutory Application No.03 of 2022 invoking section 86



of the R.P. Act, 1951 read with Order VII Rule 11 of the Code of Civil Procedure for summary dismissal of the instant election petition wherein vide order dated 15.05.2023 the coordinate bench while rejecting the aforesaid application held that the trial in the present case has already progressed inasmuch as written statement has been filed and original documents for evidence have been received and issues had already been framed.

31. The election petitioner has filed a supplementary affidavit bringing on record the FIR dated 31.08.2009, the order sheet of Rajaur P.S. Case 121 of 2009 (G.R. No. 1371 of 2009) and the charge sheet bearing no. 42 of 2010 dated 30.05.2010.

32. Upon hearing both the parties, this Court vide order dated 11.04.2022 had framed nine issues for adjudicating the present election petition, which are as follows:-

- (i) *Whether, concealment of criminal antecedents in affidavit filed in Form-26 by the Respondent no.1 was a defect of substantial character for which the election of the respondent no.1 is fit to be declared void?*
- (ii) *Whether, if blank paragraph of an affidavit filed by a candidate in Form-26 before the Returning Officer along with his nomination paper was also a ground for*



rejection of nomination as contemplated under paragraph no.6.10.1(x) of the Hand Book for Returning Officer, the nomination of respondent no. 1 was fit to be rejected by the Returning Officer, filed in Form-26 along with his nomination paper were blank ?

- (iii) Whether, the Returning Officer had improperly accepted the nomination paper of the Respondent no.1 with blank paragraphs of the affidavit filed by him if Form-26 along with the nomination paper and on that ground, the election of Respondent no. 1 is fit to be declared void ?*
- (iv) Whether, the election petition is not maintainable and fit to be dismissed under Section 86 of the Representation of Peoples Act, 1951 for non compliance of Section 81, 82 and 117 of the Representation of Peoples Act, 1951?*
- (v) Whether the election petition is de-void of concise statement of material facts not disclosing a cause of action or a complete cause of action and hence is fit to be dismissed under Order 7 Rule 11 of Code of Civil Procedure ?*
- (vi) Whether the election petition is in noncompliance of section 81(1) read with Section 83(1)(a) of the Representation of*



Peoples Act, 1951 as it fails to make out a triable case under Section 100(1) and 101 of the Act, 1951?

(vii) Whether, the election petition is not maintainable in absence of pleadings as to how the result of election is materially affected due to alleged non disclosure of any case in Form-26 filed along with nomination paper so as to make out a triable case under Section 100(1)(d)(iii) and (iv) of the Representation of People Act, 1951?

(viii) Whether the election petition is also not maintainable as appropriate remedy for the allegation of error or alleged concealment of information is covered by Section 125A of Representation of People Act, 1951?

(ix) Whether the election petition is fit to be dismissed for non compliance of Section 83(1)(c) proviso of the Act for not filing affidavit in the prescribed Form-25 under the Conduct of Election Rules, 1961 despite alleging corrupt practice ?

33. The following documents have been exhibited on behalf of the election petitioner :-

Exhibit-1	Original nomination form of respondent no.1 Bhudeo Choudhary filed before the Returning Officer (Marked on 04.07.2023)
Exhibit-1(i)	Affidavit in Form 26 along with Nomination Form filed by respondent no.1 Bhudeo Choudhary



	before the Returning Officer (Marked on 04.07.2023)
Exhibit-2	Certified copy of F.I.R. of Rajoun P.S. Case No.121 of 2009 dated 21.08.2009 with objection (Marked on 04.07.2023)
Exhibit-3	Certified copy of the F.I.R. of Mojahidpur P.S. Case No.12 of 2014 dated 22.01.2014 with objection (Marked on 04.07.2023)
Exhibit-4	Certified copy of entire ordersheet of Complaint Case no.468 of 2015 dated 23.01.2014 to 17.12.2022 (Marked on 04.07.2023)
Exhibit-5	Order-sheet of Criminal Miscellaneous No.7238 of 2016 (Indrani Choudhary and Ors. vs. State of Bihar and Anr.) dated 01.11.2018 of the Hon'ble Patna High Court (Marked on 09.09.2024)

34. The following documents have been exhibited on behalf of the respondent no.1 :-

Exhibit A-	Certified Copy of the Order-sheet dated 03.07.2019 passed in Complaint Case No.468/2015 (Marked on Date-14.05.2024)
Identification X	Photocopy of entire order-sheet of Mojahidpur P.S. Case No. 12/2014 in which Final Form was submitted (Page No.134 to 137) which are produced as Annexure R-1/E by way of documents filed by Respondent no.1 (Marked on 14.05.2024)
Identification X	Photocopy of entire order-sheet passed by the DCLR, Bhagalpur in Land Dispute Case no. 91/2013-14 (Page no.122 to 133) which are produced as Annexure-2-1/D by way of documents filed by Respondent no.-1(Marked on 14.05.2024)
Exhibit B-	Checklist given to Sri Bhudeo Choudhary which bears Signature of the Returning officer (Marked on 02.09.2024)
Exhibit C-	Photocopy of order-sheet dated 07.12.2013 passed by the DCLR, Bhagalpur in Land Dispute Case No.91/2013-14 (Page no.-126 to 127) which is filed by way of documents filed by Respondent



	no.1 (Marked on 02.09.2024)
Exhibit D-	Certified Copy of F.I.R. of Rajoun P.S. Case no.128/2009 dated 15.09.2009. (Marked on 05.09.2024)
Exhibit E-	Photocopy of entire order-sheet passed by the C.J.M., Bhagalpur in Rajoun P.S. Case no.128/2009 (Page no.-76 to 121) which are produced as Annexure-R-1/C by way of documents filed by Respondent no.-1. (Marked on 05.09.2024)
Exhibit F-	Annexure 4 of Election Petition (Page no.-77 to 82) of Rajoun P.S. Case no.121/2009 (Page no.76 to 121). (Marked on 05.09.2024)
Exhibit G-	Annexure-8 of Election Petition (Page no.-166 to 205) Form-26 of Bhudeo Chaudhary. (Marked on 05.09.2024)
Exhibit H-	The Sale deed of Smt. Indrani Choudhary. W/O Bhudeo Chaudhary as detailed in Para-8-of Examination-in-Chief of Sri Bhudeo Choudhary. (Marked on 09.09.2024)
Exhibit-I	The ordersheet of Mojahidpur RS. Case no.12/2014 (Page no.134 to 137) which was earlier marked as X for identification and the Complaint Case no.468/2015 (Page no.-138 to 222), the entire order-sheet of both the cases (Page nos 134 to 222), which are produced by way of documents filed by Respondent no.1 (Marked on 09.09.2024).
Exhibit- J	The order-sheet dated 30.08.2022 which is the order by which the Evidence closure order dated 03.07.2019 was recalled by A.C.J.M.-1st Bhagalpur (Page no.-192 to 193) which are produced by way of documents led by Respondent no.-1 (Marked on 09.09.2024)

35. In this case, election petitioner has been examined as P.W.1, Bam Shankar Chaudhary. This witness has deposed that he had filed the instant election petition



challenging the election of respondent no.01 from 160 Dhauraiya Assembly Constituency on the ground that in his affidavit in Form-26, the respondent no.01 had disclosed his criminal antecedents under the aforesaid form and had mentioned about four criminal cases pending against him. However, the respondent no.01 had left the paragraph no. 5 of the aforesaid affidavit as blank. The witness deposed that there are six criminal cases pending against the Respondent no.01, however only four have been disclosed by him. The witness further deposed that Rajaun P.S. Case No.121 of 2009 dated 31.08.2009 for offences under sections 188, 171F and 34 of the Indian Penal Code pending in the Court of ACJM, Banka and the Complaint Case No. 468 of 2015 pending in the Court of learned CJM, Bhagalpur have not been disclosed. It has further been deposed by this witness that two columns/paragraphs of the affidavit in Form-26 namely paragraph nos. 5 and 6 are blank and no declaration has been mentioned by the respondent no.01. The witness has further deposed that since two paragraphs of the affidavit in Form-26 filed by the respondent no.01 along with his nomination paper are blank, it was a defect of a substantial nature and the nomination of the respondent no.01 was liable to be rejected by the Returning Officer. Lastly,



this witness has deposed that in Rajaun P.S. Case No.121 of 2009 dated 31.08.2009 the police, after investigation, has already submitted charge sheet against the respondent no.01 vide Charge Sheet No.42 of 2010 dated 30.05.2010 and the respondent no.01 was released on bail after furnishing bail bonds. Therefore, the respondent no.01 had full knowledge about the criminal cases pending against him which was deliberately suppressed in the aforesaid affidavit.

36. In the cross examination of P.W.-1, Bam Shankar Chaudhary, has deposed that he was not a candidate from any party in the Bihar Legislative Assembly Election from 160 Dhoraiya assembly constituency held in October 2020 and further that he had neither contested any election nor stood or signed as a proposer to any candidate and further he has not even acted as an election agent for any candidate in any election or visited the office of the Returning Officer to represent any candidate. P.W.-1 has further deposed that he has knowledge regarding the submission of nomination paper during election, however he does not have any knowledge about the rules, guidelines, instructions or statutory provisions in respect of filing of nomination papers in an election. He has also deposed that he does not know the provision under the R.P. Act under



which a nomination paper submitted by a candidate can be accepted or rejected. P.W.-1 has further deposed that the defect in the nomination paper filed by the respondent no.01 were stated in the instant election petition and that he has no knowledge about any other defects in the said nomination paper. In the examination-in-chief, this witness has deposed that there are no criminal cases pending against him. Lastly, the witness deposed that Form-26 is a form of an affidavit which is attached with the nomination paper.

37. The further cross-examination of P.W.-1 was conducted on 29.08.2023 wherein this witness deposed that he is not aware as to whether a defect in the nomination paper, if found, is pointed out by the Returning Officer at the time of filing of nomination paper through a check-list and he does not have any knowledge as to whether a time is fixed for removal of that defect by the concerned candidate.

38. The Respondent Witness no.01, Uma Shankar Singh, has deposed that he had known the respondent no.01 since 1990 and this witness has been the election agent for respondent no.1 for almost all elections contested by respondent no.1. The witness has deposed that the respondent no.01 had contested multiple elections since the year 2000 from



same Dhoraiya Assembly Constituency. R.W.01 has further deposed that he had assisted the respondent no.01 in filing the nomination papers and Form-26. The witness has deposed that the nomination paper and Form-26 was submitted by the respondent no.01 on 07.10.2020, which was a day prior to the last date for filing nomination. R.W.-01 along with respondent no.01 and other party workers left from Patna on 06.10.2020, after release of the party symbol and reached Banka late night. R.W.-01 accompanied the respondent no.01 along with some party workers and supporters on 07.10.2020 to the office of the DCLR, Banka where nomination was to be filed. R.W.-01 has further deposed that one Hira Lal Singh, an advocate from Banka, also accompanied them for providing assistance in filing the nomination papers. It is deposed by this witness that after filing of the nomination papers, the same was checked by the officials and a copy of the checklist was also given by the Returning Officer. The next day an intimation was received about a notice for submitting fresh Form-26 and therefore this witness along with the respondent no.01 rushed to the office of the returning officer where it was pointed out that in Column-4 the name of the candidate was also to be written along with 'Self' and hence a fresh affidavit in Form-26 was sworn and re-



filed after curing the defects. The witness has further deposed that the scrutiny of the nomination papers submitted by all the candidates was held on 09.10.2020. R.W.-01 had remained present inside the office of DCLR-cum-Returning Officer, Banka at the time of scrutiny on behalf of the respondent no.01. Several other candidates and their representatives were also present during the scrutiny. The nomination paper of each candidate was shown by the Returning Officer and the Assitant Returning Officer to the candidates and the persons present in the scrutiny and objections were invited from the candidates or their representatives. It was deposed that neither of the candidates nor any person present had raised any objection to the nomination papers or Form-26 of the respondent no.01. There was no objection even from any of the officials present there. Even subsequent to the scrutiny, there was no objection raised by anyone. R.W.-01 has deposed in the examination-in-chief that the allegations made in the present election petition regarding non-mentioning of the two criminal cases in Form-26 with a deliberate intention on the part of the respondent no.01, is not correct. He has further deposed that, while filling the said nomination paper, R.W.-01 had taken the assistance of one Hira Lal Singh, Advocate, who had been appearing in both of the



cases which had been registered as Rajoun P.S. Case No.121/2009 and 128/2009. In Rajoun P.S. Case No.128/2009 the respondent no.01 is not an accused and in fact, it was Sri Manish Kumar(respondent no.11) a contesting candidate, who was an accused. On the other hand, in Rajoun P.S. Case No.121/2009 both Sri Manish Kumar and the respondent no.01 had been made an accused. Therefore, it was deposed that owing to the confusion in providing the correct case number by the learned advocate, the incorrect case details i.e., Rajoun P.S. Case No.128/2009 was mentioned in Form No.26 in which pertinently the respondent no.01 was not even an accused. It was deposed that this confusion might have arisen since both the aforesaid cases relate to breach of model code of conduct and was being defended by the very same advocate and the nomination paper was being filled in haste. R.W.-01 has further deposed that with respect of non-mentioning of the complaint case no.468/2015, R.W.01, had inquired from Vijay Kumar Singh, Advocate who had been defending the case on behalf of the respondent no.01 in Bhagalpur Court, who had informed R.W.-01 that the case had been closed sometime in July, 2019 itself and therefore the same was not filled in Form-26. It was deposed by this witness that there was no question or any



intention of non-disclosure, as alleged, because earlier during the parliamentary elections from 40 Jamui reserved parliamentary constituency, the nomination paper was filed by the respondent no.01, wherein the said complaint case number 468/2015 was mentioned since the said complaint case had not closed at that point of time. The said complaint case is a frivolous and fraudulent case arising from a false land dispute. The witness has lastly deposed that he had helped the respondent no.01 in filing the Form-26 in the present election under consideration and as per the norms it is incorrect to say that any of the paragraphs was left blank.

39. The R.W.-02, Kishori Prasad Sah, had deposed that the respondent no.01 had constructed his house at Kajichak, which was about 100 yards from the house of the R.W.-02. It was deposed by this witness that the land on which the house is constructed was of *khatiyani riyat* Sadho Mistry, who passed away about 25 years ago leaving behind his wife Tara Devi and she had been living alone in a hut which was over the said land. Tara Devi was the only heir of Late Sadho Mistry. It was further deposed that Tara Devi had sold the said land to the wife of the respondent no.01 by way of a registered sale deed sometime in the year 2006 and subsequently, a house was



constructed by the respondent no.01 over the said land. This witness has also deposed that he knew Late Sadho Mistry very well and that he used to regularly meet him in the house of one Kallar Bhagat, who was a *tantrik* by profession and next-door neighbour of late Sadho Mistry. Lastly, this witness has deposed that he had on several occasions visited the house of late Sadho Mistry and that both late Sadho Mistry and his wife Tara Devi have died issueless and further that he had not seen any other relatives living with them.

40. R.W.-03, Uttam Singh, has deposed that he knows the respondent no.01 for the last two decades. The witness has deposed that the respondent no.01 had been elected as a Member of the Legislative Assembly from Dhauraiya assembly constituency on three consecutive elections held in 2020, Feb-2005 and October-2005, thereafter the respondent no.01 was elected as a Member of Parliament in the year 2009 from Jamui Parliamentary Constituency and again elected in 2020 as the member of the Legislative Assembly from the Dhauraiya Assembly Constituency. The witness has deposed that he had heard about a false complaint case to have been filed against the respondent no.01 in the year 2015 relating to a land dispute. The witness has lastly deposed in paragraph-5 of his



examination-in-chief that the respondent no.01 is well educated and was practicing as an advocate in Bhagalpur Civil Court and that the respondent no.01 comes from a humble family background and has been a popular leader.

41. In his cross-examination, R.W.-03, Uttam Singh, has deposed that his village is named 'Lanka' which is 20 kms. from the village of respondent no.01. This witness has further deposed in his cross examination that he is not aware of any pending criminal cases against any villager of village Tajepur. He has not been a witness in the complaint case pending against respondent no.01 and has not met the complainant in the aforesaid complaint case. This witness has further deposed that he had studied till matriculation and has a little knowledge about English language. In the cross-examination when specific question was posed to this witness regarding his statements in paragraph-5 of the examination-in-chief, the witness has answered that he does not understand what is stated in paragraph-5 of the examination-in-chief.

42. R.W.-04, Sanjay Prasad Yadav, has deposed that he knows the respondent no.01 from the year 1995 and has deposed regarding the electoral victories of the respondent no.01 since the year 2000. This witness has further deposed that



the voters of Dhauraiya constituency are fully aware about the social service, sincere approach, helping nature as well as impeccable character of respondent no.1 and therefore this witness has deposed that despite the false criminal cases lodged by unscrupulous persons, the respondent no.1 was duly elected.

43. R.W.-4, Sanjay Prasad Yadav in his cross examination has deposed that there are about three lakh voters in the assembly constituency. Upon a question on how many persons did this witness ask regarding the case being filed the witness responded that he had asked two persons namely one Vijay Verma and Uma Shankar Singh.

44. The R.W.-05, Uday Kumar Singh and R.W.-06, Anis Kumar Chavan in their examination-in-chief have also deposed that they know the respondent no.01 since the year 2000 and 1995 respectively since the respondent no. 01 has been a popular leader in the constituency. The witnesses then deposed regarding the electoral victories of the respondent no. 01 from various elections. The witnesses have also deposed that he had heard about the criminal case relating to a land dispute being filed against the respondent no.01 which the witness further deposed that according to him this case has never been in the minds of the voters of the constituency. The witness also



deposed regarding the educational qualifications and the family background of the respondent no. 01.

45. In the cross examination, R.W.-05, has stated that he is not interested in politics and that the witness is not acquainted with the criminal antecedents of the contestants of the assembly elections of 2020 except the respondent no. 01.

46. R.W.-06, Anis Kumar Chavan, in his cross examination has stated that he does not remember the cases that were disclosed by the respondent no.01, however the witness is aware that the present election petition has been preferred since the respondent no.01 did not disclose cases during the assembly elections which were disclosed by the respondent no.01 while fighting the parliamentary elections from Jamui parliamentary constituency.

47. Kunjbihari Kumar Yadav, R.W.-07 in his examination-in-chief has stated that he earns his livelihood from agriculture and has studied till high school from his village that falls under 160 Dhoriaya assembly constituency. This witness has deposed that he knows the respondent no. 01 for the past twenty years. The witness then deposed regarding the electoral victories of the respondent no.01 for various elections. This witness lastly deposed that the respondent no.01 comes from



village Tagepur which is about 15 kms. away from the village of the witness and that the respondent no.01 comes from a humble family.

48. The R.W.-07, Kunjbihari Kumar Yadav in his cross examination has stated that he is not aware of the informant of the criminal case instituted against the respondent no. 01. The witness further stated that the respondent no.01 is a graduate and also has a degree in law however this witness has never seen him practicing as an advocate. The witness lastly states that he knows the family members of the respondent no.01 however he is not aware of the qualifications of the son or brother of the respondent no. 01.

49. R.W.-08, Krityanand Jha, in his examination-in-chief has stated that he is a voter from Shyampur village that comes under Rajoun Block under the Dhoraiya assembly constituency and that the witness and his family members have voted in the assembly elections of 2020 from the aforesaid constituency, which were held in November, 2020. The witness is engaged in agricultural activities. The witness has deposed that the respondent no. 01 had contested the said elections from *Rashtriya Janta Dal* and that there were several other candidates who had contested the said elections. Further the witness has



deposed that the respondent no.01 is a well known and popular leader of his area and the village of the witness is located just a few kilometers away from the village of the respondent no. 01. Thereafter the witness deposed regarding the electoral victories of the respondent no. 01 and stated that the respondent no. 01 has always been active in his constituency and been instrumental in executing several developmental and social work. The witness further states that to the best of his knowledge there are no pending criminal cases against respondent no. 01 except certain cases arising out of breach of model code of conduct and one complaint case relating to a land dispute, which this witness deposed, was falsely instituted against the respondent no. 01. The witness has also deposed that he had travelled around the constituency during the subject election period and he had found that the people had voted in favour of the respondent no. 01, knowing about the false case of land dispute and that this did not affect at all the voters of the constituency. The witness lastly deposed that even if the said case would have been mentioned in the nomination papers of the respondent no.01 the same would not have affected the result of the elections.

50. R.W.-08, Krityanand Jha, in his cross



examination has stated that the criminal cases pending against the respondent no.01, which have not been disclosed in the affidavit are not pending against the respondent no.01. The witness further stated that the cases which have not been disclosed relate to a land dispute and are not pending.

51. R.W.-09, Vijay Kumar Singh, in his examination-in-chief has stated that he is a practicing advocate, ordinarily practicing in Bhagalpur Civil Court and he joined the Bhagalpur Bar in the year 1994 and has been practicing ever since mainly on the criminal side. This witness has stated that when he joined the Bar, the respondent no.01 was also practicing as an advocate in the Bhagalpur Civil Court. The witness has further stated that the respondent no.01 had engaged him to defend the complaint case no. 468 of 2015. It was stated by the witness that the matter relates to execution of an order passed by the DCLR, Bhagalpur in the land dispute case No.91/2013-14 which had been filed by the wife of the respondent no.01 under the Bihar Land Dispute Resolution Act, 2009 for removal of encroachment in a portion of her registered *raiyati* land and the encroacher was the complainant Permanand Sharma. After due proceeding, the application of the wife of the respondent no.01 was allowed and direction was passed for



removal of the encroachment which was duly executed after following due process. The witness further stated that in retaliation the complainant of the aforesaid complaint case filed an FIR bearing Mojahidpur PS Case No. 12 of 2014, which after investigation, was found false and the final report was submitted. It is stated by this witness that thereafter the complainant preferred to file a complaint which was registered as complaint case 468 of 2015 wherein the DCLR, the Circle Officer, the Circle Inspector, the respondent no. 01 and the wife of the respondent no. 01 have been made accused. Further the witness states that the complainant never challenged the order passed by the DCLR, Bhagalpur before the appellate authority under the BLDR, Act, 2009 or before any other authority or Court of Law. It is stated that the complaint case was being heard before the Court of Judicial Magistrate, Bhagalpur and the complainant was directed to produce the evidence before charge vide order dated 03.03.2017, wherein the complainant defaulted for more than two years despite repeated orders by the said Court, ultimately, it is stated, that on 03.07.2019 the evidence was closed. The witness lastly states that the respondent no. 01 and his election agent had enquired from him regarding the status of the complaint case for the purposes of filing the



nomination paper in the assembly elections of 2020 and that the witness had duly informed that the complaint case was closed on 03.07.2017 due to non-production of witnesses by the complainant.

52. The witness R.W.-09, in his cross examination has stated that after submission of the final form by the police in connection with the Mojahidpur PS Case 12 of 2014, this witness was engaged as an advocate, and that the witness was aware that a complaint-cum-protest petition was filed by the informant in the aforesaid case. After submission of the final form and filing of the complaint-protest petition by the informant, the complaint case no. 468 of 2015 was registered. It was deposed by the witness that inquiry witnesses were examined in the said complaint case and on the basis of the evidence cognizance was taken. Lastly, this witness stated that he continues to appear on behalf of the respondent no.01 in the said case and no final judgment has been delivered by the Trial Court.

53. R.W.-10, Parshuram Harijan, has stated in his examination-in-chief that he is a voter from village Kathaun which falls in Rajoun Block under Banka district and his village comes under Dhoraiya assembly constituency. The witness has



stated that he had cast his vote in the aforesaid elections in 2020 and there were around 10-11 candidates, who had contested the elections. The respondent no. 01 was contesting on the ticket of *Rashtriya Janta Dal* and respondent no.11, Manish Kumar had contested on the ticket of *Janta Dal (U)*. The witness has stated that he knows the respondent no. 01 for the last two decades and has stated about the electoral journey of the respondent no. 01. The witness has also stated that the respondent no. 11, Manish Kumar, had not contested the election in the year 2000 and 2005. The witness states that as far as he knows except a land dispute case and model code of conduct violation case there are no other criminal cases pending against the respondent no. 01. The witness further states that he was elected as *Mukhiya* from the Bhawanipur-Kathauana Panchayat in the year 2001 and as such he is acquainted with the locality in the Dhoraiya Assembly Constituency. This witness has also deposed that the respondent no. 01 has been very active in his constituency and was instrumental in executing several development works. This witness has lastly deposed that he had travelled around during the subject election period in the year 2020 and found that people were in favour of the respondent no.01, and the false complaint case would not have affected the outcome of the



elections because the electors voted in favour of the respondent no. 01 for his good conduct, behaviour and the development work carried in the constituency.

54. In the cross-examination R.W.-10 has stated regarding the electoral victories and losses and the electoral journey of the respondent no. 01. This witness has further stated that he had not campaigned for the respondent no. 01 during the subject election of 2020.

55. R.W.-11 in his examination-in-chief has stated that he is a voter from the village Baliyas Kadma which is under Sizzat Baliyas gram panchayat under Dhoraiya assembly constituency. The witness states that he had contested the panchayat elections and was elected as *Sarpanch* of Sizzat Baliyas Gram Panchayat in 2011 and was re-elected in 2021. Thereafter the witness has stated regarding the electoral journey of the respondent no. 01. The witness has stated that as far as he knows there are no criminal cases pending against the respondent no. 01 except for the cases of model code of conduct violation and one land dispute case, which has been falsely instituted against the respondent no.01 and the officers of the administration of Bhagalpur. The witness states that this was out of some political instigation. The witness states that the false



case has not affected the voters of the constituency and the votes cast in favour of the respondent no.01 were because of the development work carried out by the respondent no. 01 during his tenure as a Member of Legislative Assembly and Member of the Parliament. The witness states that he had interacted with the general public of his gram panchayat who were voters in the subject elections and none of them were affected with the cases filed against the respondent no. 01.

56. R.W.-11 in his cross examination has stated that he was not present during when the respondent no. 1 had filed his nomination papers and that the witness had not seen the declarations made by the respondent no. 01. The witness states that he came to know through the newspapers that only two cases are registered against the respondent no. 01 i.e. one complaint case that pertains to the land dispute and another one relating to elections.

57. The R.W.-12, Manoj Kumar, the then Clerk, posted in the office of the DCLR Sadar, Bhagalpur, in his examination-in-chief has stated that he remembers the BLDR Case No. 91 of 2013-14 filed by one Indrani Choudhary, which was heard in the office of the DCLR Sadar, Bhagalpur. This witness states that he remembers the case since he was working



with the Head Clerk in the said office while the aforesaid BLDR case was heard for execution. This witness states that the order was passed in the execution case during the period when he was posted in the said office and the order-sheet reflects the final order passed by the then DCLR, Bhagalpur. The witness has also identified the signature and handwriting of the then DCLR, Bhagalpur.

58. In the cross-examination of the R.W.-12, the witness states that he does not remember the number of cases disposed by the DCLR between 2013 and 2020. Further the witness has stated that the dictation of the order dated 07.12.2013 was given by the then DCLR to the Head Clerk while he was not present. Lastly, the witness has stated that he is not aware of any criminal cases filed against the respondent no.01 with regard to the dispute before DCLR, Bhagalpur.

59. The Official Witness-01, Parul Priya, the then Returning Officer in her examination-in-chief has stated that she was the Returning Officer of Dhoraiya Assembly Constituency and the candidates who contested the elections had presented their nomination papers before her. This witness states that as the Returning Officer, she checked and supplied the details of the defects in the nomination papers vide a



checklist to the contesting candidates. Further, this witness has deposed that the scrutiny with regard to the nomination papers of Dhoraiya Assembly Constituency were held in the year 2020 in her office. This witness also stated that on the date of the scrutiny apart from the Returning Officer, the Assistant Returning Officer, the Observer and the other staffs of the office as well as the candidates whose nomination papers are to be scrutinized were present and the nomination papers of all the candidates were opened in front of them one by one and all the nomination papers were scrutinized in their presence. During the course of scrutiny, the candidates were allowed to raise objection with regard to any defects in the nomination papers of the candidates. This witness has further states that the scrutiny was started at 11:00 A.M. and continued till 3:00 P.M. and no objection was raised by any candidate with regard to any nomination. Further, no objection was raised by any person on the nomination papers submitted by Sri Bhudeo Choudhary, the Returned Candidate. The witness lastly states that while conducting scrutiny, she is not supposed to conduct any inquiry with regard to any facts mentioned in the nomination papers.

60. The Official Witness-01, in her cross examination has stated that once the nomination paper is



accepted there is no provision for receiving any objection with regard to the nomination of any candidate. This witness has identified the signature on the check-list. This witness states that the scrutiny is a *quasi judicial* process and while performing scrutiny she performed the duty of *quasi judicial* Officer. The decision of the Returning Officer with regard to the acceptance or rejection of the nomination paper is based on the materials disclosed in the nomination paper and the affidavit appended thereto. The Returning Officer has no role or authority to examine of the correctness of the statements made in the affidavit. If any candidate raises an objection with regard to any statement made in the nomination paper of a candidate or with regard to the statement made in the affidavit supported by the materials then the Returning Officer shall hold the summary proceeding and decide the objection, if any. This witness lastly states that since no objection was filed at the time of the scrutiny of nomination papers of the respondent no.1, she did not hold any summary inquiry.

61. R.W.-13, Bhudeo Chaudhary, the Returned candidate-respondent no.01 in his examination-in-chief has stated that he had contested the election for the Legislative Assembly from 10, Dhoraiya (S.C.) Assembly Constituency



wherein he was declared elected upon having secured highest number of votes. The witness has stated the electoral journey including his victories and losses from the year 2005. Thereafter the witness has stated that in the present elections conducted in 2020 he had contested on the ticket of *Rashtriya Janta Dal* and that he filed my nomination paper for the 2020 election on 07.10.2020 i.e. a day before the last day of nomination. This witness thereafter narrates the process undertaken by him to file the nomination papers. This witness has also stated that he had received a check list upon submission of his nomination papers wherein no defects were marked. However, on the next date, an intimation was received from the office of the Returning Officer to file fresh affidavit of Form-26 as in Para-4 Column-1 along with "self" name of the candidate was also required to be written. In pursuance of the same, a fresh Form 26 was filed after removing the said defects. Thereafter this witness states that no objection was raised by any of the candidates or their representatives or any of the officials on the date of scrutiny which was held on 09.10.2020 and further the election agent Sri Uma Shankar Singh had been present during the course of scrutiny of nomination papers. Even subsequent to the scrutiny and during the entire period of election no objection was made



by anyone with respect to acceptance of the nomination paper. This witness also states that in Form-26 at Para-5 the details of all the ongoing criminal cases against him were mentioned however, due to clerical error the P.S. Case number of one of the case had been mistakenly written as Rajoun P.S. Case No. 128/2009 instead of Rajoun PS Case No. 121/2009. Further, this witness states that in Rajoun P.S. Case No.128/2009 Sri Manish Kumar, respondent no.11, who was also a contesting candidate in this election, 2020 was named as accused. This witness further states that there was no occasion for him not to disclose Rajoun P.S. Case No.121/2009 and instead disclose the other case which was much grave in nature even though the respondent no. 01 was not an accused in that case. Further, he had disclosed the criminal antecedents while contesting the parliamentary general elections from Jamui (SC) Constituency. This witness has further states that inadvertent error evidently was more disadvantageous to him instead of being advantageous. As regards the Complaint case no. 468/2015, this witness has stated that the same originated from Complaint Case no.45 of 2014 filed by one Parmanand Sharma with respect to a land purchased by a registered sale deed in the year 2006 by the wife of this witness. The said matter was referred to Mojahidpur



police station and accordingly, Mojahidpur P.S. Case No.12/2014 was registered. After due investigation, the police had submitted final form upon finding the allegation not true. Subsequently, on protest by the complainant a separate Complaint Case no.468/2015 was registered by the learned CJM, Bhagalpur. After appearance, the court had posted the matter for evidence before the charge in April, 2017. After part evidence, the matter was fixed for cross examination in May, 2017. This witness further states that upon perusal of the order-sheet it appears that the complainant defaulted and even order of personal appearance of complainant was passed giving him last chance. The complainant kept on defaulting and virtually abandoned the case and after more than two years the evidence of the complainant was closed by the order of the learned court below. This witness also stated that there was no question or any intention of not disclosing the criminal antecedents because earlier during the parliament election which was held in the month April-May, 2019 he had filed his nomination paper from 40, Jamui (SC) Parliamentary constituency wherein he had disclosed the aforesaid criminal antecedents.

62. R.W.-13, Bhudeo Choudhary, in his examination-in-chief has stated that he knew that one of the



main grounds raised by the election petitioner was that the respondent no.01 had suppressed two criminal antecedents. The R.W.-13 upon perusal of the Exhibit-F, which is the FIR of Rajoun P.S. Case No. 121 of 2009 stated that he is one of the accused in the said FIR. Upon going through the Annexure-5 (Exhibit-3) of the election petition, the witness states that the Mojahidpur PS Case No.12 of 2014 was registered against himself and his wife along with other accused persons wherein final form was submitted. The witness further states that after submission of the final form, the protest petition was filed and thereafter cognizance was taken wherein the witness himself is named as an accused.

63. I have considered the rival contentions of the parties as well as the oral and documentary evidence led by both the parties.

64. The principal thrust and the nucleus of the present election petition as asserted by the petitioner is that the respondent no.01 has failed to disclose two pending criminal cases against him while submitting his nomination in Form-26 in terms of Rule -4A of the Conduct of Election Rules, 1961, in contravention of the constitutional rights of the voters, extant statutory provisions and the rules made thereunder thereby



rendering the votes cast to be *non-est* for want of complete exposure to the electors. The two criminal cases which according to the election petitioner have not been disclosed are as under :-

(i) Rajaun P.S. Case No. 121 of 2009 dated 31.08.2009 (G.R. No. 1371/2009) registered under sections 188, 171-F and section 34 of the Indian Penal Code pending before the Court of ACJM, Banka, wherein charge sheet being No. 42/2010 dated 30.05.2010 has been submitted.

(ii) Complaint Case No.468/2015 filed in Mojahidpur P.S. Case 12 of 2014 pending before CJM, Bhagalpur, wherein cognizance under sections 323, 324, 379, 452 and 120B of the Indian Penal Code has been taken by the learned Court.

65. Upon perusal of the certified copy of the F.I.R. in Rajoun P.S. Case No.121 of 2009 dated 31.08.2009 which is marked as Exhibit-2, it surfaces that the aforesaid FIR was registered under sections 188 (disobedience to order duly promulgated by public servant) and 171F (offence of undue



influence or personation at an election) read with section 34 of the Indian Penal Code and the returned candidate-respondent no.01 is arrayed as the accused therein.

66. On the other hand, the complaint case 468/2015 filed in Mojahidpur P.S. Case No. 12 of 2014 pending before CJM, Bhagalpur, wherein cognizance under sections 323 (Punishment for voluntarily causing hurt), 324 (Voluntarily causing hurt by dangerous weapons or means), 379 (Punishment for theft), 452 (House-trespass after preparation for hurt, assault or wrongful restraint) and 120-B (Punishment of criminal conspiracy) has been taken.

67. The first limb of the defence against the aforesaid non-disclosure made by the returned candidate-respondent no.2 is that so far as the first criminal case is concerned, the non-disclosure was merely a typographical/ clerical error, inasmuch as, instead of Rajaun P.S. Case No. 121 of 2009, the disclosure for Rajaun P.S. Case No.128 of 2009 was made, which was an inadvertent error. It is submitted that the confusion arose owing to the fact that both the aforementioned two cases were registered at the same police station in the same year, largely relating to similar provisions of law and were being defended by the same advocate. It is



emphatically argued that the typographical / clerical error was unintentional since the Rajaun P.S. Case No.128 of 2009 was registered under more grave sections wherein the returned candidate-respondent no.01 was not even arrayed as an accused when compared with the sections invoked in Rajaun PS. Case 121 of 2009. An attempt was also made to establish that such non-disclosure could not have materially affected the outcome of the elections since the criminal case which was disclosed in the Form-26, though in error, wherein the respondent was not a named accused, carried more serious and grave sections than the actual criminal case that ought to have been disclosed.

68. The other limb of defence raised by the respondent no. 01 is regarding the Mojahidpur P.S. Case 12 of 2014, which came to be registered as Complaint Case No. 468 of 2015 upon protest petition by the complainant. It is argued that the complainant therein was directed to bring the evidence before charge by the learned Magistrate but the complainant repeatedly failed to produce witness and thereafter on 03.07.2019 the evidence was closed. It is argued therefore that this was construed as the case having been closed therefore the same was not mentioned in Form-26 by the respondent no. 01. It was emphasised on behalf of the respondent that the closure of



evidence was recalled only on 30.08.2022 by the learned Magistrate, Bhagalpur whereas nominations were filed in October 2020 itself.

69. Before weighing the merits of the two sides, it would be apposite to refer to the judicial precedents, connected legislative and subordinate legislative enactments, on the subject matter, in order to adjudicate on this issue and the factum of the present case.

70. In the case of *Union of India vs. Association of Democratic Reforms* reported as (2002) 5 SCC 294, the Hon'ble Supreme Court made the following observations in relation to electoral reforms particularly the disclosures of criminal antecedents and assets, which led to the introduction of sections 33A and 33B in the R.P. Act, 1951.

“46. To sum up the legal and constitutional position which emerges from the aforesaid discussion, it can be stated that:

- 1. The jurisdiction of the Election Commission is wide enough to include all powers necessary for smooth conduct of elections and the word — “elections” is used in a wide sense to include the entire process of election which consists of several stages and embraces many steps.*
- 2. The limitation on plenary character of power is when Parliament or State Legislature has made a valid law relating to or in connection with*



*elections, the Commission is required to act in conformity with the said provisions. In case where law is silent, Article 324 is a reservoir of power to act for the avowed purpose of having free and fair election. The Constitution has taken care of leaving scope for exercise of residuary power by the Commission in its own right as a creature of the Constitution in the infinite variety of situations that may emerge from time to time in a large democracy, as every contingency could not be foreseen or anticipated by the enacted laws or the rules. By issuing necessary directions, the Commission can fill the vacuum till there is legislation on the subject. In **Kanhiya Lal Omar case [(1985) 4 SCC 628]** the Court construed the expression —superintendence, direction and control in Article 324(1) and held that a direction may mean an order issued to a particular individual or a precept which many may have to follow and it may be a specific or a general order and such phrase should be construed liberally empowering the Election Commission to issue such orders.*

3. *The word — “elections” includes the entire process of election which consists of several stages and it embraces many steps, some of which may have an important bearing on the process of choosing a candidate. Fair election contemplates disclosure by the candidate of his past including the assets held by him so as to give a proper choice to the candidate according*



*to his thinking and opinion. As stated earlier, in **Common Cause case [(1996) 2 SCC 752]** the Court dealt with a contention that elections in the country are fought with the help of money power which is gathered from black sources and once elected to power, it becomes easy to collect tons of black money, which is used for retaining power and for reelection. If on an affidavit a candidate is required to disclose the assets held by him at the time of election, the voter can decide whether he could be re-elected even in case where he has collected tons of money.*

Presuming, as contended by the learned Senior Counsel Mr Ashwani Kumar, that this condition may not be much effective for breaking a vicious circle which has polluted the basic democracy in the country as the amount would be unaccounted. Maybe true, still this would have its own effect as a step-in-aid and voters may not elect law-breakers as law-makers and some flowers of democracy may blossom.

4. *To maintain the purity of elections and in particular to bring transparency in the process of election, the Commission can ask the candidates about the expenditure incurred by the political parties and this transparency in the process of election would include transparency of a candidate who seeks election or re-election. **In a democracy, the electoral process has a strategic role. The little man of this country would have basic elementary right to know full particulars of a candidate who is to represent***



him in Parliament where laws to bind his liberty and property may be enacted.

5. *The right to get information in democracy is recognised all throughout and it is a natural right flowing from the concept of democracy. At this stage, we would refer to Article 19(1) and (2) of the International Covenant on Civil and Political Rights, which is as under:*

“(1) Everyone shall have the right to hold opinions without interference.

(2) Everyone shall have the right to freedom of expression; this right shall include freedom to seek, receive and impart information and ideas of all kinds, regardless of frontiers, either orally, in writing or in print, in the form of art, or through any other media of his choice.”

6. *On cumulative reading of a plethora of decisions of this Court as referred to, it is clear that if the field meant for legislature and executive is left unoccupied detrimental to the public interest, this Court would have ample jurisdiction under Article 32 read with Articles 141 and 142 of the Constitution to issue necessary directions to the executive to subserve public interest.*
7. **Under our Constitution, Article 19(1)(a) provides for freedom of speech and expression. Voter's speech or expression in case of election would include casting of votes, that is to say, voter speaks out or expresses by casting vote.**



For this purpose, information about the candidate to be selected is a must. Voter's (little man — citizen's) right to know antecedents including criminal past of his candidate contesting election for MP or MLA is much more fundamental and basic for survival of democracy. The little man may think over before making his choice of electing lawbreakers as law-makers.

.....

48. *The Election Commission is directed to call for information on affidavit by issuing necessary order in exercise of its power under Article 324 of the Constitution of India from each candidate seeking election to Parliament or a State Legislature as a necessary part of his nomination paper, furnishing therein, information on the following aspects in relation to his/her candidature:*

(1) *Whether the candidate is convicted/acquitted/discharged of any criminal offence in the past* — if any, whether he is punished with imprisonment or fine.

(2) *Prior to six months of filing of nomination, whether the candidate is accused in any pending case, of any offence punishable with imprisonment for two years or more, and in which charge is framed or cognizance is taken by the court of law. If so, the details thereof.*

(3) *The assets (immovable, movable,*



bank balance, etc.) of a candidate and of his/her spouse and that of dependants.

(4) Liabilities, if any, particularly whether there are any over dues of any public financial institution or government dues.

(5) The educational qualifications of the candidate. (emphasis supplied)”

71. The Representation of the People (Amendment) Ordinance, 2002, subsequently added section 33A and 33B, which were incorporated into the R.P. Act, 1951 with retrospective effect and the aforesaid ordinance was replaced by the Representation of the People (Third Amendment) Act, 2002.

72. At this junction it would be apposite to reproduce the section 33A of the R.P. Act, 1951:-

“33A. Right to information.—*(1) A candidate shall, apart from any information which he is required to furnish, under this Act or the rules made thereunder, in his nomination paper delivered under sub-section (1) of section 33, also furnish the information as to whether—*

(i) he is accused of any offence punishable with imprisonment for two years or more in a pending case in which a charge has been framed by the court of competent jurisdiction;

(ii) he has been convicted of an offence



[other than any offence referred to in sub-section (1) or sub-section (2), or covered in sub-section (3), of section 8] and sentenced to imprisonment for one year or more.

(2) The candidate or his proposer, as the case may be, shall, at the time of delivering to the returning officer the nomination paper under sub-section (1) of section 33, also deliver to him an affidavit sworn by the candidate in a prescribed form verifying the information specified in sub-section (1).

(3) The returning officer shall, as soon as may be after the furnishing of information to him under sub-section (1), display the aforesaid information by affixing a copy of the affidavit, delivered under sub-section (2), at a conspicuous place at his office for the information of the electors relating to a constituency for which the nomination paper is delivered.”

73. The Hon’ble Supreme Court in the case of ***People's Union for Civil Liberties (PUCL) vs. Union of India***, reported as ***(2003) 4 SCC 399*** while dealing with the challenge to the constitutionality of the aforesaid amendment to the R.P. Act, at paragraph 14 and 15, the Hon’ble Apex Court had taken note of fact that the statute had subsequently limited/curtailed the disclosure required to be made, the relevant excerpt from the aforesaid decision is as under :-



“14. The learned counsel for the respondent submitted that the directions issued by this Court are, to a large extent, implemented by the aforesaid Amended Act. It is true that some part of the directions issued by this Court are implemented. Comparative chart on the basis of judgment and Ordinance would make the position clear -

Subject	Discussion in judgment dated 2-5-2002	Provision under the impugned Ordinance/Amended Act
Past criminal record	Para 48(1) All past convictions/ acquittals/ discharges, whether punished with imprisonment or fine.	Section 33A(1)(ii) Conviction of any offence (except Section 8 offence) and sentenced to imprisonment of one year or more. No such declaration in case of acquittals or discharge. (Section 8 offences to be disclosed in nomination paper itself)
Pending Criminal Cases	Para 48(2) Prior to six months of filing of nomination, whether the candidate has been accused of any criminal offence punishable with imprisonment of two years or more, and charge framed or <u>cognizance taken.</u>	Section 33-A(1)(i) Any case in which the candidate has been accused of any criminal offence punishable with imprisonment of two years or more, and <u>charge framed.</u>
...

15. From the aforesaid chart, it is clear that a candidate is not required to disclose (a) the cases in which he is acquitted or discharged of criminal offence(s); (b) his assets and liabilities; and (c) his educational qualification. With regard to assets, it is sought to be contended that under the Act the



candidate would be required to disclose the same to the Speaker after being elected. It is also contended that once the person is acquitted or discharged of any criminal offence, there is no necessity of disclosing the same to the voters. (emphasis supplied)''.

74. In the aforesaid case ***People's Union for Civil Liberties (PUCL) v. Union of India (Supra)***, the Hon'ble Supreme Court had further held as follows:-

“78. What emerges from the above discussion can be summarised thus:

(A) The legislature can remove the basis of a decision rendered by a competent court thereby rendering that decision ineffective but the legislature has no power to ask the instrumentalities of the State to disobey or disregard the decisions given by the court. A declaration that an order made by a court of law is void is normally a part of the judicial function. The legislature cannot declare that decision rendered by the Court is not binding or is of no effect.

It is true that the legislature is entitled to change the law with retrospective effect which forms the basis of a judicial decision. This exercise of power is subject to constitutional provision; therefore, it cannot enact a law which is violative of fundamental right.

(B) Section 33-B which provides that notwithstanding anything contained in the judgment of any court or directions issued by



the Election Commission, no candidate shall be liable to disclose or furnish any such information in respect of his election which is not required to be disclosed or furnished under the Act or the rules made thereunder; is on the face of it beyond the legislative competence, as this Court has held that the voter has a fundamental right under Article 19(1)(a) to know the antecedents of a candidate for various reasons recorded in the earlier judgment as well as in this judgment.

The Amended Act does not wholly cover the directions issued by this Court. On the contrary, it provides that a candidate would not be bound to furnish certain information as directed by this Court.

*(C) The judgment rendered by this Court in **Assn. for Democratic Reforms** (Ed.: See full text at 2003 Current Central Legislation, Pt. II, at p. 3) has attained finality, therefore, there is no question of interpreting constitutional provision which calls for reference under Article 145(3).*

(D) The contention that as there is no specific fundamental right conferred on a voter by any statutory provision to know the antecedents of a candidate, the directions given by this Court are against the statutory provisions is, on the face of it, without any substance. In an election petition challenging the validity of an election of a particular candidate, the statutory provisions would govern respective rights of the parties.



However, voters' fundamental right to know the antecedents of a candidate is independent of statutory rights under the election law. A voter is first citizen of this country and apart from statutory rights, he is having fundamental rights conferred by the Constitution. Members of a democratic society should be sufficiently informed so that they may cast their votes intelligently in favour of persons who are to govern them. Right to vote would be meaningless unless the citizens are well informed about the antecedents of a candidate. There can be little doubt that exposure to public gaze and scrutiny is one of the surest means to cleanse our democratic governing system and to have competent legislatures.

(E) It is established that fundamental rights themselves have no fixed content, most of them are empty vessels into which each generation must pour its content in the light of its experience. The attempt of the Court should be to expand the reach and ambit of the fundamental rights by process of judicial interpretation. During the last more than half a decade, it has been so done by this Court consistently. There cannot be any distinction between the fundamental rights mentioned in Chapter III of the Constitution and the declaration of such rights on the basis of the judgments rendered by this Court.”

75. In *People's Union for Civil Liberties*



(PUCL) v. Union of India (supra) the Hon'ble Supreme Court speaking through Hon'ble Justice Reddi, J, had finally summarised the conclusions as follows –

“123. Finally, the summary of my conclusions:

...

(6) The right to information provided for by Parliament under Section 33-A in regard to the pending criminal cases and past involvement in such cases is reasonably adequate to safeguard the right to information vested in the voter/citizen. However, there is no good reason for excluding the pending cases in which cognizance has been taken by the Court from the ambit of disclosure.

.....

(9) The Election Commission has to issue revised instructions to ensure implementation of Section 33-A subject to what is laid down in this judgment regarding the cases in which cognizance has been taken. The Election Commission's orders related to disclosure of assets and liabilities will still hold good and continue to be operative. However, Direction 4 of para 14 insofar as verification of assets and liabilities by means of summary enquiry and rejection of nomination paper on the ground of furnishing wrong information or suppressing material information should not be enforced.”

76. Evidently in the aforesaid decision Hon'ble Justice Dharmadhikari had also concurred with the opinion of



Hon'ble Justice Reddi, J.

“131. With these words, I agree with Conclusions (A) to (E) in the opinion of Brother Shah, J. and Conclusions (1), (2), (4), (5), (6), (7) and (9) in the opinion of Brother P.V. Reddi, J.”

77. In the case of ***Public Interest Foundation v. Union of India*** reported as (2019) 3 SCC 224 the Hon'ble Supreme Court held as follows :-

“116. Keeping the aforesaid in view, we think it appropriate to issue the following directions which are in accord with the decisions of this Court:

116.1. Each contesting candidate shall fill up the form as provided by the Election Commission and the form must contain all the particulars as required therein.

116.2. It shall state, in bold letters, with regard to the criminal cases pending against the candidate.

116.3. If a candidate is contesting an election on the ticket of a particular party, he/she is required to inform the party about the criminal cases pending against him/her.

116.4. The political party concerned shall be obligated to put up on its website the aforesaid information pertaining to candidates having criminal antecedents.



116.5. The candidate as well as the political party concerned shall issue a declaration in the widely circulated newspapers in the locality about the antecedents of the candidate and also give wide publicity in the electronic media. When we say wide publicity, we mean that the same shall be done at least thrice after filing of the nomination papers.”

78. In compliance with the directions given by the Hon'ble Supreme Court in ***Lok Prahari vs. Union of India & Ors. (2018) 4 SCC 699*** and ***Public Interest Foundation & Ors. vs. Union of India and Anr. (Supra)***, the Union Government in exercise of powers under section 77(3) read with section 169 of the R.P. Act 1951, amended the Conduct of Election Rules 1961 by way of Conduct of Election (Amendment) Rules, 2018. The paragraph 5 of the present Form-26, as amended which was in vogue during the subject election cycle, thus stood as under –

"(5) Pending criminal cases.-

(i) I declare that there is no pending criminal case against me. (Tick this alternative, if there is no criminal case pending against the Candidate and write NOT APPLICABLE against alternative (ii) below)

OR



(ii) *The following criminal cases are pending against me:*

(If there are pending criminal cases against the candidate. then tick this alternative and score off alternative (i) above and give details of all pending cases in the Table below)

Table

(a)	<i>FIR No. with name and address of Police Station concerned</i>			
(b)	<i>Case No. with Name of the Court</i>			
(c)	<i>Sections of concerned Acts/Codes involved (give no. of the section. e.g. Section of IPC, etc.)</i>			
(d)	<i>Brief description of offence</i>			
(e)	<i>Whether charges have been framed (mention YES or NO)</i>			
(f)	<i>If answer against item (e) above is YES, then give the date on which charges were framed</i>			
(g)	<i>Whether any Appeal/Application for revision has been filed against the proceedings (Mention YES or NO)</i>			

79. The Hon'ble Supreme Court in the case of ***Satish Ukey vs. Devendra Gangadharrao Fadnavis & Anr.*** (Three Judge Bench) reported in (2019) 9 SCC 1, while considering the provisions of Section 33A of the R.P. Act of 1951 and the amended provisions of (amended in 2012) Rule 4-



A of the Conduct of Election Rules of 1961 and the contents of the Form-26 had held in paragraph 24 as follows

“20. A bare perusal of Form 26 makes it abundantly clear that, for offences punishable with imprisonment for two years or more, while Entry (5)(i) mandates disclosure of information by the contesting candidate regarding the case(s) that is/are pending against him in which charges have been framed by the Court; **Entry (5)(ii) mandates disclosure of information by the contesting candidate regarding cases that are pending against him in which cognizance has been taken by the Court.**

21. Entry 5(ii) specifically mentions that the candidate is required to provide information of the case(s) pending in which cognizance has been taken. This is in addition to the information he is required to provide against the column in Entry 5(i) as the words "Other than the cases mentioned in Item (i) above" are specifically used in Entry 5(ii).

.....

24. A cumulative reading of Section 33-A of the 1951 Act and Rule 4-A of the 1961 Rules and Form 26 along with the letters dated 24-8-2012 26-9-2012 and 26-4-2014, **in our considered view, make it amply clear that the information to be furnished under Section 33-A of the**



1951 Act includes not only information mentioned in clauses (i) and (ii) of Section 33-A(1), but also information, that the candidate is required to furnish, under the Act or the Rules made thereunder and such information should be furnished in Form 26, which includes information concerning cases in which a competent court has taken cognizance [Entry 5(ii) of Form 26]. This is apart from and in addition to cases in which charges have been framed for an offence punishable with imprisonment for two years or more or cases in which conviction has been recorded and sentence of imprisonment for a period of one year or more has been imposed [Entries 5(i) and 6 of Form 26 respectively].

80. In the case of *Karikho Kri vs Nuney Tayang & Anr.* reported as **2024 SCC OnLine SC 519** the Hon'ble Supreme Court had observed as under –

“45. So far as the ground under Section 100(1)(d) (iv) of the Act of 1951 is concerned, the provision requires that the established noncompliance with the provisions of the Constitution or the Act of 1951 or any rules or orders made thereunder necessarily has to be shown to have materially affected the result of the election insofar as it concerns the returned



candidate. Significantly, the High Court linked all the nondisclosures attributed to Karikho Kri to Section 100(1)(d)(i) of the Act of 1951 but ultimately concluded that his election stood invalidated under Section 100(1)(d)(iv) thereof. Surprisingly, there is no discussion whatsoever on what were the violations which qualified as non-compliance with the provisions of either the Constitution or the Act of 1951 or the rules and orders framed thereunder, for the purposes of Section 100(1)(d)(iv), and as to how the same materially affected the result of the election.

46. *In Mangani Lal Mandal v. Bishnu Deo Bhandari, this Court held that where a returned candidate is alleged to be guilty of noncompliance with the provisions of the Constitution or the Act of 1951 or any rules or orders made thereunder and his election is sought to be declared void on that ground, it is essential for the election petitioner to aver, by pleading material facts, that the result of the election insofar as it concerned the returned candidate has been materially affected by such breach or non-observance. It was further held that it is only on the basis of such pleading and proof that the Court would be in a position to form an opinion and record a finding that such breach or non-compliance has materially affected the result of the election before election of the returned candidate could be declared void. It was further observed that mere non-compliance or breach of the Constitution or the*



statutory provisions, as stated above, would not result in invalidating the election of the returned candidate under Section 100(1)(d)(iv) as the sine qua non for declaring the election of a returned candidate to be void on that ground under clause (iv) of Section 100(1)(d) is further proof of the fact that such breach or non-observance has resulted in materially affecting the election of the returned candidate. For the election petitioner to succeed on such ground, viz., Section 100(1)(d) (iv), he has not only to plead and prove the breach but also show that the result of the election, insofar as it concerned the returned candidate, has been materially affected thereby.

47. *In L.R. Shivaramagowda v. T.M. Chandrashekar (Dead) by LRs, a 3-Judge Bench of this Court pointed out that in order to declare an election void under Section 100(1)(d)(iv) of the Act of 1951, it is absolutely necessary for the election petitioner to plead that the result of the election, insofar as it concerned the returned candidate, has been materially affected by the alleged non-compliance with the provisions of the Constitution or the Act of 1951 or the rules or orders made thereunder and the failure to plead such material facts would be fatal to the election petition.*

48. *However, perusal of the election petition filed by Nuney Tayang reflects that the only statement made by him in this regard is in Paragraph 21 and it reads as follows:*



‘.....Hence, his nomination papers suffer from substantial and material defects. As such, the result of the election, insofar as the respondent No. 1 is concerned, is materially affected by the improper acceptance of his nomination as well as by the non-compliance with the provisions of the Representation of the People Act, 1951 and the rules and orders made thereunder, including Section 33(1) of the Representation of the People Act, 1951, Rule 4A of the Conduct of Election Rules, 1961 and the orders made thereunder.....’

Again, in his ‘Ground No. (ii)’, Nuney Tayang stated as under:

‘.....As such, the nomination papers of the respondent Nos. 1 and 2 were improperly accepted by the Returning Officer and the result of the election in question, insofar as it concerns the respondent No. 1 the return candidate, as well as the respondent No. 2, has been materially affected by such improper acceptance of their nominations.....’

Though there are some general references to



non-compliance with particular provisions of the Act of 1951 and the rules made thereunder; we do not find adequate pleadings or proof to substantiate and satisfy the requirements of Section 100(1)(d)(iv) of the Act of 1951. Therefore, it is clear that Nuney Tayang tied up the improper acceptance of Karikho Kri's nomination, relatable to Section 100(1)(d) (i) of the Act of 1951, with the non-compliance relatable to Section 100 (1)(d)(iv) thereof and he did not sufficiently plead or prove a specific breach or how it materially affected the result of the election, in so far as it concerned the returned candidate, Karikho Kri. It was not open to Nuney Tayang to link up separate issues and fail to plead in detail and adduce sufficient evidence in relation to the non-compliance that would attract Section 100(1)(d)(iv) of the Act of 1951. The finding of the High Court in that regard is equally bereft of rhyme and reason and cannot be sustained.

49. *As regards the failure on the part of Karikho Kri to disclose the dues of municipal/property taxes payable by him and his wife, the same cannot be held to be a non-disclosure at all, inasmuch as he did disclose the particulars of such dues in one part of his Affidavit but did not do so in another part. In any event, as Mr. Arunabh Chowdhury, learned senior counsel, fairly stated that he would not be pressing this ground, we need not labour further upon this point.*
50. *On the above analysis, we hold that the High*



Court was in error in concluding that sufficient grounds were made out under Sections 100(1)(b), 100(1)(d)(i) and 100(1)(d)(iv) of the Act of 1951 to invalidate the election of Karikho Kri and, further, in holding that nondisclosure of the three vehicles, that still remained registered in the names of his wife and son as on the date of filing of his nomination, amounted to a 'corrupt practice' under Section 123(2) of the Act of 1951. In consequence, we find no necessity to independently deal with Civil Appeal No. 4716 of 2023 filed by Nuney Tayang, in the context of denial of relief to him by the High Court, or the issues raised by Dr. Mohesh Chai in the replies filed by him."

81. From the perusal of the aforesaid decisions of the Hon'ble Supreme Court and the statutory provisions along with rules made thereunder, it becomes patently clear that a contesting candidate is supposed to disclose the criminal antecedents in the nomination papers, in the form and manner as prescribed under Form-26 (as amended from time to time), in order to ensure that the electors have due and proper exposure to make an informed and intelligent choice while casting their votes. This fundamental right to know the criminal antecedents of the contesting candidates is *sine qua non* for functioning of a healthy democracy and to ensure its purity. However, in order to declare the election of a returned candidate as *null* and *void* the



election petitioner would have to ensure specific and adequate pleadings or prove to substantiate and satisfy the requirements of section 100(1) of the R.P. Act, 1951 in order to abundantly illustrate that the result of the election stood materially affected. The Hon'ble Apex Court in *Karikho Kri (supra)* placing reliance on *Mangani Lal Mandal vs. Bishnu Deo Bhandari (2012) 3 SCC 314*, had emphasised on the 'two-layered' test to set aside the election of the returned candidate having been declared as null and void. Bald and vague allegations without any basis would not be sufficient compliance of the requirement of stating material facts in the election petition, therefore on the first layer of the test, the petitioner is essentially required to aver by way of specific, adequate and unambiguous pleadings on material facts regarding non-compliance/non-observance of provisions of Constitution or the R.P. Act, 1951 or any rules or orders made thereunder. However, a mere non-compliance *simpliciter* would not *ipso facto* result in straightaway invalidating the election of the returned candidate. The second and more crucial layer of the test is for the petitioner to abundantly establish that such non-observance/non-compliance has materially affected the result of the election in each case.

82. The Hon'ble Supreme Court in *Sudarsha*



Avasthi v. Shiv Pal Singh, reported as (2008) 7 SCC 604 has observed as under:

“20. The election petition is a serious matter and it cannot be treated lightly or in a fanciful manner nor is it given to a person who uses this as a handle for vexatious purpose.”

83. Therefore, what falls from a close analysis of the precedents cited above and the materials available on record is that the election petitioner has not been able to sufficiently establish that the mere non-disclosure of the two criminal cases has materially affected the outcome of the election. In the peculiar factual matrix of the present case wherein there is admittedly a typographical error in Form 26 submitted by the respondent no.1 which carries a more grave offence as compared to the original case which ought to have been declared. The respondent has brought several independent witnesses to establish that the non-disclosure of the aforesaid criminal cases did not materially affect the outcome of the election.

84. The Hon'ble Supreme Court in the case of *Thakur Sen Negi vs. Dev Raj Neji* reported as AIR 1994 SC 2526 has held that the decision of the ballot must not be lightly interfered with unless the challenge is on a substantial ground



supported by responsible and dependable evidence.

85. The instant case is peculiar in the sense that the respondent no.1 has disclosed a case wherein he has not been named as an accused and the particular case which was disclosed in fact carries a more serious offence as compared to the actual case. Therefore, it cannot be drawn from this fact that the right the know of the electors was deliberately infringed in order to benefit the respondent no.1 in the elections. Each election petition has to be examined on its own facts.

86. Be that as it may, the first criminal case i.e. Rojoun P.S. Case No.121 of 2009 carries maximum punishment which is less than two years.

87. The onus of sufficiently establishing the grounds under section 100 of the R.P. Act, 1951 lies solely on the election petitioner and therefore, it is the election petitioner who has to meticulously satisfy the procedural and substantive requirements under the R.P. Act, 1951. Non-filing of Form 25 by the election petitioner to substantiate the allegation of undue influence and corrupt practices is a fatal flaw that prevents attracting the grounds enumerated under section 100 of the R.P. Act, 1951.

88. Therefore, the first issue is answered in the



negative i.e. against the petitioner and in favour of the respondent no.1.

89. Since the first issue, which is the central issue, has been decided against the petitioner, the rest issues which have been framed on the question of maintainability of the petition do not warrant further adjudication.

90. In view of the aforesaid discussions, the election petitioner has not been able to establish sufficient grounds for declaring the election of the respondent no.1 as *null and void* and therefore this election petition must fail. According, this election petition is dismissed.

(Sandeep Kumar, J)

pawan/-

AFR/NAFR	N.A.F.R.
CAV DATE	28.11.2024.
Uploading Date	27.02.2025
Transmission Date	

