

**IN THE HIGH COURT OF JUDICATURE AT PATNA**  
**ELECTION PETITION No.4 of 2025**

Dr. Ejya Yadav wife of Sri Ashok Kumar, resident of S.D.O. Road, Hajipur,  
P.O. and P.S. Hajipur District - Vaishali at Hajipur.

... .. Petitioner/s

Versus

1. Rajesh Kumar Singh son of Kameshwar Singh, resident of village and P.O. Anugrah Nagar , Baluaahi, P.S. Mohiuddin Nagar, District - Samastipur.
2. The Election Commission of India through the Chief Election Commissioner, Nirvachan Sadan, Ashoka Road, New Delhi.
3. Sri Vikash Pandey son of not known to the petitioner, presently posted as the Sub-Divisional Officer, Patori -cum-Returning Officer , 137, Mohiuddin Nagar Assembly Constituency, Bihar, District- Samastipur

... .. Respondent/s

**Appearance :**

|                          |   |                                    |
|--------------------------|---|------------------------------------|
| For the Petitioner/s     | : | Mr. Awnish Kumar, Advocate         |
| For the ECI & Resp. No.3 | : | Mr. Siddharth Prasad, Advocate     |
| For the Respondent No.1  | : | Mr. Kumar Kaushik, Advocate        |
|                          |   | Mr. Vishal Vikram Rana, Advocate   |
|                          |   | Ms. Misha Bharti, Advocate         |
|                          |   | Mr. Utkarsh Vikaram Rana, Advocate |
|                          |   | Mr. Kumar Sourabh, Advocate        |
|                          |   | Mr. Akash Priye, Advocate          |
|                          |   | Mr. Rishabh Kumar Rao, Advocate    |

**CORAM: HONOURABLE MR. JUSTICE ASHOK KUMAR PANDEY**  
**CAV ORDER**

14    12-08-2026

**I.A. No. 4 of 2026**

This interlocutory application (I.A.) has been filed on behalf of respondent no. 1 under Order 7 Rule 11 of CPC read with Section 86 Sub-clause 1 of the Representation of People Act ( in short R.P. Act) for rejection of plaint since the plaint does not disclose a cause of action and the election is barred by the proviso to Section 83 (I) (C) read with Rule 94A of the Conduct of Election Rules 1961 as a necessary affidavit in Form 26 of the Conduct of Election Rules 1961 was required to be



furnished by the election petitioner at the time of filing the election petition.

2. It has been submitted that the present election petition has been filed by the election petitioner for declaring the election of respondent number 1 from 137 Mohiuddinnagar Assembly Constituency in the election held on 06/11/2025 to be void, allegedly for improper acceptance of the nomination paper filed by respondent number 1 and for wrong rejection of the nomination paper of another candidate, namely Ramjit Thakur.

3. The election petition is fit to be rejected in view of the provisions contained in Order 7 Rule 11 (A) and (D) of the Civil Procedure Code 1908 read with Section 86 Sub-clause 1 of the RP Act for the following reasons. First, the allegation leveled in the election petition with respect to non-disclosure of criminal cases against respondent number 1 is absolutely vague and lacks necessary averment to substantiate that respondent number 1 has concealed any information in this regard which was required to be disclosed as per Section 33A of the RP Act (hereinafter to be mentioned as RP Act).

4. The election petition lacks averment to the effect that respondent number 1 was accused of an offense punishable with imprisonment for two years or more in a pending case in



which a charge has been framed by a court of competent jurisdiction or he has been convicted of an offense and sentenced to imprisonment for one year or more. In the absence of any averment to the said effect, it cannot be said that the answering respondent has not furnished the requisite details in the nomination form with respect to his criminal antecedents.

5. It has not been stated anywhere in the election petition that respondent no. 1 had knowledge about any criminal case pending against him on the date of filing of nomination. In the absence of any averment in the election petition that respondent no. 1 had any knowledge about the criminal case or charges having been framed in a criminal case, the said ground does not give any cause of action to the election petitioner and that there is no any averment in the election petition that the non-disclosure of the information relating to a criminal case has materially affected the election of the returned candidate, in the absence of which the petition on the grounds mentioned under Section 100(1)(d)(i) is not maintainable.

6. It has further been submitted that cognizance has also not been taken in the case bearing Patori (Mohiuddinnagar) PS Case Number 371 of 2020, dated 14/10/2020 on the stage of filing of nomination, and the answering respondent later came to



know that a charge sheet was filed only under Section 504 and 506 which were both non-cognizable in nature and did not contain any punishment for more than 2 years. Later on, cognizance was also taken under Section 353, apart from Section 504 and 506 of the IPC. Therefore, the said case gives no cause of action to the election petitioner at all.

7. It has further been submitted that the allegations regarding the failure of the answering respondent to disclose his income and assets are thoroughly misconceived and do not deserve any consideration. Respondent number 1 has disclosed all the requisite details relating to his assets and liabilities. Moreover, there is no averment in the election petition that the result of the election has been materially affected by the improper acceptance of the nomination of respondent number 1.

8. Under Section 83 Sub-clause 1 Sub-clause C read with Rule 94A of the Conduct of Election Rules 1961, an affidavit in Form 26 of the Conduct of Election Rules 1961 was required to be furnished by the election petitioner at the time of filing the election petition. Since the election petitioner has alleged corrupt practice against the returned candidate, the failure to file such an affidavit in Form-26 is fatal to the maintainability of the election petition.



9. That if the allegation of concealment of criminal antecedent is found to be true and if found to have materially affected the election of the returned candidate, it would amount to undue influence and therefore, the filing of Form 26 is essential and mandatory. In the absence of which, the present election petition is not maintainable.

10. The election petition is also not maintainable due to the reason that the election petitioner did not challenge the nomination paper filed by respondent number 1 before the returning officer on the day on which the nomination paper was filed despite an opportunity of making an objection. In the absence of any objection having been made by the election petitioner at the time of filing of the nomination, he is estopped from contending now that the nomination paper of respondent number 1 was improperly accepted. The petitioner did not raise any objection with respect to the discrepancy in the nomination paper at the stage of scrutiny and therefore should be precluded from raising such objection in the present election petition.

11. It has further been submitted that the election petition also deserves to fail for non-joinder of a candidate, namely Ramjit Thakur, as a party to the election petition. Since the election petitioner has sought to sustain the election petition



also on the ground that the nomination paper of the aforesaid candidate was improperly rejected. In the absence of Sri Ramjit Thakur being a party to this list, this ground cannot be entertained by this court.

12. The averment made in the election petition that the income shown in the income tax return filed by respondent number 1 is not commensurate with his real income is beyond the scope of the election petition. Respondent number 1 had duly disclosed his income as furnished by him in the income tax return and therefore, no cause of action accrues to the election petitioner to challenge the election on this ground.

13. In the absence of Form 26 having been filled up by the election petitioner, the election petition alleging concealment of necessary information relating to criminal cases, assets, and liabilities cannot be maintained. Therefore, the election petition is barred by the proviso to Section 83(1)(C) read with Rule 94A of the Conduct of Election Rules.

14. It is well-settled law that the will of the people cannot be rejected on technical grounds and clerical defects which do not materially affect the election. As such, it has been prayed to reject the election petition at the threshold.

15. No counter affidavit/rejoinder has been filed by



the petitioner.

16. Learned counsel for the respondent has relied on following citations **Ajmera Shyam versus Kova Laxm and Ors.** reported in **(2026) 3 SCC 373**, wherein the Hon'ble Apex Court has verified the law relating to non-disclosure of income, assets as shown in income tax return for four financial years out of last five financial years in Form 26 affidavit and has held that mere failure to disclose assets in affidavit which does not constitute material defect and is not of substantial character does not make acceptance of nomination improper, invalidating the election. Further, issue whether non disclosure of asset is of substantial character must be determined on specific facts of each case. The true test is whether non disclosure of information about assets is of consequential or inconsequential import based on which election would be declared valid or void as the case may be.

17. In this very case, the Hon'ble Apex Court has also dealt scrutiny of nomination- **Scrutiny of nomination papers by returning officer before election vis-a-vis determination of validity of nomination by Court post-election- Difference- Elucidated.**

- Held, scrutiny by returning officer is at stage where voters have not yet expressed their choice through ballot box while the



determination by Court would be post election where voters have declared their verdict and people's mandate cannot be overlooked by Court while examining legality of acceptance of nomination. Court must be careful and circumspect while invalidating people's mandate.

18. Learned counsel for the respondent has relied on column E and F of the Ajmera Shyam (*supra*) case as follows:-

**E. Election - Election Petition/Trial - Scope of Interference- Grounds for declaring election void- Corrupt practices/Electoral Offences- Declaration of voidance of election of returned candidate for non-disclosure of information relating to criminal antecedents vis-à-vis non-disclosure of assets/ income and/or educational qualifications- Considerations for-Whether can be treated with parity -- Law clarified**

--Held, considering evolution of law concerning disclosure of information relating to criminal antecedents and assets, and "*raison d'être*" for same, said considerations cannot be placed on same pedestal - Requirement of disclosure of criminal antecedents need to be examined more scrupulously and dealt with more strictly since involvement of criminals is bane to electoral system, which was prime focus of judicial intervention reflected in insertion of S. 33-A in the 1951 Act

--Disclosure of assets and educational qualifications on the other hand, are attending requirements to improve quality



of electoral process and elected members for which no specific provision is incorporated in the Act but forms part of information required to be stated in terms of R. 4-A of the 1961 Rules

--No disqualification based on candidate's wealth or financial status unlike in case of candidate with criminal antecedents

--Representation of the People Act, 1951 Ss. 33-A. 8 and 9 - Conduct of Election Rules, 1961 R. 4-A and Form 26 Affidavit

**F. Election - Representation of the People Act, 1951 — S. 100 - Grounds for declaring election void - Analysed**

--Under S. 100(1)(a), which was already in existence before judicial intervention, returned candidate is either qualified or not qualified for seat in question and his/her eligibility predate election process No subjective element involved in process for determination and neither any liberal approach proper since such deficiency is fatal to candidacy

Such As regards second ground related to corrupt practice stated in S. 100(1) (b) which also existed prior to judicial intervention, questioned acts would be committed by returned candidate or on his behalf during election process and not connected to attributes of qualifications of candidate acts are censured to ensure integrity of election process, to prevent voters from being misled or unduly influenced, and are essential for proper conduct No leniency can



be shown while addressing issue of corrupt of elections practices

--As regards other grounds concerning improper acceptance or rejection of nominations, or non-compliance with provisions of Constitution, or the Act, or Rules. or Orders made under the Act. these issues are mainly technical and involve some element of subjectivity. since no nomination can be rejected unless defect is of substantial character

19. Learned counsel for the respondent has relied on Paragraph '13' to '26' of the **Ajmera Shyam** (*supra*) case as follows:-

***The legal framework on the right to information***

**13.** Having identified the core issues, we will now focus our attention on the relevant law, which will facilitate resolving the dispute at hand.

**14.** As our country became free and independent, we took a solemn resolution to make this country a democratic republic, as encapsulated in the Preamble to the Constitution of India. Democracy, in its essence, means a society governed by the elected representatives of the people based on universal adult franchise in a free and transparent manner. Thus, free and fair elections go to the root of a functional democracy. Because of the great significance attached to it, the subject of election finds a special place in the Constitution of India



under Part XV which lays down the constitutional mechanism under a constitutional body viz. the Election Commission of India as provided under Article 324 of the Constitution, has been assigned the unique responsibility of superintending, directing and controlling. amongst others, the conduct of all elections to Parliament and the legislature of every State and of elections to the office of the President and Vice-President.

**15.** Article 327 of the Constitution empowers Parliament to make laws covering all aspects related to elections for the Houses of Parliament and the State Legislatures. Based on this Article, Parliament has passed the Representation of the People Act, 1951. which explicitly details the conduct of elections to Parliament and State Legislatures, the qualifications and disqualifications for membership, the corrupt practices and other offences connected with these elections, and the procedure for resolving doubts and disputes arising from them. Thus, the 1951 Act offers a comprehensive and self-contained framework for the conduct of elections by the Election Commission of India. To implement the provisions of the Act, the Central Government, in consultation with the Election Commission of India, framed rules known as "the Conduct of Elections Rules, 1961" (hereinafter referred to as "the Rules").

**16.** It may be apt to mention herein that the Framers of the Constitution had envisaged a



robust electoral system to sustain democracy in our country by incorporating constitutional provisions, and since the Independence, the Election Commission of India has successfully undertaken periodical elections for electing the representatives to the Houses of Parliament and the State Legislatures. Unfortunately, certain pernicious malaise like criminalisation of politics crept in the electoral system compromising with the purity of the elections, causing a serious dent in the electoral system and credibility of the results, which in turn posed a serious challenge to the Rule of Law and the principles of democracy which are the foundational tenets of our Constitution and the society.

**17.** One of the remedies widely discussed in the public domain was how to prevent criminal elements from taking part in the electoral process and subvert the electoral mandate. The most effective means perceived was to disqualify such candidates who had been convicted of serious crimes and/or for corrupt practices, corruption or disloyalty, etc. as incorporated under Section 8 to Section 11-A of the Act. With the passage of time, even such deterrent provisions appeared to be inadequate and there were calls from the public demanding complete disclosure of the antecedents and assets of the candidates, so that the electorate can make a meaningful and informed choice at the time of exercise of franchise, which was also recommended by the Law Commission of India, in its 170th



Report.

**18.** It was in this background that when Parliament and the Election Commission of India, did not show any inclination to bring in the desired appropriate legal measures, writ petition, CWP No. 7257 of 1999 came to be filed before the Delhi High Court in the year 1999 by a public-spirited organisation called the Association for Democratic Reforms, seeking for directions to be issued to the Union of India and the Election Commission of India for the implementation of the suggestions/recommendations of the Law Commission of India to make it mandatory for every candidate to provide information on various aspects including criminal antecedents, assets, liabilities, educational qualifications, etc. by amending Forms 2-A to 2-E prescribed under the Rules, and to make the information public in print form as well as on electronic media for proper dissemination so as to enable the voters to make an informed decision while exercising their voting rights.

**19.** The intrinsic link between a robust democracy and well-informed citizens who periodically elect the representatives who will have the legitimate right to manage the affairs of the society for a specified period can never be overstated. For making the right choice of the elected representatives, there is nothing more important than a well-informed electorate. who have the right to get the information about the candidates. This right to have information by the citizens of the



particulars of the candidates has been acknowledged to be part of the fundamental right of speech and expression as guaranteed under Article 19(1)(a) of the Constitution.

**20.** It also goes without saying that strong leadership can be provided by individuals who are held in high esteem by the people and who are above board in terms of integrity and public standing. Certainly, candidates who are involved in criminal activities cannot be ideal candidates and are to be shunned. Thus, making the antecedents of the candidates known to the electorate before the election assumes great significance for a healthy democracy.

**21.** It is for this reason that there had been a strident movement to make the antecedents of the candidates public. Spurred by this necessity and popular demand, to ensure proper functioning of the parliamentary democracy, which is a basic structure of the Constitution, and in view of the reluctance of Parliament and the Election Commission to take appropriate remedial steps, the extraordinary writ jurisdiction of the Court was invoked.

**22.** In this background, the Delhi High Court, at the instance of Association for Democratic Reforms in Assn. for Democratic Reforms v. Union of India, issued the following directions to ensure that the antecedents and assets of the candidates are made public and known to the electorate: (SCC OnLine Del)

“... Accordingly, it is directed that the Election Commission shall secure to



the voters the following information pertaining to each of the candidates standing for election to Parliament and to the State Legislatures and the parties they represent:

1. Whether the candidate is accused of any offence(s) punishable with imprisonment? If so, the details thereof.

2. Assets possessed by a candidate, his or her spouse and dependent relations.

3. Facts giving insight to candidate's competence, capacity and suitability for acting as parliamentarian or legislator including details of his/her educational qualifications.

4. Information which the Election Commission considers necessary for judging the capacity and capability of the political party fielding the candidate for election to Parliament or the State Legislature."

**23.** The aforesaid directions of the Delhi High Court were unsuccessfully challenged by the Union of India before this Court in *Union of India v. Assn. for Democratic Reforms*<sup>3</sup>, in which this Court elaborately discussed the various legal issues including the right of the citizen to know about the candidates contesting the elections and clarified the legal position, emphasising the importance of the right to information of the voters of the candidates, as are relevant, as follows: (*Assn. for Democratic Reforms case*, SCC pp. 420-422, para 46)

"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...

3. \* \* \*

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 Articles 19(1) and (2) of the International Covenant on Civil and Political Rights, which is as under:

**19. (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 law-breakers as law-makers."  
(emphasis in original)

**24.** Thereafter, in the light of the above legal principles enunciated, this Court in Assn. jor Democratic Reforms<sup>3</sup> issued following directions for disclosure of certain relevant information about antecedents relating to criminal 9 offences, assets and liabilities and educational qualification: (SCC p. 322, para 48)

"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 overdues of any public financial institution or government dues.

(5) The educational qualifications of the candidate."

**25.** After the aforesaid judgment of this Court in Assn. for Democratic Reforms<sup>3</sup>, an Ordinance was promulgated by the President of India on 24-8-2002 by way of which, Sections 33-A and 33-B were inserted in the Representation of People Act, 1951 purportedly in compliance of the directions issued by this Court. Later the said Ordinance was repealed and the Representation of People (3rd Amendment) Act. 2002 172 of 2002) was notified inserting Sections 33-A and 33-B in the 1951 Act.

**25.1.** Section 33-A requires the candidate to furnish additional information as to-

(i) whether he is accused of any offence punishable with imprisonment for 2 (two) years or more in a pending case in which a charge has been framed by the Court of competent jurisdiction:

(i) whether 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.

**25.2.** Section 33-B, however, provides that notwithstanding anything contained in any judgment, decree or order of any court or any direction, order or any other instruction 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 this Act or the Rules made thereunder.

26. It may be noted that, the aforesaid Section 33-A did not provide for furnishing of the information as directed by this Court in Assn. for Democratic Reforms (supra) and the scope of the directions issued by this Court was further sought to be whittled down by incorporating Section 33-B.

20. Other citation relied by the learned counsel for the respondent is *Tanakdhar Tripathy vs. Dipali Das* reported in **2025 SCC OnLine SC 1793**, wherein the Hon'ble Apex Court has held in Paragraphs '18' to '22' as follows :-

18. In our considered view, the question of law on this aspect is extremely well-settled in the above-cited cases, and thus the issue raised is no longer res integra. However, one question that still requires consideration, in terms of G. M. Siddeshwar (supra), is: whether the defects in a Form 25 affidavit filed alongside the Election Petition are required to be cured by way of a fresh affidavit within the stipulated period of limitation or whether it can be filed at any point during the proceedings, even after such period has expired?

19. In this respect, the first port of call ought to be the 'Rules to Regulate Proceedings under Section 80-A of the Representation of the People Act, 1951 (Act 43 of 1951), which are contained in Chapter XXXIII of the High



Court Rules. Rules 7 and 21 of this Chapter prescribe the process of scrutiny of an Election Petition and the procedure to be followed while conducting the proceedings.

Rules 7 and 21 read as follows:

**"7. Every election petition shall, on presentation, be examined by the Stamp Reporter, who shall certify thereon whether the petition is in conformity with the requirements of law and the rules applicable to the same and the petition with the defects or omissions if any, as reported by the Stamp Reporter, shall be referred to the Judge who has been assigned by the Chief Justice for the trial of the Election Petition for orders under section 86 of the Act.**

**21. Subject to the provisions of the Act and these rules, the provisions of Code of Civil Procedure, so far as may be applicable, will apply to the proceedings arising under the Act. The rules regarding applications and affidavits in Chapter VI Part II of the Orissa High Court Rules Vol. I shall apply mutatis mutandis to the applications under this Chapter."** [Emphasis supplied]

**20.** It becomes clear from a perusal of these Rules that at the stage of presenting an Election Petition, it must be examined by the prescribed officer of the High Court, alongwith its accompanying documents, so as to ensure that the same conforms with the requirements of law and the applicable rules. During this process, if it is found that the Election Petition or its accompanying documents suffer from any defects or omissions, the same shall be placed before



the learned Judge-cum-Election Tribunal. The judicial proceedings thereafter shall be conducted in accordance with the rules and procedures described in Rule 21 above. Such procedure also contemplates compliance with the contents and format of an affidavit elaborately described in Chapter VI of the High Court Rules.

**21.** In the instant case, the Impugned Order does not clarify whether the above-stated process of scrutiny was duly followed by the prescribed officer at the time of presentation of the Election Petition. Further, there is no reference to whether any defects were noticed at the time of admission. In the same vein, it is also indiscernible from the Impugned Order whether the Learned Judge, to whom the Election Petition was assigned, granted any time to the Election Petitioner to cure such defects at the first instance. Instead, the Impugned Order, which emanated from an adjudication at the Order VII Rule 11 stage, simply granted the Respondent an opportunity to "cure defects" and further provided a period of three weeks to do so. The Impugned Order thus neither sheds any light on the nature of the defects so recognized, nor clarifies whether the opportunity to rectify such defects was accorded before or after the expiry of the period of limitation.

**22.** Alongside this, it is pertinent to note that the law evolved in the recent decisions of this Court, as cited in paragraphs 15 to 17 above, places an obligation on the Election



Petitioner to file an affidavit which amounts to 'substantial compliance' with the prescribed format. Whether an affidavit appended with an Election Petition has 'substantially complied with or 'omitted' to do so is essentially a question of fact to be determined by juxtaposing the allegations of 'corrupt practices' averred in the Election Petition vis-à-vis the contents of the supporting affidavit. Substantial compliance in ordinary terms means, almost, actual compliance with the essence of the enactment, or perhaps, in simpler terms, to do all that is reasonably expected, which satisfies the substance of the Statute. It, however, cannot be inferred to mean mere lip service to the requirements of the law. That being so, although the High Court has concluded that the affidavit 'substantially complied with the proviso to Section 83(1)(c), it has not detailed the examination conducted in order to reach such a conclusion. As a result, the necessary facts-based analysis appears to have escaped attention.

21. Next citation relied upon by the learned counsel for the respondent is **Pratap Chandra vs. Manish Sisodia and Others**, reported in **(2026) SCC OnLine Del 222**, wherein the Hon'ble Delhi High Court has held in paragraphs '44', '45' and '47' as follows:-

**44.** The second contention of the petitioner was regarding concealment of FIR No. 696/2013 in the Form 26 affidavit. Section



33A of the act, read with Rule 4-A of the rules and Form 26, requires a candidate to disclose criminal cases pending against him.

**45.** Section 33A reads as under:

*"33-A. 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 subsection (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.*

*Rule 4A of The Conduct of Elections Rules, 1961 reads as under:*

*[4A. Form of affidavit to be filed at the time of delivering nomination paper. 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 of the Act, also deliver to him an affidavit sworn by the candidate before a Magistrate of the first class or a Notary in Form 26.]"*

*47. From the above, it is clear that the mere registration of an FIR does not, by itself, imply that a criminal case is pending against a person for the purposes of disclosure under Section 33A of the RP Act, 1951. It is only when charges are framed, or cognizance of the offence is taken by the Court, that the statutory obligation to disclose arises.*

22. Learned counsel for the respondent has further relied on a judgment of Hon'ble Apex Court in the case of ***Bhim Rao Baswanth Rao Patil vs. K. Madan Mohan Rao and Ors.***, reported in **MANU/SC/0791/2023**, wherein the Hon'ble Apex Court has held in Paragraph '28' as follows :-



28. The elector or voter's right to know about the full background of a candidate- evolved through court decisions-is an added dimension to the rich tapestry of our constitutional jurisprudence. Keeping this in mind, this court is of the opinion that if the Appellant's contentions were to be accepted, there would be a denial of a full-fledged trial, based on the acknowledgement that material facts were not suppressed. Whether the existence of a criminal case, where a charge has not been framed, in relation to an offence which does not possibly carry a prison sentence, or a sentence for a short spell in prison, and whether conviction in a case, where penalty was imposed, are material facts, are contested. This court would be pre-judging that issue because arguendo if the effect of withholding some such information is seen as insignificant, by itself, that would not negate the possibility of a conclusion based on the cumulative impact of withholding of facts and non-compliance with statutory stipulations (which is to be established in a trial). For these reasons, this court is of the opinion that the impugned judgment cannot be faulted.

23. Likewise, learned counsel for the respondent has relied on the judgment of Hon'ble Bombay High Court and the learned Co-ordinate Bench of this Court wherein similar view was taken by the Hon'ble Courts.

24. Learned counsel for the petitioner has submitted



that there is a cause of action as there is an election which has been challenged by the petitioner. It has been stated in Section 100(c) of the Representation of the People(in short 'RP') Act, 1951 that '*any nomination has been improperly rejected*'. Since the nomination paper of petitioner is improperly rejected, there is always a cause of action. Learned counsel for the petitioner has further submitted that if the election petition of the petitioner attracts any of the provisions of Section 100 of the RP Act, the same is maintainable and cause of action is there in favour of the petitioner.

25. It has been submitted that since none of the candidates whose nomination paper was found valid by the Returning Officer at the time of its scrutiny, had withdrawn his candidature, all 12 finally contested the election.

26. It has further been submitted that the election of the respondent no.1 is fit to be declared void on the ground that the nomination paper of the respondent no.1 was improperly accepted by the Returning Officer though the nomination filed by the respondent no.1 was liable to be rejected for the defect in the affidavit filed by the respondent no.1 in Form-26 before the Returning Officer along with her nomination paper.

27. It has been submitted that as the nomination of



respondent no.1 himself is challenged, there is a cause of action regarding knowledge of criminal cases. It has been submitted that it can only be ascertained through trial whether he was having knowledge regarding criminal cases or not.

28. Learned counsel has further submitted that the right of votes under Article -19(1) (a) of the Constitution of India was for the first time considered by the Hon'ble Supreme Court in the case of **Union of India Vs. Association for Democratic Association and others** since reported in **(2002) 5 SCC-294**. On consideration of all aspects of the matter, their Lordships finally came since Article 19(1) (a) provides for freedom of speech and expression and the voter's speech or expression in the case of election, would include casting of votes i.e. to say voter speaks out or expresses by casting vote. For this purpose, information about the candidate to be selected is must.

29. That, after a detailed discussion on the issue, their Lordships vide paragraph no.48 of their judgment directed the Election Commission 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 on the following aspects :-

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

(II) Prior to six months of filing of nomination whether the candidate is accused in pending cases 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;

(III) The assets (movable, immovable, bank balance etc.) of a candidate and of his/her spouse and that of dependants;

( IV) Liabilities, if any, particularly whether there are any overdues of any public financial institution or government dues;

(V) The educational qualification of the candidate.

30. That, in view of the direction of the Hon'ble Supreme Court in the above mentioned judgment and power conferred upon the Election Commission of India under Article 324 of the Constitution, amendments were made in the Representation of the People Act, 1951 and the Conduct of Election Rules, 1961. In the Representation of the People Act, 1951, a new provision namely Section -33A and the Conduct of



Election Rules, 1961, a new provision i.e. Rule-4A was inserted. The Election Commission of India further prescribed a form i.e. Form-26 in which the candidates were required to file an affidavit sworn by them either before a Magistrate or before a Notary in compliance of the judgment of the Hon'ble Supreme Court.

31. That, as a Member of Bihar Legislative Assembly, the Respondent no.1 is entitled to draw his salary and allowances. The petitioner would state that assuming that the salary of a Member of Bihar Legislative Assembly is Rs.60,000/- per month ,the yearly income of the Respondent no.1 from his salary would be more than Rs.7 Lacs. Yet according to his return for the financial year 2021-22 he has shown his income as Rs.2,91,500/-, for the financial year 2022-23 he has shown his income as Rs.3,88,730/-, for the financial year 2023-24 it is Rs.3,88,820/- ,for the financial year 2024-25 it is Rs.6,13,730/- and for the financial year 2025-26, it is Rs.6,30,300/-.

32. That, according to the information provided in paragraph no.9(Ka) of the Affidavit, the source of income of Respondent no.1 is agriculture and part time service, there is no source of income so far as his spouse is concerned. In the



circumstances, if the income of Respondent no.1 from agricultural sources is also added to his salary paid to him by the Bihar Legislative Assembly, his income is much more than Rs.6,30,000/-, the maximum income declared by the Respondent no.1 in his affidavit in Form-26.

33. Learned counsel for the petitioner has relied on a judgment of Hon'ble Apex Court in the case of **Durai Muthuswami vs. N. Nachiappan and Ors.** reported in **MANU/SC/0246/1973** wherein the Hon'ble Apex Court has held in Paragraphs '3', '4' and '5' of the judgment as follows:-

3. Before dealing with the question whether the learned Judge was right in holding that he could not go into the question whether the 1st respondent's nomination has been improperly accepted because there was no allegation in the election petition that the election had been materially affected as a result of such improper acceptance, we may look into the relevant provisions of law. Under Section 81 of the Representation of the People Act, 1951 an election petition calling in question any election may be presented on one or more of the grounds specified in Sub-section (1) of Section 100 and Section 101. It is not necessary to refer to the rest of the section. Under Section 83(1)(a), in so far as it is necessary for the purposes of this case, an election petition shall contain a concise statement of the material facts on which the



petitioner relies. Under Section 100(1) if the High Court is of opinion-

(a) that on the date of his election a returned candidate was not qualified, or was disqualified, to be chosen to fill the seat under the Constitution or this Act.

(b)...

(c)...

(d) that the result of the election, in so far as it concerns a returned candidate, has been materially affected-

(i) by the improper acceptance of any nomination, or

(ii)...

(iii)...

the High Court shall declare the election of the returned candidate to be void. Therefore, what Section 100 requires is that the High Court before it declares the election of a returned candidate is void should be of opinion that the result of the election in so far as it concerns a returned candidate has been materially affected by the improper acceptance of any nomination. Under Section 83 all that was necessary was a concise statement of the material facts on which the petitioner relies. That the appellant in this case has done. He has also stated that the election is void because of the improper acceptance of the 1st respondent's nomination and the facts given showed that the 1st respondent was suffering from a disqualification which will fall under Section 9A. That was why it was called improper acceptance. We do not consider that in the



circumstances of this case it was necessary for the petitioner to have also further alleged that the result of the election in so far as it concerns the returned candidate has been materially affected by the improper acceptance of the 1st respondent's nomination. That is the obvious conclusion to be drawn from the circumstances of this case. There was only one seat to be filled and there were only two contesting candidates. If the allegation that the 1st respondent's nomination has been Improperly accepted is accepted the conclusion that would follow is that the appellant would have been elected as he was the only candidate validly nominated. There can be, therefore, no dispute that the result of the election in so far as it concerns the returned candidate has been materially affected by the improper acceptance of his nomination because but for such Improper acceptance he would not have been able to stand for the election or be declared to be elected. The petitioner had also alleged that the election was void because of the improper acceptance of the 1st respondent's nomination. In the case of election to a single member constituency if there are more than two candidates and the nomination of one of the defeated candidates had been Improperly accepted the question might arise as to whether the result of the election of the returned candidate had been materially affected by such improper reception. In such a case the question would arise as to what would have happened to the votes which had



been cast in favour of the defeated candidate whose nomination had been improperly accepted if it had not been accepted. In that case it would be necessary for the person challenging the election not merely to allege but also to prove that the result of the election had been materially affected by the improper acceptance of the nomination of the other defeated candidate. Unless he succeeds in proving that if the votes cast in favour of the candidate whose nomination had been improperly accepted would have gone in the petitioner's favour and he would have got a majority he cannot succeed in his election petition. Section 100(1)(d)(i) deals with such a contingency. It is not intended to provide a convenient technical plea in a case like this where there can be no dispute at all about the election being materially affected by the acceptance of the improper nomination. "Materially affected" is not a formula that has got to be specified but it is an essential requirement that is contemplated in this section. Law does not contemplate a mere repetition of a formula. The learned Judge has failed to notice the distinction between a ground on which an election can be declared to be void and the allegations that are necessary in an election petition in respect of such a ground. The petitioner had stated the ground on which the 1st respondent's election should be declared to be void. He had also given the material facts as required under Section 83(1)(a). We are, therefore, of opinion that the learned Judge erred in



holding that it was not competent for him to go into the question whether the 1st respondent's nomination had been Improperly accepted.

4. One other point which the learned Judge failed to notice is that on the allegations contained in the petition, if they were established, the respondent must be deemed to suffer the disqualification under Section 9A of the Act and all that Section 100(1)(a) requires is that on the date of his election a returned candidate was not qualified or was disqualified to be chosen to fill the seat under the Constitution or this Act. In order to declare his election void it is not necessary that the election petition should state that the result of the election was materially affected thereby. The question of the election being materially affected does not arise in a case falling under Section 100(1)(a).

5. Though it is not necessary to cite any authorities we may refer to a few decisions. In *Balakrishna v. Fernandez* MANU/SC/0270/1969: [1969]3SCR603. this Court pointed out that the first sub-section of Section 100 lays down the grounds for declaring an election to be void, that Sections 100 and 101 deal with the substantive law on the subject of election, that these two sections circumscribe the conditions which must be established before an election can be declared void or another candidate declared elected. It further observed :

The heads of substantive rights in Section 100(1) are laid down in two separate parts:



the first dealing with situations in which the election must be declared void on proof of certain facts, and the second in which the election can only be declared void if the result of the election, in so far as it concerns the returned candidate, can be held to be materially affected on proof of some other facts.... In the first part they are that the candidate lacked the necessary qualification or had incurred disqualification.... These are grounds on proof of which by evidence, the election can be set aside without any further evidence. The second part is conditional that the result of the election, in so far as it concerns a returned candidate, was materially affected by the improper acceptance of a nomination.... This condition has to be established by some evidence direct or circumstantial. It is, therefore, clear that the substantive rights to make an election petition are defined in these sections and the exercise of the right to petition is limited to the grounds specifically mentioned.

Having dealt with the substantive law on the subject of election petitions we may now turn to the procedural provisions in the Representation of the People Act. Here we have to consider Sections 81, 83 and 86 of the Act. The first provides the procedure for the presentation of election petitions. The proviso to sub-section alone is material here. It provides that an election petition may be presented on one or more of the grounds specified in Sub-section (1) of Section 100 and Section 101. That as we have shown



above creates the substantive right. Section 83 then provides that the election petition must contain a concise statement of the material facts on which the petitioner relies.... The section is mandatory and requires first a concise statement of material facts.... What is the difference between material facts and particulars? The word 'material' shows that the facts necessary to formulate a complete cause of action must be stated. Omission of a single material fact leads to an incomplete cause of action and the statement of claim becomes bad. The function of particulars is to present as full a picture of the cause of action with such further information in detail as to make the opposite party understand the case he will have to meet.

That lays down the proper test. In *Konappa v. Viswanath*[1969]2SCR90. this Court pointed out that:

Where by an erroneous order of the Returning Officer poll is held which, but for that order, was not necessary, the Court would be justified in declaring those contesting candidates elected, who, but for that order, would have been declared elected.

34. Learned counsel has further relied on a judgment of Hon'ble Apex Court in the case of *Mairembam Prithviraj and Ors. vs. Pukhrem Sharatchandra Singh and Ors* reported in MANU/SC/1361/2016 wherein Hon'ble Apex Court has held in Paragraphs '20', '21' and '23' of the judgment as follows:-

20. There is no dispute that an election cannot



be set aside on the ground of improper acceptance of any nomination without a pleading and proof that the result of the returned candidate was materially affected. The point to be considered is whether the law as laid down by this Court relating to the pleading and proof of the fact of the result of the returned candidate being materially affected applies to a case where the nomination of the returned candidate is declared to have been improperly accepted. A situation similar to the facts of this case arose for consideration of this Court in Durai Muthuswami's case. It is necessary to deal with this case in detail as the Counsel for the Appellant submitted that the said judgment is not applicable to the facts of the present case and that finding in the said case have to be treated as obiter.

**21.** The facts, in brief, of the case of Durai Muthuswami are that the Petitioner in the election petition contested in the election to the Tamil Nadu Legislative Assembly from Sankarapuram constituency. He challenged the election of the First Respondent on the grounds of improper acceptance of nomination of the returned candidate, rejection of 101 postal ballot papers, ineligible persons permitted to vote, voting in the name of dead persons and double voting. The High Court dismissed the election petition by holding that the Petitioner failed to allege and prove that the result of the election was materially affected by the improper acceptance of the nomination of the



First Respondent as required by Section 100(1)(d) of the Act. The Civil Appeal filed by the Petitioner therein was allowed by this Court in Durai Muthuswami (supra) in which it was held as follows:

*3. Before dealing with the question whether the learned Judge was right in holding that he could not go into the question whether the 1st Respondent's nomination has been improperly accepted because there was no allegation in the election petition that the election had been materially affected as a result of such improper acceptance, we may look into the relevant provisions of law. Under Section 81 of the Representation of the People Act, 1951 an election petition calling in question any election may be presented on one or more of the grounds specified in Sub-section (1) of Section 100 and Section 101. It is not necessary to refer to the rest of the section. Under Section 83(1)(a), insofar as it is necessary for the purpose of this case, an election petition shall contain a concise statement of the material facts on which the Petitioner relies. Under Section 100(1) if the High Court is of opinion--*

*(a) that on the date of his election a returned candidate was not qualified, or was disqualified, to be chosen to fill the seat under the Constitution or this Act ....*

*(b)-(c) \*\*\**

*(d) that the result of the election, insofar as it concerns a returned candidate, has been materially affected--*



*(i) by the improper acceptance of  
any nomination, or*

*(ii)-(iii) \*\*\**

*the High Court shall declare the  
election of the returned candidate to be void.  
Therefore, what Section 100 requires is that  
the High Court before it declares the election  
of a returned candidate is void should be of  
opinion that the result of the election insofar  
as it concerns a returned candidate has been  
materially affected by the improper  
acceptance of any nomination. Under Section  
83 all that was necessary was a concise  
statement of the material facts on which the  
Petitioner relies. That the Appellant in this  
case has done. He has also stated that the  
election is void because of the improper  
acceptance of the 1st Respondent's  
nomination and the facts given showed that  
the 1st Respondent was suffering from a  
disqualification which will fall Under Section  
9-A. That was why it was called improper  
acceptance. We do not consider that in the  
circumstances of this case it was necessary  
for the Petitioner to have also further alleged  
that the result of the election insofar as it  
concerns the returned candidate has been  
materially affected by the improper  
acceptance of the 1st Respondent's  
nomination. That is the obvious conclusion to  
be drawn from the circumstances of this case.  
There was only one seat to be filled and there  
were only two contesting candidates. If the  
allegation that the 1st Respondent's  
nomination has been improperly accepted is*



*accepted the conclusion that would follow is that the Appellant would have been elected as he was the only candidate validly nominated. There can be, therefore, no dispute that the result of the election insofar as it concerns the returned candidate has been materially affected by the improper acceptance of his nomination because but for such improper acceptance he would not have been able to stand for the election or be declared to be elected. The Petitioner had also alleged that the election was void because of the improper acceptance of the 1st Respondent's nomination. In the case of election to a single-member constituency if there are more than two candidates and the nomination of one of the defeated candidates had been improperly accepted the question might arise as to whether the result of the election of the returned candidate had been materially affected by such improper reception. In such a case the question would arise as to what would have happened to the votes which had been cast in favour of the defeated candidate whose nomination had been improperly accepted if it had not been accepted. In that case it would be necessary for the person challenging the election not merely to allege but also to prove that the result of the election had been materially affected by the improper acceptance of the nomination of the other defeated candidate. Unless he succeeds in proving that if the votes cast in favour of the candidate whose nomination had been improperly accepted would have gone in the*



*Petitioner's favour and he would have got a majority he cannot succeed in his election petition. Section 100(1)(d) (i) deals with such a contingency. It is not intended to provide a convenient technical plea in a case like this where there can be no dispute at all about the election being materially affected by the acceptance of the improper nomination. "Materially affected" is not a formula that has got to be specified but it is an essential requirement that is contemplated in this section. Law does not contemplate a mere repetition of a formula. The learned Judge has failed to notice the distinction between a ground on which an election can be declared to be void and the allegations that are necessary in an election petition in respect of such a ground. The Petitioner had stated the ground on which the 1st Respondent's election should be declared to be void. He had also given the material facts as required Under Section 83(1) (a). We are, therefore, of opinion that the learned Judge erred in holding that it was not competent for him to go into the question whether the 1st Respondent's nomination had been improperly accepted.*

23. Mere finding that there has been an improper acceptance of the nomination is not sufficient for a declaration that the election is void Under Section 100(1)(d). There has to be further pleading and proof that the result of the election of the returned candidate was materially affected. But, there would be no necessity of any proof in the event of the



nomination of a returned candidate being declared as having been improperly accepted, especially in a case where there are only two candidates in the fray. If the returned candidate's nomination is declared to have been improperly accepted it would mean that he could not have contested the election and that the result of the election of the returned candidate was materially affected need not be proved further. We do not find substance in the submission of Mr. Giri that the judgment in *Durai Muthuswami* (supra) is not applicable to the facts of this case. The submission that *Durai Muthuswami* is a case of disqualification Under Section 9-A of the Act and, so, it is not applicable to the facts of this case is also not correct. As stated supra, the election petition in that case was rejected on the ground of non-compliance of Section 100(1) (d). The said judgment squarely applies to this case on all fours. We also do not find force in the submission that the Act has to be strictly construed and that the election cannot be declared to be void Under Section 100(1)(d) without pleading and proof that the result of the election was materially affected. There is no requirement to prove that the result of the election of the returned candidate is materially affected once his nomination is declared to have been improperly accepted.

35. Learned counsel has further relied on a judgment of Hon'ble Apex Court in the case of *A. Manju vs. Prajwal Revanna and Ors.*, reported in **MANU/SC/1243/2021** wherein



the Hon'ble Apex Court has held in Paragraphs '5' to '7' and '22' to '27' as follows:-

5. Intent conspectus of the aforesaid provisions, we first set out the pleas of raised in its application before the High Court and on the basis of which the election petition was sought to be dismissed at the threshold. The grievance in a nutshell is set out below:

(a) non-compliance of Section 81(3) of the RP Act on the ground that the election petition was not attested by the Appellant under his own signature as a true copy. Respondent No. 1 sought to rely on the mandatory nature of such compliance as enunciated in Sharif-ud-din V. Abdul Gani Lone MANU/SC/0352/1979: (1980) 1 SCC 403 and the consequence of non-compliance was rejection of the election petition Under Section 86 of the RP Act. The object of this Rule is to ensure that the Petitioner takes full responsibility of its contents and then the Respondent in turn receives a true and accurate copy of the petition.

(b) Respondent No. 1 alleged that the Appellant had made allegations against him in the election petition which would constitute an allegation of "corrupt practice". The proviso to Section 83(1) of the RP Act mandates that all allegations of corrupt practice must be accompanied by an affidavit in the prescribed form in support of the allegations. The form of affidavit is as set out in Form 25 as per the mandate of Section



(sic Rule) 94A of the Conduct of Election Rules, 1962(sic 1961) (hereinafter referred to as the 'Election Rules'). The mandatory requirement of the filing of such an affidavit has formed part of the observations in B.R. Patil v. Rajeev Chandrashekar and Ors. MANU/KA/0321/2007: ILR 2007 Kar 317 of the Karnataka High Court and Purushottam v. Returning Officer, Amravati and Ors. MANU/MH/0042/1992 : AIR 1992 Bom 227 of the Bombay High Court.

Submissions of the Appellant before the High Court:

6. On the other hand, the Appellant sought to contest this application filed by Respondent No. 1. It was urged that the Appellant had in any case substantially complied with Section 81(3) by ascribing his signature and duly verifying every page of the election petition, including on the copies furnished to Respondent No. 1. Further, the index and synopsis of the petition were not required to be attested as they were not part of the election petition by their very description. In any case this was stated to be substantial compliance in terms of Section 81(3) of the RP Act, which required an election petition to be admitted in light of the observations of the Supreme Court in Ch. Subbarao v. Member, Election Tribunal, Hyderabad and Ors. MANU/SC/0176/1964: AIR 1964 SC 1027.

7. On the second plea advanced by Respondent No. 1, the Appellant contended that the question of filing Form 25 would arise only if there are any allegations of corrupt practice as defined by Section 123 of the RP Act. The Appellant pleaded that the



election petition actually fell within the purview of Section 33A of the RP Act as inserted by Act 72 of 2002 which required certain information to be furnished by a candidate. Section 33A of the RP Act reads as under:

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.

The allegation in the election petition dealt with suppression of information. The Appellant did not allege Section 123 of the RP Act against Respondent No. 1 and the specific averment to corrupt practice made in para 32 was simply alluding to the observations of this Court in Krishnamoorthy v. Sivakumar and Ors. MANU/SC/0108/2015: (2015) 3 SCC 467, opining that non-disclosure of assets and income amounts to corrupt practice.

**22.** We may take note of the Constitution Bench judgment of this Court in Murarka Radhey Shyam Ram Kumar v. Roop Singh Rathore MANU/SC/0122/1963: AIR 1964 SC 1545: (1964) 3 SCR 573 which opined that the defect in verification of an affidavit cannot be a sufficient ground for dismissal of the Petitioner's petition summarily and such an affidavit can be permitted to be filed later. This Constitution Bench judgment was also referred to in G.M. Siddeshwar case to come to a conclusion that non-compliance with proviso to Section 83(1) of the RP Act was not fatal to the maintainability of an election petition and the defect could be remedied, i.e., even in the absence of compliance, the petition would still be called an election petition. We cannot say that the High Court



fell into an error while considering the election petition as a whole to come to the conclusion that the allegations of the Appellant were not confined only to Section 33A of the RP Act, but were larger in ambit as undue influence and Improper acceptance of nomination of Respondent No. 1 were also pleaded as violation of the mandate Under Sections 123 and 100 of the RP Act.

**23.** However, we are not persuaded to agree with the conclusion arrived at by the High Court that the non-submission of Form 25 would lead to the dismissal of the election petition. We say so because, in our view, the observations made in Ponnala Lakshmaiah<sup>1</sup> case which have received the imprimatur of the three Judges Bench in G.M. Siddeshwar<sup>1</sup> case appear not to have been appreciated in the correct perspective. In fact, the G.M. Siddeshwar case has been cited by the learned Judge to dismiss the petition. If we look at the election petition, the prayer Clause is followed by a verification. There is also a verifying affidavit in support of the election petition. Thus, factually it would not be appropriate to say that there is no affidavit in support of the petition, albeit not in Form 25. This was a curable defect and the learned Judge trying the election petition ought to have granted an opportunity to the Appellant to file an affidavit in support of the petition in Form 25 in addition to the already existing affidavit filed with the election petition. In fact, a consideration of both the judgments of the Supreme Court referred to by the learned



Judge, i.e. Ponnala Lakshmaiah as well as G.M. Siddeshwar<sup>1</sup>, ought to have resulted in a conclusion that the correct ratio in view of these facts was to permit the Appellant to cure this defect by filing an affidavit in the prescribed form.

**24.** The arguments of learned Counsel for Respondent No. 1 were predicated on the distinction between the absence of an affidavit and a defective affidavit. This presupposes that for an opportunity of cure to be granted, there must be the submission of a Form 25 affidavit which may be defective. This would be very narrow reading of the provisions. Once there is an affidavit, albeit not in Form 25, the appropriate course would be to permit an affidavit to be filed in Form 25. We have to appreciate that the petition is at a threshold stage. It is not as if the Appellant has failed to cure the defect even on being pointed out so. This is not a case where the filing of an affidavit now in Form 25 would grant an opportunity for embellishment as is sought to be urged on behalf of Respondent No. 1.

**25.** The Appellant states the case clearly and in no uncertain terms with supporting material in the election petition. Whether the violation is made out by Respondent No. 1 or not would be a matter of trial but certainly not a matter to be shut out at the threshold.

**26.** The result of the aforesaid is that the impugned order of the learned Single Judge dated 17.1.2020 is set aside and the application filed by Respondent No. 1 Under



Order 7 Rule 11, Section 151 of the said Code and Section 86(1) of the RP Act would stand dismissed with liberty to the Appellant to file an appropriate affidavit in Form 25 within fifteen (15) days from today. The further proceedings in the election petition are required to be taken up urgently as almost two and a half years have gone on the preliminary skirmishes rather than the meat of the matter, which we are sure the learned Single Judge of the High Court would so do.

27. The appeal is accordingly allowed leaving the parties to bear their own costs.

36. Learned counsel has further relied on a judgment of Hon'ble Apex Court in the case of **Ponnala Lakshmaiah vs. Kommuri Pratap Reddy and Ors.**, reported in **MANU/SC/0529/2012**, wherein the Hon'ble Apex Court has held in Paragraphs '12' and '16' as follows :-

12. The high Court has, in the present case, held that the material facts constituting the foundation of the case set up by the election petition have been stated in the election petition. That being so, the requirement of Section 83 of the Act viz. that "the petition shall contain a concise statement of material facts" has been satisfied. The question dismissing the petition on that ground also therefore did not arise. The High Court in our opinion committed no wrong in coming to that conclusion. We need only emphasise that the burden which lies on an election Petitioner to prove the allegations made by



him in the election petition whether the same relate to commission of any corrupt practice or proof of any other ground urged in support of the petition has to be discharged by him at the trial. There is no dilution of that obligation when the court refuses to dismiss a petition at the threshold. All that the refusal to dismiss the petition implies is that the Appellant has made out a case for the matter to be put to trial. Whether or not the Petitioner will succeed at the trial remains to be seen till the trial is concluded. Even so on a somewhat erroneous understanding of the law settled by this Court, the successful candidates charged with commission of corrupt practices or other illegalities and irregularities that constitute grounds for setting aside their elections seek dismissal of the petitions in limine on grounds that are more often than not specious, in an attempt to achieve a two fold objective. First, it takes a chance of getting the election petition dismissed on the ground of it being deficient, whether the deficiency be in terms of non-compliance with the provisions of Sections 81, 82 & 117 of the Act or on the ground that it does not disclose a cause of action. The second and the more predominant objective is that the trial of the election gets delayed which in itself sub-serve the interests of the successful candidate. Dilatory tactics including long drawn arguments on whether the petition discloses a cause of action or/and whether other formalities in the filing of the petition have been complied with are adopted



with a view to prevent or at least delay a trial of the petition within a reasonable time frame. While a successful candidate is entitled to defend his election and seek dismissal of the petition on ground legally available to him, the prolongation of proceedings by prevarication is not conducive to ends of justice that can be served only by an early and speedy disposal of the proceedings. The Courts have, therefore, to guard against such attempts made by parties who often succeed in dragging the proceedings beyond the term for which they have been elected. The Courts need to be cautious in dealing with requests for dismissal of the petitions at the threshold and exercise their powers of dismissal only in cases where even on a plain reading of the petition no cause of action is disclosed. Beyond that note of caution, we do not wish to say anything at this stage for it is neither necessary nor proper for us to do so.

**16.** Even otherwise the question whether non-compliance of the proviso to Section 83(1) of the Act is fatal to the election petition is no longer res-integra in the light of a three-Judge Bench decision of this Court in **Sardar Harcharan Singh Brar v. Sukh Darshan Singh and Ors.** MANU/SC/0920/2004: (2004) 11 SCC 196. In that case a plea based on a defective affidavit was raised before the High Court resulting in the dismissal of the election petition. In appeal against the said order, this Court held that non-compliance with the proviso to Section 83 of the Act did



not attract an order of dismissal of an election petition in terms of Section 86 thereof. Section 86 of the Act does not provide for dismissal of an election petition on the ground that the same does not comply with the provisions of Section 83 of the Act. It sanctions dismissal of an election petition for non-compliance of Sections 81, 82 and 117 of the Act only. Such being the position, the defect if any in the verification of the affidavit filed in support of the petition was not fatal, no matter the proviso to Section 83(1) was couched in a mandatory form. This Court observed:

*14. So is the case with the defect pointed out by the High Court in the affidavit filed in support of the election petition alleging corrupt practice by the winning candidate. The proviso enacted to Sub-section (1) of Section 83 of the Act is couched in a mandatory form inasmuch as it provides that a petition alleging corrupt practice shall be accompanied by an affidavit in the prescribed form in support of the allegations of such corrupt practice and the particulars thereof. The form is prescribed by Rule 94-A. But at the same time, it cannot be lost sight of that failure to comply with the requirement as to filing of an affidavit cannot be a ground for dismissal of an election petition in limine Under Sub-section (1) of Section 86 of the Act. The point is no more res integra and is covered by several decisions of this Court, Suffice it to refer to two recent decisions namely G. Mallikarjunappa and Anr. v.*



*Shamanur Shivashankarappa and Ors, and Dr. Vijay Laxmi Sadho v. Jagdish, both three-Judges Bench decisions, wherein the learned Chief Justice has spoken for the Benches. It has been held that an election petition is liable to be dismissed in limine Under Section 86(1) of the Act if the election petition does not comply with either the provisions of "Section 81 or Section 82 or Section 117 of the RP Act". The requirement of filing an affidavit along with an election petition, in the prescribed form, in support of allegations of corrupt practice is contained in Section 83(1) of the Act. Non-compliance with the provisions of Section 83 of the Act, however, does not attract the consequences envisaged by Section 86(1) of the Act. Therefore, an election petition is not liable to be dismissed in limine Under Section 86 of the Act, for alleged non-compliance with provisions of Section 83(1) or (2) of the Act or of its proviso. The defect in the verification and the affidavit is a curable defect. What other consequences, if any, may follow from an allegedly "defective" affidavit, is required to be judged at the trial of an election petition but Section 86(1) of the Act in terms cannot be attracted to such a case.*

37. Learned counsel has further relied on a judgment of Hon'ble Apex Court in the case of **Harkirat Singh vs. Amrinder Singh**, reported in **MANU/SC/2461/2005**, wherein the Hon'ble Apex Court has held in Paragraph '77' as follows :-

77. As we have already observed earlier, in



the present case, 'material facts' of corrupt W practice said to have been adopted by the respondent had been set out in the petition with full particulars. It has been expressly stated as to how Mr. Chahal who was a Gazetted Officer of Class I in the Government of Punjab assisted the respondent by doing several acts, as to complaints made against him by authorities and taking of disciplinary action. It has also been stated as to how a Police Officer, Mr. Mehra, who was holding the post of Superintendent of Police helped the respondent by organizing a meeting and by distributing posters. It was also alleged that correct and proper accounts of election expenses have not been maintained by the respondent. Though at the time of hearing of the appeal, the allegation as to projecting himself as 'Maharaja of Patiala' by the respondent had not been pressed by the learned counsel for the appellant, full particulars had been set out in the election petition in respect of other allegations. The High Court, in our opinion, was wholly unjustified in entering into the correctness or otherwise of facts stated and allegations made in the election petition and in rejecting the petition holding that it did not state material facts and thus did not disclose a cause of action. The High Court, in our considered view, stepped into prohibited area of appreciating the evidence and by entering into merits of the case which would be permissible only at the stage of trial of the



election petition and not at the stage of consideration whether the election petition was maintainable.

38. Heard the parties and perused case records.

39. First of all, I would like to refer Order VII Rule 11 of the CPC under which provision this I.A. has been filed. Order VII Rule 11 reads as follows:-

**11. Rejection of plaint.** The plaint shall be rejected in the following cases:-

(a) where it does not disclose a cause of action;

(b) where the relief claimed is under-valued, and the plaintiff, on being required by the Court to so correct the valuation within a time to be fixed by the Court, fails to do so;

(c) where the relief claimed is properly valued, but the plaint is written upon paper insufficiently stamped, and the plaintiff, on being required by the Court to supply the requisite stamp-paper within a time to be fixed by the Court, fails to do so;

(d) where the suit appears from the statement in the plaint to be barred by any law;

(e) where it is not filed in duplicate;

(f) where the plaintiff fails to comply with the provisions of rule 9.

[Provided that the time fixed by the Court for the correction of the valuation or supplying of the requisite stamp-papers shall not be extended unless the Court, for reasons to be



recorded, is satisfied that the plaintiff was prevented by any cause of an exceptional nature from correcting the valuation or supplying the requisite stamp-papers, as the case may be, within the time fixed by the Court and that refusal to extend such time would cause grave injustice to the plaintiff.]

40. The respondent has mainly agitated Order VII Rule 11(a) which provides that the plaint shall be rejected whether it does not disclose a cause of action. From perusal of the application of the election petitioner it is clear that the election petitioner has raised objection against the nomination paper of respondent no.1 himself who is a winning candidate and has stated that he has concealed material (i) regarding pendency of criminal cases (ii) that he has not disclosed his income and i.e. why the right of the Public to know about the candidate has been seriously affected. It has been argued by the learned counsel for the respondent that the entire election application does not disclose a cause of action and in view of Section 100 of the RP Act, an allegation of the returned candidate cannot be held void in view of Section 100 of the RP Act. Section 100 of the RP Act provides as follows:-

**100. Grounds for declaring election to be void.** (1) Subject to the provisions of sub-section (2), if the High Court is of opinion-  
(a) that on the date of his election



a returned candidate was not qualified, or was disqualified, to be chosen to fill the seat under the Constitution or this Act 2 for the Government of Union Territories Act, 1963]; or

(b) that any corrupt practice has been committed by a returned candidate or his election agent or by any other person with the consent of a returned candidate or his election agent; or

(c) that any nomination has been improperly rejected; or

(d) that the result of the election, insofar as it concerns a returned candidate, has been materially affected-

(i) by the improper acceptance of any nomination, or

(ii) by any corrupt practice committed in the interests of the returned candidate 24 [by an agent other than his election agent], or

(iii) by the improper reception, refusal or rejection of any vote or the reception of any vote which is void, or

(iv) by any non-compliance with the provisions of the Constitution or of this Act or of any rules or orders made under this Act,

the High Court shall declare the election of the returned candidate to be void.

If in the opinion of [the High Court), a returned candidate has been guilty by an agent other than his election agent, of any corrupt practice but [the High Court] is satisfied-



(a) that no such corrupt practice was committed at the election by the candidate or his election agent, and every such corrupt practice was committed contrary to the orders, and [without the consent], of the candidate or his election agent;

29[\*\*\*]

(c) that the candidate and his election agent took all reasonable means for preventing the commission of corrupt practices at the election; and

(d) that in all other respects the election was free from any corrupt practice on the part of the candidate or any of his agents,

then [the High Court] may decide that the election of the returned candidate is not void.

41. Learned counsel for the respondent has mainly argued Sub-clause (d) of Section 100 of the RP Act that there is no specific pleading that the result of the election, insofar it concerns a returned candidate, has been mainly affected-

(i) by the improper acceptance of any nomination, or

(ii) by any corrupt practice committed in the interests of the returned candidate 24 [by an agent other than his election agent],  
or

(iii) by the improper reception, refusal or rejection of any vote or the reception of any vote which is void, or

(iv) by any non-compliance with the provisions of the Constitution or of this Act or of any rules or orders made under this



Act.

42. Learned counsel for the respondent has stated that the election petition does not make out any cause of action and as such the same is liable to be dismissed as threshold.

43. Countering this, the learned counsel for the petitioner has submitted that if the election petition of the petitioner attracts any of the provisions of Section 100 of the RP Act, it cannot be said that it does not disclose a cause of action. Moreover, it has been submitted that from perusal of the affidavit Form-26 it will transpire that material information have been concealed. The returned candidate has concealed his antecedents and his income as well. Learned counsel for the petitioner has submitted that if the nomination of a candidate has been improperly rejected or accepted, this sole can be a ground for declaring the election to be void in view of Section 100 of the RP Act. Moreover, it has been submitted that the issues which are raised by the petitioner are matter of trial and without trial, this issue cannot be determined.

44. Considering the above facts and circumstances, I am of the view that this is not a fit case for rejection of plaint under Order VII Rule 11 of the CPC and also from perusal of the election petition it is clear that it makes out a cause of action.



45. Accordingly, I.A. No. 04 of 2026 stands dismissed.

(Ashok Kumar Pandey, J)

Shubham/-  
Durgesh/-

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