

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No. 2394 of 2016

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Shiv Ballam Yadav, Son of Sri Deonandan Yadav @ Ram Swaroop Yadav,
Resident of Village - Khojpura, Gram Panchayat Jagpura, Police Station -
Makhdumpur, District - Jehanabad.

.... Petitioner/s

Versus

1. The State of Bihar
2. The Bihar Election Authority, 32 Harding Road, Patna - 800001, represented through its Secretary, Bihar Election Authority, 32, Harding Road, Patna - 800001.
3. The Joint Registrar, Co-operative Society, Magadh Division, Gaya.
4. The District Election Officer - cum - District - Magistrate, Jehanabad.
5. The District Co-operative Officer, Jehanabad.
6. The Block Co-operative Officer, Makhdumpur, District - Jehanabad.
7. The Returning Officer - cum - Block Development Officer, Makhdumpur, District - Jehanabad.
8. Sri Bindeshwar Singh, Son of Dhanuk Singh, R/o Village -Jagpura, P.O. - Jagpura, P.S. - Makhdumpur, District- Jehanabad, presently Chairman, Primary Agriculture Co-operative Society (PACS), Jagpura, Gram Panchayat Jagpura, Block & P.S. - Makhdumpur, District - Jehanabad.

.... Respondent/s

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Appearance :

For the Petitioner	:	Mr. Umesh Kumar, Advocate
For Resp. No.8	:	Mr. M.P.Bhartee with Mrs. Manisha Prakash, Advocates
For State Election Authority	:	Mr. Mukesh Kumar, Advocate
Amicus Curiae	:	Mr. Amit Shrivastava, Advocate
For the State	:	Mr. P.K.Verma, AAG-3 and Mr. Saroj Kumar Sharma AC to AAG-3

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CORAM: HONOURABLE MR. JUSTICE AHSANUDDIN AMANULLAH
ORAL JUDGMENT

Date: 18-11-2016

Heard learned counsel for the parties and Mr. Amit
Shrivastava, learned *Amicus Curiae* who has assisted the Court at its
request.

2. The challenge in the present writ application is to the
order dated 12.09.2015/15.12.2015 contained in Memo no.1083 dated



15.12.2015, passed by the Joint Registrar, Cooperative Societies, Magadh Division, Gaya acting as the Prescribed Authority under the Bihar State Election Authority Act, 2008 (hereinafter referred to as the 'Act'), in Election Case No.02/15-16, by which he has dismissed the case filed by the petitioner for setting aside the election of respondent no.8 as Chairman, Primary Agriculture Cooperative Society (PACS), Jagpura in the Gram Panchayat Jagpura in Block Makhdumpur in the district Jehanabad.

3. The petitioner and respondent no. 8 were both candidates for the election to the post of Chairman of the aforesaid PACS and having lost the election, the said case was filed before the Prescribed Authority by the petitioner challenging the election of the respondent no.8 on the ground that his nomination paper was improperly accepted. Such plea has been negated on the ground that the petitioner having participated in the election on the basis of the voters list and after having tried his luck on the said basis cannot challenge the election.

4. Learned counsel for the petitioner submitted that in the Form-1, filled up by the respondent no.8, which is part of the nomination paper, in the very first page at clause-2, one of the requirements was to declare as to whether against him, in any matter, cognizance has been taken, and if so, various other details were to be furnished. It was submitted that the petitioner at the top at clause-1



has written '*Nahi*' and thereafter a line has been drawn right across, which includes the abovereferred columns. Learned counsel submitted that the implied import is that the answer to such query was in the negative. He submitted that the factual position is that against respondent no.8, in Bela P.S.Case No.127 of 2001 dated 21.11.2001 under Sections 147, 148, 149, 302, 307, 325, 379, 353, 332, 333 and 120B of the Indian Penal Code, 3, 4, 5 of the Explosive Substance Act and 17 of the C.L.A. Act and 27 of the Arms Act, pursuant to chargesheet being submitted, cognizance had been taken against the respondent no.8 by order dated 28.09.2002 and despite this, he replied in the negative to the question in the form as to whether cognizance had been taken against him in any matter. Learned counsel submitted that this amounted to suppression of material facts and was a sound ground for rejecting the nomination paper of the respondent no.8 and the same having been improperly accepted was also a ground for declaring the election to be void, more specifically in light of Section 12(1)(d)(i) of the Act. Learned counsel submitted that the Prescribed Authority has erroneously gone on the issue that once the petitioner had taken his chance to participate in the election, he could not challenge the voters list after losing the election as that was not the issue in the case. Learned counsel also submitted that the declaration being part of the mandatory requirement which is in tune with law laid down by the Hon'ble Supreme Court with regard to purity and



probity in public life having been violated blatantly, the election of respondent no.8 deserves to be set aside.

5. Learned counsel for respondent no.8 submitted that his intention was never to defraud, which would be clear from the fact that with the nomination form he has enclosed a photo copy of the order by which he has been granted bail in the said criminal case and thus, it would not amount to suppression of fact. Learned counsel placed reliance on a Division Bench judgement of this Court, to which I was a party, in the case of **Ramkeshwar Singh vs. Bihar State Election Authority**, reported as **2016 (4) PLJR 545**, in which it has been held that non-disclosure of information in the form which were not a requirement of the statute was not suppression of material fact and could not be a ground for setting aside the election. He also referred to a Single Bench decision of this Court in the case of **Nand Lal Kumar v. The State of Bihar**, reported as **2016 (4) PLJR 685**, in which it has been held that non-disclosure of involvement in criminal cases cannot be a ground for setting aside a cooperative election. Learned counsel for the respondent further submitted that such strict and mandatory requirement to disclose or fill up the forms stringently in terms of the queries made therein relate to elections conducted under the Representation of the People Act and such principle cannot be imported in the present matter.

6. Learned counsel for the State Election Authority



submitted that till the date of scrutiny, since no objection was filed by any party, the acceptance of the nomination of respondent no.8 cannot be faulted. However, with regard to the requirement of correctly disclosing the fact as required in the nomination form, he submitted that the same has to be mandatorily followed as it has been issued under the authority of law and non-conformity with the same will make the election void.

7. Mr. Amit Shrivastava, learned counsel appearing as *Amicus Curiae* submitted that the law now stands settled on the aspect whether a prospective candidate has to honestly disclose all queries made in the form. He submitted that in the current case relating to criminal antecedent, the requirement was a must as the very spirit of such declaration being made mandatory is to ensure purity and probity in public life where the common people have a right to know about the antecedent, background and other activities of a person who has offered himself to be elected, especially with regard to his personal character and his criminal activity which relates to his dealing with the public and the society at large and in fact would amount to infringement of the right under Article 19(1)(a) of the Constitution of India, as every voter has a fundamental right to know about the antecedent of the person chosen by him as his representative. Learned counsel submitted that all these aspects have been considered and dealt with by the Hon'ble Supreme Court in its recent judgment



delivered on 28th of October, 2016 in **Civil Appeal No.2649 of 2016 (Sri Mairembam Prithviraj @ Prithviraj Singh V. Shri Pukhrem Sharatchandra Singh)** and **Civil Appeal No.2829 of 2016 (Pukhrem Sharatchandra Singh v. Sri Mairembam Prithviraj @ Prithviraj Singh)**, specifically the following paras:-

“14. In Union of India v. Association for Democratic Reforms (supra) this Court held that the voter has a fundamental right to information about the contesting candidates. The voter has the choice to decide whether he should cast a vote in favour of a person involved in a criminal case. He also has a right to decide whether holding of an educational qualification or holding of property is relevant for electing a person to be his representative. Pursuant to the judgment in Union of India v. Association for Democratic Reforms (supra) Section 33-A was inserted in the Representation of the People Act providing for right to additional information by an Ordinance. The challenge to the said Ordinance was dealt with by this Court in People’s Union for Civil Liberties (PUCL) v. Union of India (supra) in which it was held as follows:

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

(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.”

XXXXX

16. In Resurgence India v. Election Commission of India and Anr. (supra) this Court held that every candidate is obligated to file an affidavit with relevant information with regard to their criminal antecedents, assets and liabilities and educational qualification. The fundamental right under Article 19 (1) (a) of the voter was reiterated in the said judgment and it was held that filing of affidavit with blank particulars would render the affidavit as nugatory. In [Kisan Shankar Kathore v. Arun Dattatray Sawant reported in 2014 \(14\) SCC page 162](#) this Court considered the question as to whether it was incumbent upon the Appellant to have disclose the information sought for in the nomination form and whether the non- disclosure thereof render the nomination invalid and void. It was held that non-furnishing of the required information would amount to suppression/non-disclosure.

17. It is clear from the law laid down by this Court as stated above that every voter has a fundamental right to know about the educational qualification of a candidate. It is also clear from the provisions of the Act, Rules and Form 26 that there is a duty cast on the candidates to give correct information about their educational qualifications. It is not in dispute that the Appellant did not study MBA in the Mysore University. It is the case of the Appellant that reference to MBA from Mysore University was a clerical error. It was contended by the Appellant that he always thought of doing MBA by correspondence course from Mysore University. But, actually he did not do the course. The question which has to be decided is whether the declaration given by him in Form 26 would amount to a defect of substantial nature



warranting rejection of his nomination. Section 36 (4) of the Act mandates that the Returning Officer shall not reject a nomination paper on the ground of any defect which is not of a substantial character. The declaration made by the Appellant in Form 26, filed in 2012 is not a clerical error as contended by him. The Appellant contested election to the same constituency in 2008 and in the affidavit filed by him in Form 26 he declared that he passed MBA from Mysore University in 2004. In the affidavit filed by him in this election petition by way of examination-in-chief, the Appellant stated that his nomination paper and the enclosed affidavit were prepared and filed by his counsel Chakpam Bimolchandra Singh on the instructions of his agent Ph. Shamu Singh. He also stated that his counsel filled the prescribed affidavit in his own hand-writing. The Appellant also stated that he signed the affidavit without reading the contents and he came to know about the error only when the Respondent raised his objection to the nomination. The Appellant further stated that he was working in Projeon, Infosys Company and IBM till 2007 and because of his job many local friends and elders thought that he was an MBA degree-holder. His election agent also thought that he was holding an MBA degree due to which he instructed the Advocate Chakpam Bimolchandra Singh to fill up column 9 of the affidavit by stating that the Appellant is an MBA degree-holder. In his cross-examination, the Appellant gave evasive replies to the questions relating to his educational qualification. He stated that he does not remember whether he had undergone MBA from Mysore University and he does not remember whether he possesses MBA degree. Chakpam Bimolchandra Singh who was examined as DW-3 in his cross-examination denied having filled up the entries in Form 26. He stated that he entered the educational qualifications of the Appellant on the basis of instructions given by the election agent Shamu Singh. He also stated that he was not present before the Oath Commissioner when the Appellant signed the affidavit.

18. The contention of the Appellant that the declaration relating to his educational qualification in the affidavit is a clerical error cannot be accepted. It is not an error committed once. Since 2008, the Appellant was making the statement that he has an MBA degree. The information provided by him in the



affidavit filed in Form 26 would amount to a false declaration. The said false declaration cannot be said to be a defect which is not substantial. He was given an opportunity by the Returning Officer to produce the relevant document in support of his declaration. At least at that point of time he should have informed the Returning Officer that an error crept into the declaration. He did not do so. The false declaration relating to his educational qualification cannot be stated to be not of a substantial character. It is no more res integra that every candidate has to disclose his educational qualification to subserve the right to information of the voter. Having made a false declaration relating to his educational qualification, the Appellant cannot be permitted to contend that the declaration is not of a substantial character. For the reasons stated supra, we uphold the findings recorded by the High Court that the false declaration relating to the educational qualification made by the Appellant is substantial in nature.

19. Having answered the first question against the Appellant, we proceed now to deal with the next point. Section 100 (1) (a) to (c) deals with disqualification, corrupt practices and improper rejection of nominations respectively which are grounds for setting aside the election. The sine qua non for setting aside an election under Section 100 (1) (d) is that the result of the election, in so far as it concerns a returned candidate, has been materially affected. The contention of Mr. Giri, learned Senior Counsel for the Appellant is that even if it is held that the nomination of the appellant was improperly accepted, his election cannot be set aside in the absence of any pleading or proof that the result was materially affected by the improper acceptance of the nomination. He relied upon **Magani Lal Mandal v. Bishnu Deo Bhandari, reported in 2012 (3) SCC page 314** to contend that every defect cannot be a ground for setting aside an election under Section 100 (1) (d) without further proof that it had materially affected the result of the returned candidate. He also referred to **Shambhu Prasad Sharma v. Charandas Mahant and Ors. reported in 2012 (11) SCC page 390** in which it was held as follows:



“20. Coming to the allegation that other candidates had also not submitted affidavits in proper format, rendering the acceptance of their nomination papers improper, we need to point out that the appellant was required to not only allege material facts relevant to such improper acceptance, but further assert that the election of the returned candidate had been materially affected by such acceptance. There is no such assertion in the election petition. Mere improper acceptance assuming that any such improper acceptance was supported by assertion of material facts by the appellant- petitioner, would not disclose a cause of action to call for trial of the election petition on merit unless the same is alleged to have materially affected the result of the returned candidate.”

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.” (Underlining ours)

22. It is clear from the above judgment that there is a difference between the improper acceptance of a nomination of a returned candidate and the improper acceptance of nomination of any other candidate. There is also a difference between cases where there are only two candidates in the fray and a situation where there are more than two candidates contesting the election. If the nomination of a candidate other than the returned candidate is found to have been improperly accepted, it is essential that the election Petitioner has to plead and prove that the votes polled in favour of such candidate would have been polled in his favour. On the other hand, if the improper acceptance of nomination is of the returned candidate, there is no necessity of proof that the election has been materially affected as the returned candidate would not have been able to contest the election if his nomination was not accepted. It is not necessary for the Respondent to prove that result of the



*election in so far as it concerns the returned candidate has been materially affected by the improper acceptance of his nomination as there were only two candidates contesting the election and if the Appellant's nomination is declared to have been improperly accepted, his election would have to be set aside without any further enquiry and the only candidate left in the fray is entitled to be declared elected. The judgment of this Court in Durai Muthuswami (supra) was referred to in **Jagjit Singh v. Dharam Pal Singh, 1995 Supp (1) SCC 422 page 429** in which it was held as follows:*

“21. The trial Judge has held that since there is no averment in the petition that the result of the election was materially affected by improper rejection or acceptance of votes, it is devoid of cause of action. We are unable to agree that the absence of such an averment in the facts of this case is fatal. As pointed out by this Court, there may be cases where the obvious conclusion to be drawn from the circumstances is that the result of the election has been materially affected and that Section 100(1)(d) of the Act is not intended to provide a convenient technical plea in a case where there can be no dispute at all about the result of the election being materially affected by the alleged infirmity. (See: Durai Muthuswami v. N. Nachiappan [(1973) 2 SCC 45 : (1974) 1 SCR 40] .) In the present case, the appellant in the election petition has stated that he has lost by a margin of 80 votes only. From the various averments in the election petition it was evident that the number of valid votes of the appellant which are alleged to have been improperly rejected is much more than 80. From the averments contained in the election petition it is thus obvious if the appellant succeeds in establishing his case as set out in the election petition the result of this election,



insofar as it concerns the returned candidate, would be materially affected.”

*It was held by this Court in **Vashist Narain Sharma v. Dev Chandra**, reported in 1955 (1) SCR 509 as under:*

“9. The learned counsel for the respondents concedes that the burden of proving that the improper acceptance of a nomination has materially affected the result of the election lies upon the petitioner but he argues that the question can arise in one of three ways:

(1) where the candidate whose nomination was improperly accepted had secured less votes than the difference between the returned candidate and the candidate securing the next highest number of votes,

(2) where the person referred to above secured more votes, and

(3) where the person whose nomination has been improperly accepted is the returned candidate himself.

It is agreed that in the first case the result of the election is not materially affected because if all the wasted votes are added to the votes of the candidate securing the highest votes, it will make no difference to the result and the returned candidate will retain the seat. In the other two cases it is contended that the result is materially affected. So far as the third case is concerned it may be readily conceded that such would be the conclusion. But we are not prepared to hold that the mere fact that the wasted votes are greater than the margin of votes between the returned candidate and the candidate securing the next highest number of votes must lead to the necessary inference that the result of the election has been materially affected. That is a matter which has to be proved and the



onus of proving it lies upon the petitioner. It will not do merely to say that all or a majority of the wasted votes might have gone to the next highest candidate. The casting of votes at an election depends upon a variety of factors and it is not possible for any one to predicate how many or which proportion of the votes will go to one or the other of the candidates. While it must be recognised that the petitioner in such a case is confronted with a difficult situation, it is not possible to relieve him of the duty imposed upon him by Section 100(1)(c) and hold without evidence that the duty has been discharged. Should the petitioner fail to adduce satisfactory evidence to enable the Court to find in his favour on this point, the inevitable result would be that the Tribunal would not interfere in his favour and would allow the election to stand.” (Underlining ours).

This Court in Kisan Shankar Kathore v. Arun Dattatray Sawant (supra) dealt with a situation similar to that of this case. In that case, the election of the returned candidate was successfully challenged on the ground of non- disclosure of material information. The appeal filed by the returned candidate was dismissed by this Court by observing as follows:

“Once it is found that it was a case of improper acceptance, as there was misinformation or suppression of material information, one can state that question of rejection in such a case was only deferred to a later date. When the Court gives such a finding, which would have resulted in rejection, the effect would be same, namely, such a candidate was not entitled to contest and the election is void.”

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."

8. Having heard the rival contentions, the Court finds that the election of the respondent no.8 cannot be sustained. The filling-up of the form is prescribed as per the Manual of the State Election Authority under Section 4 of the Act read with Rule 7 of the Bihar State Election Authority Rules, 2008. Hence, the same are as per the mandate of the law and such instructions have the force of law. Section 12(1)(d)(iv) of the Act reads as under:-

"12. Grounds for declaring election to be void.—(1)
Subject to the provisions of sub-section (2) if the prescribed



authority is of opinion-

xxxxx

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

xxxxx

(iv) by any non-compliance with the provision of this Act or of any rules or orders made thereunder; the prescribed authority shall declare the election of the returned candidate to be void.

xxxxx”

9. It specifically provides that in the event of non-compliance of the provisions of this Act or of any rules thereunder, the Prescribed Authority shall declare the election of the returned candidate to be void.

10. In the present case, it is admitted that under the orders made in exercise of the power conferred on the authority under the Act, the forms required various details to be disclosed, one of them relating to criminal antecedent, and more specifically, as to whether in any matter cognizance has been taken against the person concerned. Thus, the said form cannot be said to be devoid of the force of law. The decision relied upon by the learned counsel for the respondent no.8 in the case of **Ramkeshwar Singh** (supra) no doubt has held that non-declaration of information sought in the form cannot be a ground for disqualification but the same was in reference to non-furnishing of the information which related to the shares held by the contestant of the society for which the election was to be held and in that context, the said order came to be passed. This is also clear from



the fact that in the penultimate paragraph it has been held that declaration of assets (in relation to holding of shares) is not a requirement under the Act or the Rules or Orders issued thereunder. In the present case, the matter relates to non-disclosure of criminal antecedent against the respondent no.8, in which cognizance has been taken under serious sections of the Indian Penal Code. Thus, the same clearly amounts to suppression of material fact as the very character of the person is reflected from such information and which cannot be disputed to be a major consideration before every elector voting in an election. Moreover, the facts and circumstances in the case of **Ramkeshwar Singh** (supra) cannot be said to be similar to those of the present case. As far as the case of **Nand Lal Kumar** (supra) is concerned, the learned Single Judge has gone on to hold that because disclosure of such fact of criminal antecedent would not have been a disqualification for contesting by the candidate, the election had not been materially affected and thus, could not be a ground for setting aside the election. In view of the settled law by various judgments including that of the Hon'ble Supreme Court, especially in **Sri Mairembam Prithviraj @ Prithviraj Singh** (supra) and also that the matter concerning criminal antecedent(s) of a person would have a deep impact on the mind of the electorate with regard to the person whom they are going to elect, such disclosure cannot be said to be merely a cursory or technical requirement which may not affect the



election materially, but because such suppression or non-declaration has prevented the electors from knowing about the criminal antecedent of the candidate with regard to whom they have to take a call by voting, amounts to fraud played upon them, as they are totally oblivious of the grave criminal antecedent of a person when they decide to elect him or not. This is in consonance with Article 19(1)(a) of the Constitution of India that non-disclosure infringes on the Fundamental Right of the people and any violation of the same cannot be upheld in the eyes of law. In the present case, on a categorical query to the learned counsel for respondent no.8 as to whether the column against which there is no specific entry but only at the top of the page, it has been answered in the negative and a line has been drawn, it should be taken as if the reply is 'no' or it should be taken as 'blank', the stand is that it should be taken as blank. The note at the end of the form reads as :

“नोट:— सभी स्तम्भ निश्चित रूप से भरे जायें। जहाँ शून्य विवरण देना हो वहाँ “शून्य” अवश्य अंकित किया जाय। स्तम्भ खाली छोड़ देने अथवा (x) चिन्ह अंकित करने पर यह माना जायेगा कि अभ्यर्थी द्वारा सूचना छिपाने की चेष्टा की गई है और यह नामांकन पत्र रद्द करने का आधार बन सकता है।”

11. The above provision clearly indicates that if the column is left blank or a cross is marked, it would amount to suppression of information for which the nomination paper can be rejected. Even otherwise, if it is taken that the answer was 'no', then also it is a clear- cut case of suppression and also a case of stating



deliberate falsehood. In both events, the position stands that the correct fact has not been disclosed. As per the note printed in the nomination paper itself, the nomination Form was liable to be rejected. The plea of respondent no.8 that he had enclosed a copy of the bail order obtained by him would not mitigate the situation for the simple reason that it does not disclose that cognizance had been taken, which is the specific requirement in the nomination form. The order of bail is dated 11.04.2002 whereas cognizance has been taken on 28.09.2002 and therefore, right from taking bail he is presumed to be aware of the developments of the case, including cognizance, much prior to filling-up of the form.

12. Regarding the contention of learned counsel for the respondent no.8 that the requirement of strict disclosure with regard to criminal antecedent applies only under the Representation of the People Act and cannot be relied upon presently, the same is noticed only for the sake of rejection. The procedure may differ, but the basic principle in a democracy is that the will of the people be reflected and for the true reflection of the will of the people, the people must be fully informed before they exercise their franchise and if they do so as a result of suppression or non-disclosure of a fact, the whole spirit of fair and free elections gets defeated. The very conception of an election in a mature democracy rests on the presumption that the electorate knows fully about the candidates and then decides as to



who should be their representative in the body concerned. The said process gets short-circuited if the electors do not know the antecedent, of a person and more importantly, criminal antecedent, which has a direct nexus to dealings with the public which would be a factual reality while he discharges his duties, if elected. Further, Section 12(1)(d)(i) of the Act clearly stipulates that one ground for declaring an election void would be improper acceptance of any nomination. As discussed above, non-disclosure of criminal antecedent of respondent no.8 was clearly a ground for rejection of the nomination paper of respondent no.8 and becomes a ground for declaring the election void.

13. Moreover, the nomination paper of the returned candidate was fit to be rejected and thus the election result stands materially affected as it is not a case of rejection of the nomination paper of a candidate who lost the election. For such proposition, the Court deems it appropriate to refer to the Hon'ble Supreme Court's decision in the case of **Krishnamoorthy v. Sivakumar** reported as **2015(3) SCC 467**, the relevant being reproduced hereinbelow :

“82. Having stated about the need for vibrant and healthy democracy, we think it appropriate to refer to the distinction between disqualification to contest an election and the concept or conception of corrupt practice inhered in the words “undue influence”. Section 8 of the 1951 Act stipulates that conviction under certain offences would disqualify a person for being a Member either of House of Parliament or the Legislative Assembly or Legislative Council of a State. We repeat at the cost of repetition unless a person is



disqualified under law to contest the election, he cannot be disqualified to contest. But the question is when an election petition is filed before an Election Tribunal or the High Court, as the case may be, questioning the election on the ground of practicing corrupt practice by the elected candidate on the foundation that he has not fully disclosed the criminal cases pending against him, as required under the Act and the Rules and the affidavit that has been filed before the Returning Officer is false and reflects total suppression, whether such a ground would be sustainable on the foundation of undue influence. We may give an example at this stage. A candidate filing his nomination paper while giving information swears an affidavit and produces before the Returning Officer stating that he has been involved in a case under Section 354 IPC and does not say anything else though cognizance has been taken or charges have been framed for the offences under the Prevention of Corruption Act, 1988 or offences pertaining to rape, murder, dacoity, smuggling, land grabbing, local enactments like the Maharashtra Control of Organised Crime Act, 1999, U.P. Control of Goondas Act, 1970, embezzlement, attempt to murder or any other offence which may come within the compartment of serious or heinous offences or corruption or moral turpitude. It is apt to note here that when an FIR is filed a person filling a nomination paper may not be aware of lodgement of the FIR but when cognizance is taken or charge is framed, he is definitely aware of the said situation. It is within his special knowledge. If the offences are not disclosed in entirety, the electorate remain in total darkness about such information. It can be stated with certitude that this can definitely be called antecedents for the limited purpose, that is, disclosure of information to be chosen as a representative to an elected body.

83. *The sanctity of the electoral process imperatively commands that each candidate owes and is under an obligation that a fair election is held. Undue influence should not be employed to enervate and shatter free exercise of choice and selection. No candidate is entitled to destroy the sacredness of election by indulging in undue influence. The basic concept of “undue influence” relating to an election is voluntary interference or attempt to interfere with the free exercise of electoral right. The voluntary act also encompasses attempts to*



interfere with the free exercise of the electoral right. This Court, as noticed earlier, has opined that legitimate canvassing would not amount to undue influence; and that there is a distinction between “undue influence” and “proper influence”. The former is totally unacceptable as it impinges upon the voter’s right to choose and affects the free exercise of the right to vote. At this juncture, we are obliged to say that this Court in certain decisions, as has been noticed earlier, laid down what would constitute “undue influence”. The said pronouncements were before the recent decisions in People’s Union for Civil Liberties, People’s Union for Civil Liberties and Assn. for Democratic Reforms and other authorities pertaining to corruption were delivered. That apart, the statutory provision contained in Sections 33, 33-A and Rules have been incorporated.

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86. *From the aforesaid, it is luculent that free exercise of any electoral right is paramount. If there is any direct or indirect interference or attempt to interfere on the part of the candidate, it amounts to undue influence. Free exercise of the electoral right after the recent pronouncements of this Court and the amendment of the provisions are to be perceived regard being had to the purity of election and probity in public life which have their hallowedness. A voter is entitled to have an informed choice. A voter who is not satisfied with any of the candidates, as has been held in People’s Union for Civil Liberties, can opt not to vote for any candidate. The requirement of a disclosure, especially the criminal antecedents, enables a voter to have an informed and instructed choice. If a voter is denied of the acquaintance to the information and deprived of the condition to be apprised of the entire gamut of criminal antecedents relating to heinous or serious offences or offence of corruption or moral turpitude, the exercise of electoral right would not be an advised one. He will be exercising his franchisee with the misinformed mind. That apart, his fundamental right to know also gets nullified. The attempt has to be perceived as creating an impediment in the mind of a voter, who is expected to vote to make a free, informed and advised choice. The same is sought to be scuttled at the very commencement. It is well settled in law that election covers the entire process from the issueance of the notification till the declaration of the result. This position has been clearly*



settled in *Hari Vishnu Kamath v. Ahmad Ishaque, Election Commission of India v. Shivaji and V.S. Achuthanandan v. P.J. Francis*. We have also culled out the principle that corrupt practice can take place prior to voting. The factum of nondisclosure of the requisite information as regards the criminal antecedents, as has been stated hereinabove is a stage prior to voting.

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94. In view of the above, we would like to sum up our conclusions :

94.1. Disclosure of criminal antecedents of a candidate, especially, pertaining to heinous or serious offence or offences relating to corruption or moral turpitude at the time of filing of nomination paper as mandated by law is a categorical imperative.

94.2 When there is non-disclosure of the offences pertaining to the areas mentioned in the preceding clause, it creates an impediment in the free exercise of electoral right.

94.3 Concealment or suppression of this nature deprives the voters to make an informed and advised choice as a consequence of which it would come within the compartment of direct or indirect interference or attempt to interfere with the free exercise of the right to vote by the electorate, on the part of the candidate.

94.4 As the candidate has the special knowledge of the pending cases where cognizance has been taken or charges have been framed and there is a non-disclosure on his part, it would amount to undue influence and, therefore, the election is to be declared null and void by the Election Tribunal under Section 100(1)(b) of the 1951 Act.

94.5 The question whether it materially affects the election or not will not arise in a case of this nature.”

14. For the reasons aforesaid, the election of respondent no. 8 as Chairman of the concerned PACS cannot be upheld



and is, accordingly, set aside. The impugned order dated 12.09.2015/15.12.2015 contained in Memo no.1083 dated 15.12.2015, passed by the Joint Registrar, Cooperative Societies, Magadh Division, Gaya acting as the Prescribed Authority under the Act is also set aside. Respondent No. 2, the State Election Authority, is hereby directed to conduct the election afresh for the Chairman of the concerned PACS expeditiously.

15. The writ petition stands allowed in the aforementioned terms.

(Ahsanuddin Amanullah, J)

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