

IN THE HIGH COURT OF JUDICATURE AT BOMBAY**ORDINARY ORIGINAL CIVIL JURISDICTION****ELECTION PETITION NO.7 OF 2014**

Balaram Dattatray Patil, Alias

Balaram Dattusheth Patil (Balusheth) ...Petitioner

vs.

Prashant Ram Thakur

...Respondent

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Mr. C.G. Gavnekar, a/w. Mr. Suhas Deokar and Mr. A.C. Gavnekar, i/b. Mr. G.S. Hiranandani, for the Petitioner.

Mr. M.M. Vashi, Senior Advocate, a/w. Mr. S.B. Shetye, i/b. Mr. S.V. Gavand, for the Respondent.

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CORAM: S.C. GUPTE, J.

DATE : 23 MARCH, 2018.

JUDGEMENT :-

. This Election Petition challenges the election of the Respondent to Maharashtra Legislative Assembly from Constituency No.188 – Panvel. The challenge is on the ground of improper acceptance of the Respondent's nomination form by the Returning Officer and corrupt practice, as defined under Section 123 of the Representative of the People Act, committed by the Respondent. The facts of the case may be briefly stated as follows :-

2. The Petitioner and the Respondent were both candidates for Assembly Constituency No.188 – Panvel for the election to Maharashtra Legislative Assembly held on 15 October 2014. The Petitioner was the official candidate of the Peasants and Workers Party of India, whilst the Respondent was the official candidate of the Bhartiya Janata Party. In

addition to the Petitioner and the Respondent, there were twelve other candidates, four of whom were from recognised National or State political parties, whilst two were from registered political parties (other than recognised National and State political parties) and six were independent candidates. It is the grievance of the Petitioner that the nomination forms for the election submitted by the Respondent were vitiated by several defects of a substantial nature. They *inter alia* contained a false declaration about the Respondent's assets and were incomplete in material particulars. The nomination forms were accompanied by an affidavit of the Respondent, which also contained wrongful disclosures and suffered from material non-disclosure and incomplete information. It is the grievance of the Petitioner that despite these defects and lapses, the nomination forms were improperly accepted by the Returning Officer within the meaning of Section 100(1)(d)(i) of the Representation of the People Act, 1951 and, accordingly, the election of the Respondent was void for non-compliance and/or violation of the orders passed by the election commission under Article 324 of the Constitution of India *inter alia* on the basis of the law declared by the Supreme Court under Article 141 of the Constitution of India. It is also the grievance of the Petitioner that the Respondent's election is liable to be set aside on account of corrupt practice committed by him through himself or his election agent or by another person with the consent of the Respondent or his election agent, namely, bribery, as defined under Section 123 of the Representation of the People Act. In particular it is alleged that a vehicle owned by a company controlled by the family of the Respondent, Thakur Infra Projects Pvt. Ltd., and used for election propaganda at the instance of the Respondent and/or his election agent, was found to contain 500 envelopes containing Rs.500/- each, together with material such as election pamphlets, voters' list, etc. It is submitted that the vehicle was, accordingly,

used for the purpose of offering gratification to the voters. It is submitted that an F.I.R. was registered in connection with this incident. Secondly, it is claimed that two employees of the same company, apprehended by the police, were found to be in possession of cash and materials used by the Respondent for offering gratification to the voters of the constituency for voting or refraining from voting at the election held on 15 October 2014. It is submitted that an F.I.R. was registered in this behalf detailing the recovery of cash of Rs.15,500/-, along with the voters' slips of voters residing in Sector 12, Khanda Colony, Navi Mumbai, which comes within the constituency. It is submitted that the Respondent's election is, accordingly, liable to be declared void on the grounds set out under Section 100(1)(b) and 100(d) (ii) and (iv) of the Representation of the People Act, 1951.

3. In his written statement, the Respondent denies the allegations of the Petitioner. It is denied that there was any defect in the nomination papers filed by the Respondent or that the nomination was improperly accepted by the Returning Officer. It is submitted that improper scrutiny or enquiry in respect of assets mentioned in the affidavit filed by the candidate or rejection or acceptance of nomination on account of suppression of facts or filing of false or misleading affidavit, cannot be made a ground under Section 100 of the Representation of the People Act, 1951 for declaring the election of a returned candidate as void. It is submitted that assuming that the nomination was improperly accepted, the Petitioner did not plead or prove that the result of the election was materially affected thereby. The Respondent also denies the allegations of corrupt practice on his part. The Respondent denies that the company, Thakur Infra Projects Pvt. Ltd., was owned by the family members of the Respondent. The Respondent denies

the existence of a joint family comprising of himself, his brother, father, etc. It is submitted that the Respondent's family consists of himself, his wife and two children, none of whom owns any shares in the company. The Respondent denies having used the alleged vehicle of the company for the purpose of propaganda during his election, as alleged by the Petitioner. The Respondent denies that the vehicle was found to contain envelopes with alleged notes or material, including election pamphlets, voters' lists, etc. The Respondent denies that the vehicle was used for the purpose of distributing cash amongst voters of the constituency. The Respondent also denies that any employee of Thakur Infra Projects Pvt. Ltd. was found in possession of cash in envelopes along with voters' list. The Respondent denies that there was any attempt on his part or on the part of his election agent or anyone at the instance of himself or his election agent to offer any gratification to any voter in his constituency for voting or refraining from voting at the election.

4. Based on the pleadings of the parties, issues were framed in the petition on 28 October 2015 and corrected on 16 March, 2017. Issues 1, 2 and 8 concern the alleged corrupt practice under Section 123(1)(A) read with Section 100(1)(b) and Section 100(1)(d)((ii) of the Representation of the People Act, whilst Issues 3, 4, 6 and 7 concern the invalidity of the nomination paper on account of suppression of material particulars and filing of false affidavit and its impact on the election of the returned candidate.

5. At the very outset of the hearing, Mr. Vashi, learned Senior Counsel appearing for the Respondent, raises a preliminary objection. Learned Counsel submits that the petition lacks concise statement of material facts and full particulars. Relying on the judgment of the Supreme

Court in the case of **C.P. John vs. Babu M. Palissery**¹ and other cases, it is submitted that without a definite plea of corrupt practice supported by legally acceptable material evidence, the election petition cannot be entertained and will have to be rejected at the threshold. It is submitted that the success gained by a candidate in a public election cannot be allowed to be called in question by any unsuccessful candidate by making frivolous or baseless allegations, thereby unnecessarily dragging the successful candidate to the Court and wasting his precious time, which could otherwise be devoted for the welfare of the members of his constituency as their representative.

6. Let me at the very outset deal with this preliminary objection. Setting aside of the election of an elected candidate is by its very nature a serious consequence. The *raison d'être* for the requirement to state material facts and particulars of corrupt practice leading to cancellation of the election, emanating from Section 83 of the Representation of the People Act, is to ensure that the Petitioner comes with a definite plea of corrupt practice supported by legally acceptable material evidence. The object, as held by the Supreme Court in the case of **C.P. John** (supra), is to prevent wasting of precious time of the elected candidate, which could have been otherwise used for public welfare. That is why the proviso to Section 83(1) requires an affidavit in the prescribed form in support of the allegation of corrupt practice and the particulars thereof. Though, as held by the Supreme Court in the case of **K. V. Narayana Rao vs. P. Purushotham Rao**², the penalty of dismissal of the election petition for non-compliance with the requirement of Section 83(1) is no longer there, still the rule contained in Section 83 cannot be said to be without a purpose. The purpose is to pin

1 AIR 2015 Supreme Court 16

2 1993 Supp (2) Supreme Court Cases 90

down the election petitioner to specific allegations and also to enable the contesting respondent to meet the allegations effectively. As held by the Supreme Court in the case of **Lalit Kishore Chaturvedi vs. Jagdish Prasad Thadda**³, failure to furnish these particulars would render the election petition infirm and liable to be dismissed under Order VII Rule 11 of the Code of Civil Procedure.

7. It is clear from the foregoing discussion, however, that the objection of non-compliance with the provisions of Section 83, that is to say, failure to plead material particulars in the manner stated therein, is a threshold objection. Such objection must be raised at the very outset. In fact, if taken at the very outset, the Petitioner himself could take recourse to corrective steps by amending the petition or affidavit, if necessary. It ill-suits a trial procedure that the petition is thrown out on the ground of failure to comply with the requirements of Section 83 after the parties are allowed to lead evidence and are fully heard in the matter. It would be more appropriate for the Court to consider at that stage whether the alleged corrupt practice is made out or not, rather than apply its mind to whether the petition should be thrown out on the ground of want of particulars or compliance with Section 83. I, therefore, would not like to labour much on this aspect and would rather proceed to the merits of the controversy.

8. Besides, as held by the Supreme Court in the case of **Harkirat Singh vs. Amrinder Singh**⁴, a distinction must be drawn between material facts and particulars. Material facts are primary or basic facts, which must be pleaded by the plaintiff or by the defendant in support of the case set up by him either to prove his cause of action or defence. Particulars, on the

³ 1990 Supp SCC 248

⁴ AIR 2006 SC 713

other hand, are details in support of material facts pleaded by the party. They amplify, refine or establish material facts by adding meat and substance to the basic contours of a picture already drawn, so as to make it fuller, clearer and more informative. Whereas failure to state material facts will entail dismissal of a suit or petition, the particulars, on the other hand, are details of the case, which are in the nature of evidence a party would be leading at the time of trial. Going by these dicta, I cannot bring myself to hold that material facts, or even basic particulars, for that matter, are lacking in the present case. Insofar as the alleged corrupt practice is concerned, the petition contains material facts such as seizure of cash from a vehicle and employees belonging to a company owned purportedly by the family of the Respondent. There are particulars also concerning the ownership of the vehicle, the employment of the persons apprehended, particulars of F.I.R., including names, dates, etc. Going by these particulars, it cannot possibly be said that the opposite party would not have known the case he has to meet. Whether the material facts pleaded and supported by particulars and evidence before the court, eventually make out the alleged corrupt practice or not, is, of course, an altogether different matter. That is really a matter of trial and assessment of the material facts and particulars disclosed in support of such facts in the light of the evidence led at the trial. But there is clearly no case for throwing out the petition merely on the ground that there is want of material facts or particulars.

9. Before we come to the merits of the two grounds, on which the election of the Respondent is sought to be set aside, it is appropriate to deal with the question of standard of proof, on which there was much debate at the hearing of the petition. Mr. Vashi for the Respondent argues that the charge of bribery, constituting corrupt practice, is in the nature of a criminal

charge and must be proved beyond reasonable doubt. Learned Counsel relies on the judgments of the Supreme Court in the cases of **Omprakash vs. Lalchand**⁵, **Ramanbhai Nagjibhai Patil vs. Jasvantsingh Udesingh Dabhi**⁶ and **N.C. Zeliang vs. Aju Newmai**⁷ in this behalf. On the other hand, it is submitted by Mr. Gavnekar for the Petitioner that the rule of strict standard of proof referred to in election cases should not be extended to an extreme limit. Learned Counsel submits that the ordinary rule of a civil trial of shifting of the legal burden, which is in-apposite in a criminal trial, can very well be resorted to in an election petition. In my opinion, learned Counsel is right here. There is no doubt that, as stated by the Supreme Court in the cases of **Omprakash**, **Ramanbhai Nagjibhai Patil** and **N.C. Zeliang** (supra), the charge of bribery in an election petition being in the nature of a criminal charge, a stricter standard of proof is required to prove the same. The ordinary standard of preponderance of probabilities, which is adopted in a civil trial, is not apposite in such a case. Yet, at the same time, there is a caution to be exercised here. An election petition is not strictly like a criminal trial, where the Court rules on commission of an offence and considers a penalty. There are important differences between the two and these spring from the very purpose or *raison de atre* of the relevant election law. After considering the various tests laid down to determine the standard of proof required to establish corrupt practice under election law, the Supreme Court in the case of **S. Harcharan Singh vs. S. Sajjan Singh**⁸ held as follows :-

“While insisting on standard of strict proof, the Court should not extend or stretch this doctrine to such an extreme extent as to make it well-nigh impossible to prove an allegation of corrupt practice.

5 AIR 1970 SC 1889

6 AIR 1978 SC 1162

7 AIR 1981 SC 8

8 AIR 1985 SC 236

Such an approach would defeat and frustrate the very laudable and sacrosanct object of the Act in maintaining purity of the electoral process.”

The object of the law being maintenance of the purity of the electoral process, extending the doctrine of strict proof to such an extent, where it would be well-nigh impossible to prove any allegation of corrupt practice, is, thus, not warranted. As held by the Supreme Court in the case of **R. Puthunainar Alhithan vs. P.H. Pandian**⁹, though the charge of corrupt practice under Section 123 of the Representation of the People Act is akin to a charge in a criminal trial and the doctrine of preponderance of probabilities, which is typically followed in a civil action, is not extended to the proof of corrupt practice, the burden of proof, unlike in a criminal case, can shift on the returned candidate, if the election petitioner adduces cogent evidence to prove that the returned candidate had committed a corrupt practice. Unlike in a criminal trial, the accused candidate here cannot simply keep mum and refuse to lead any evidence in defence. He must take upon himself the burden of rebuttal of the evidence brought by the election petitioner. If not so rebutted, the proof tendered by the petitioner may be accepted, even if such proof may not be conclusive in itself. Another case in point is the case of **Thiru John vs. The Returning Officer**¹⁰. That was a case, where the election petitioner relied on several admissions and declarations made by the returned candidate concerning his age. The Court held that an admission, if clearly and unequivocally made, is the best evidence against the party making it and though not conclusive, shifts the onus on to the maker on the principle that “what a party himself admits to be true may reasonably be presumed to be so and until the presumption was rebutted the fact admitted must be taken to be established”. This principle

9 AIR 1996 Supreme Court 1599

10 (1977) 3 Supreme Court Cases 540

ordinarily would not apply in a criminal trial, but can be applied *proprio vigore* to an election petition.

10. The law being, thus, put in place, let us now examine the two grounds of challenge to the election of the Respondent. The first ground, covered by Issue Nos. 1 and 2, concerns corrupt practice under Section 123 (1)(A) read with Section 100(1)(b) and Section 100(1)(d)(ii) of the Representation of the People Act. Under Section 100 (1)(b), the election of a returned candidate is liable to be declared void if any corrupt practice has been committed by him or his election agent or any person with his or his election agent's consent. 'Bribery' is defined by Section 123 (1)(A) as a corrupt practice. Section 123(1)(A) defines "bribery" to be any gift, offer or promise by a candidate or his agent or by any other person with the consent of a candidate or his election agent, of any gratification, to any person, with the object, directly or indirectly, of inducing an elector to vote or refrain from voting at an election, or as a reward to an elector for having voted or refrained from voting. There are two incidents referred to in this behalf by the Petitioner, which, according to the Petitioner, make out a case of an offer of gratification made by the Respondent or his agent or any other person with his, or his election agent's, consent to the electors for voting at the election. The Petitioner's pleadings in this behalf are to be found in paragraphs 29 to 42 of the election petition. The first incident is of seizure of 500 envelopes containing Rs.500/- each along with election pamphlets and voters' list found in a vehicle, being a Scorpio Jeep of Mahindra Company, bearing Registration No.MH-06-AS-3963, registered in the name of M/s. Thakur Infraprojects Pvt. Ltd., a company owned by the family members of the Respondent and which was used by the Respondent for the purpose of election propaganda between 11 and 12 October 2014. The

Petitioner relies on materials such as the seizure panchnama, FIR bearing No.II-30/14 dated 12 October 2014 registered with Kharghar Police Station against unknown persons, the information issued by RTO, Pen, Raigad, concerning registration of the vehicle, the application of M/s. Thakur infraprojects Pvt. Ltd. filed before Judicial Magistrate, First Class, Panvel, for return of the vehicle, etc.. According to the Petitioner, the material supports his case that this vehicle belonged to M/s. Thakur Infraprojects Pvt. Ltd.; and that the shares of this company were owned by the Respondent's brother and father. Relying on the oral testimony of the Police Naik, who gave the FIR, the Police Sub-Inspector, who recorded it, and two panchas, who signed the seizure panchnama, it is claimed that the vehicle was used by the Petitioner or his agent or any other person with his or his election agent's consent for offering gratification to the electors to vote at the election.

11. From the evidence referred to above, it can very well be said to be established that a vehicle owned by the company - Thakur Infra Projects Pvt. Ltd. was apprehended by the police and that 500 envelopes containing Rs.500 each were found in this vehicle. It can also be said to be established that relations of the Respondent, namely, his brother and father, held substantial shareholding in this company. Taking an inductive leap from these established facts, even if we were to hold that this vehicle was actually used by the Respondent or his election agent or by any other person with the consent of the Respondent or his election agent for election propaganda, though there is no such concrete connection established at the trial, there is absolutely no case here of any offer made by the Respondent or his election agent or any person with the consent of the Respondent or his agent of any gratification to any elector. The word "offer", as a transitive verb, implies

presenting or tendering for acceptance or refusal or holding out (a thing) to a person to take, if he or she so desires. As is obvious, any plea of offer implies that there are two individuals or entities, who must be present in the case of an offer. There must be an offerer, who presents or tenders or holds out (a thing) and the offeree, to whom (the thing) is presented or tendered or held out. In the absence of an offeree, there cannot be an offer. The presentation or thing tendered or held out must be to an individual. In the present case, there was clearly no offeree, to whom the presentation or tender of gratification was made or to whom any gratification was held out to take, if he or she so desired.

12. Mr. Gavnekar, learned Counsel for the Petitioner, relies on the judgment of the Supreme Court in the case of **Rajendra Prasad Jain vs. Sheel Bhadra Yajee**¹¹. Relying on this judgment, learned Counsel submits that it cannot be said that for a tender or presentation or holding out to be an offer of gratification, there needs to be any specific amount offered as a gratification. Relying on the case of **C. Narayanswamy vs. C.K. Jaffer Sharief**¹², learned Counsel submits that the nexus between the offer and direct or indirect inducement thereby to the elector to vote or to refrain from voting can very well be established from circumstantial evidence. Relying on **S. Iqbal Singh vs. S. Gurdas Singh**¹³, learned Counsel further submits that it is enough if the candidate or his agent is shown to have made a gift, offer or promise; there is no need to establish any bargain for votes against such gift, offer or promise. It is true that, as held by these judgments, an offer need not be of any specific amount; there need not be any evidence of negotiation between the offerer and the elector; the object of offer must be shown to have a nexus with direct or indirect inducement of

¹¹ (1967) 3 SCR 19

¹² 1994 Supp (3) SCC 170

¹³ (1976) 3 SCC 284

an electoral result through votes in favour of the candidate and this nexus can be established by circumstantial evidence; there is no need to establish in particular that there was any bargain for votes; and it is certainly enough if the candidate or his election agent or any other person with the consent of the candidate or his election agent makes such offer. But these propositions, well established as they are, are still besides the point in the present case. They do not detract from the elementary requirement of there being an offeree to whom such offer is made.

13. If we look at the allegations in the petition and evidence led at the trial in support thereof, what emerges at the highest, as mentioned above, is that a vehicle used by the Respondent for his election propaganda was found to be containing cash kept in individual envelopes along with voters' list. All that one can possibly say, though even that is in the nature of a surmise, is that this cash was **meant to be offered** to the voters whose names were contained in the list. There is still no **offer** of any cash to any individual voter or even voters generally. There may be a preparation for commission of an offence of bribery, but no actual commission. Since before the cash could be distributed, assuming that such was the intent, the vehicle was apprehended, the potential offender was stopped in his tracks and bribery was averted.

14. Even the other incident shows that two employees of Thakur Infra Projects Pvt. Ltd. were found to be carrying cash in envelopes (31 envelopes containing Rs.500/- each) along with voters' slips. It may well be that this cash was **meant to be offered** to the individual voters whose names were in the slips, but it still stops short of materialising into an **offer made**. So long as there is no offer, there is no offence of bribery. Preparations for making an offer are not sufficient for entering the verdict of

bribery.

15. Issue Nos. 1, 2 and 8 are, accordingly, answered in the negative, that is to say, against the Petitioner.

16. Coming now to the aspect of incomplete nomination papers or mis-information or suppression of material information and improper acceptance of the Respondent's nomination thereby, it is the Petitioner's case that the properties of the Respondent are not truly and fully disclosed in the affidavit and papers forming part of his nomination. It is submitted that two parcels of land, having a substantial value are not disclosed. Secondly it is submitted that the Respondent was admitted as a partner of one M/s. Kalpavruksh Infra Projects on 1 August 2013 with 20% share; that firm had purchased a number of immovable properties; and the firm being an unregistered firm, the Defendant ought to have disclosed these properties in the affidavit filed with the nomination papers. It is submitted that the Respondent not only did not do so, but falsely claimed that a sum of Rs.78.50 lakhs was due to him from the firm towards his advance. It is submitted that there is, thus, a material suppression in the affidavit and the Respondent's nomination was, accordingly, incomplete or made on mis-information or suppression of material information. It is submitted that the acceptance of such nomination form was improper and invalid. It is submitted that since the Respondent himself is the returned candidate, such improper acceptance has materially affected the result of the election and that the Respondent's election is, accordingly, liable to be set aside.

17. Learned Counsel for the Petitioner submits that every candidate has a constitutional obligation or duty to make a truthful and complete

disclosure of information and if there be any suppression of material information or mis-information or dis-information on account of disclosures made by the candidate in the affidavit, it would entail a clear non-compliance with such constitutional obligation and lead to improper acceptance of nomination within the meaning of Section (100)(d)(i) of the Representation of the People Act. Learned Counsel relies on the decision of our Court in the case of **Arun Dattatray Sawant vs. Kisan Shankar Kathore**¹⁴.

18. Mr. Vashi, learned Counsel for the Respondent, on the other hand, disputes the factum of non-disclosure. Learned Counsel submits that the two properties referred to by the Petitioner as undisclosed properties did not belong to the Respondent when his nomination was filed. Learned Counsel submits that the Respondent had retired from the partnership firm of M/s. Kalpavruksh Infra Projects on 2 May 2014, i.e. before filing his nomination. Learned Counsel also disputes the Petitioner's contention that since the firm is an unregistered firm, the immovable property of the firm must be treated as individual property of the partners and ought to be disclosed as such in the nomination papers. Mr. Vashi relies on the case of **Addanki Narayanappa vs. Bhaskara Krishnappa**¹⁵ and submits that any property, which is acquired in the course of the business of partnership, becomes the property of the firm and all that the partner is entitled to is the share in the profits, if any. As far as the properties of the firm themselves are concerned, learned Counsel submits that many of the properties claimed to be belonging to the firm are acquired by the firm after the Respondent retired from the firm. Learned Counsel submits that there was substantial compliance on the part of the Respondent in making disclosure of his

¹⁴ Judgment of A.M. Khanwilkar, J. dtd. 16/8/17 in EP-10/2004.

¹⁵ AIR 1966 Supreme Court 1300

property. Learned Counsel submits that, in keeping with the purpose of disclosure of assets and liabilities, there is a fair and substantial disclosure on the part of the Respondent. Learned Counsel relies on the Supreme Court's decision in the case of **Kisan Shankar Kathore vs. Arun Dattatray Sawant**¹⁶ in this behalf.

19. There are two particular properties, namely, Survey No.61, admeasuring 5 ares at Village Jasai, Taluka Uran, District Raigad and Survey No.57/1, admeasuring 1 are at the same village, which are said to be owned by the Respondent. 7/12 extracts of these properties issued by Talathi Saja Jasai have been produced in evidence along with the relevant mutation entires. The existing Circle Officer, Saja Jasai has also been examined in this behalf. These allegations have been dealt with by the Respondent in paras 12 to 16 of his written statement. The Respondent's case is that these two survey numbers were required by the State Government for the purpose of Nerul Belapur Uran Railway Line vide notification published in Government Gazette on 21 March 2002. The process of acquisition of these lands was commenced by issuance of a notice under Section 4 of the Land Acquisition Act, 1894. Special Land Acquisition Officer, Metro Center No.1, Uran, District Raigad, had even passed an award under Section 11 of the Acquisition Act on 5 March 2005. The award included both survey numbers. Even final payment was made to the Respondent in respect of these two survey numbers as and by way of compensation for acquisition of lands. The relevant form in this behalf was issued on 21 December 2006 and, on the same day, possession of these lands was handed over to Special Land Acquisition Officer, Metro Center No.1, Uran. There is a possession receipt of the same date.

16 AIR 2014 Supreme Court 2069

20. The documents placed on record in this behalf by rival parties are not matters of dispute. It is clear from these documents that, on 26 September 2014, when the disclosure affidavit was made by the Respondent, these lands did not belong to the Respondent. The lands were not only acquired, but against payment of compensation, even possession of these lands was handed over by the Respondent to the State much before filing of his nomination papers. Non-disclosure of these lands in the nomination form and accompanying affidavits, thus, does not amount to any suppression or mis-statement on the part of the Respondent.

21. As regards the allegation that the properties of the firm of M/s. Kalpavruksh Infra Projects should have been disclosed as the properties of the Respondent to the extent of his individual share therein, the Respondent, firstly, disputes the factum of ownership of the properties of the firm as of the date of the nomination of the Respondent. The Respondent, secondly, submits that, by his letter dated 1 April 2014, he gave a notice of retirement to the partners of the firm. It is submitted that, in pursuance of this notice, on 2 May 2014, a deed of retirement was executed between the Respondent and the continuing partners. It is submitted that, in pursuance of this retirement deed, the firm owed to the Respondent an amount of Rs.78.50 lakhs towards return of his capital. It is submitted that this amount has been duly reflected in his nomination papers as a receivable from the firm.

22. There is some controversy raised by the Petitioner as to the alleged retirement of the Respondent. Mr. Gavnekar submits that the notice of retirement, purportedly issued by the Respondent, is invalid, firstly, because it amounts to retirement from the business and not from the

partnership firm and, secondly, because it is not a notice of intention to retire given to the partners. It is submitted that the letter of retirement is addressed to the firm and not to its partners. A reading of the notice, which is placed on record and, which is duly proved by oral and documentary evidence laid by the Respondent, makes it clear that it is nothing but a notice of retirement from the partnership firm. Retirement from the business of partnership referred to in the notice is nothing but retirement from the partnership firm and a notice issued to the firm is clearly notice to all the partners. The notice is not only served on the partners, but thereafter, even acted upon by all the parties by executing a formal retirement deed and duly communicating such retirement to the firm's bankers. The retirement deed and the letter addressed to the bank containing the receipt stamp of the addressee are also produced and proved before the Court. There is, thus, no substance in the Petitioner's contention that on the date of his nomination, the Respondent continued to be a partner of the partnership firm of M/s. Kalpavruksh Infra Projects.

23. The Respondent retired from the partnership firm of M/s. Kalpavruksh Infra Projects and, under the retirement deed, he released all his share, right, title and interest in the business of the firm and its assets and agreed to treat the amount found as due and payable by the firm to him as his loan/advance. The firm was said to owe him an amount of Rs.78.50 as return of his capital in full and final settlement of his claim upon such retirement. Such sum being treated as his advance, the disclosure of receivable of Rs.78.50 lakhs from the firm is a fair and proper disclosure of the Respondent's property insofar as this firm is concerned.

24. Even otherwise, learned Counsel for the Petitioner is not right

in submitting that the property of an unregistered firm is actually property of the partners and the Respondent, as an individual partner of the firm, should have disclosed his share in this property as his asset. As held by the Supreme Court in the case of **Addanki Narayanappa** (supra), the provisions of the Partnership Act make it very clear that whatever may be the character of the property, which is brought in by the partners when the partnership is formed, or which may be acquired in the course of the business of the partnership, it becomes the property of the firm and what a partner is entitled to is his share of profits, if any, accruing to the partnership from out of the use of the property. In case of a dissolution of the partnership or retirement of a partner, the partner is entitled to an account as of the date of dissolution or retirement, as the case may be, and, in that sense, would have an interest in the surplus coming to his share actually or notionally, as the case may be, after satisfying the liabilities of the firm in accordance with Section 48 of the Partnership Act. Share of a partner upon his retirement is his share in the surplus of the assets of the firm after their realization (on a notional basis in the event of a retirement from an ongoing firm) over liabilities of the firm (also on a notional basis). A partner cannot be said to have any definite share or interest in the property of the firm as such.

25. No doubt, strictly speaking, balance in his capital account cannot be said to be the partner's share coming to him upon retirement. It is really the partner's share in the surplus as mentioned above. There is no evidence that accounts have been drawn up between the parties upon such retirement and the amount of Rs.78.50 lakhs cannot be termed as the dues owed by the firm to the Respondent. But then, there is no evidence that any other amount was due or payable by the firm to him as his share upon retirement. In the absence of any contrary material, the amount claimed as

due and payable by the firm to the Respondent cannot be said to be incorrect or inadequate.

26. The disclosure made by the Respondent in his affidavit concerning his financial status, including his assets and liabilities, is, thus, a fair disclosure, which substantially complies with the mandate of the legal requirement of disclosure of material particulars within the framework of the election law. As noted by the Supreme Court in the case of **Kisan Shankar Kathore** (supra), the disclosure is required to enable the voter to form his opinion about the candidate's antecedents. The purpose of disclosure of assets and liabilities of the candidate is to educate the voters about the financial status of the candidate. It also facilitates the voters to estimate whether assets declared by the candidate have been procured by him out of legitimate or known sources of income. Based on this estimate, the voters have to form a decision on whether or not to elect the candidate. It is this fundamental right of the voter, which casts a corresponding fundamental duty on the candidate to disclose fully and truthfully information regarding his assets and liabilities. This is more a matter of substance than form. If in substance the candidate properly, fully and bonafide discloses a true financial picture, which enables the voters to take an informed decision, merely on some technical error or incidental non-disclosure, the nomination form cannot be rejected or the election cannot be set aside on the ground of improper acceptance of the nomination form. Going by the facts of the present case, this Court cannot but come to an overall conclusion that there is a fair and proper disclosure of his financial status by the Respondent. The Respondent has truly and completely disclosed his assets and liabilities as a matter of substance.

27. Issue Nos. 3, 4, 6 and 7 are, accordingly, answered in favour of the Respondent, that is to say, Issue Nos. 3 and 4 are answered in the negative and Issue Nos. 6 and 7 are answered in the affirmative.

28. Based on the discussion above, this Court finds no merit in the election petition. The petition is, accordingly, dismissed. No order as to costs.

29. Office to communicate the substance of this decision to the Election Commission and the Speaker of the State Legislature and also send an authenticated copy of the decision to the Election Commission as soon as possible.

30. Office to return the originals of the documents tendered in evidence to the respective parties against supply of certified copies, if not already supplied, after 30 days from today.

(S.C. GUPTE, J.)