

**IN THE HIGH COURT OF JUDICATURE AT HYDERABAD
FOR THE STATE OF TELENGANA AND THE STATE OF ANDHARA PRADESH**

ELECTION PETITION No.8 of 2014

Between:

Madiraju Venkata Ramana Raju

.....Petitioner

and

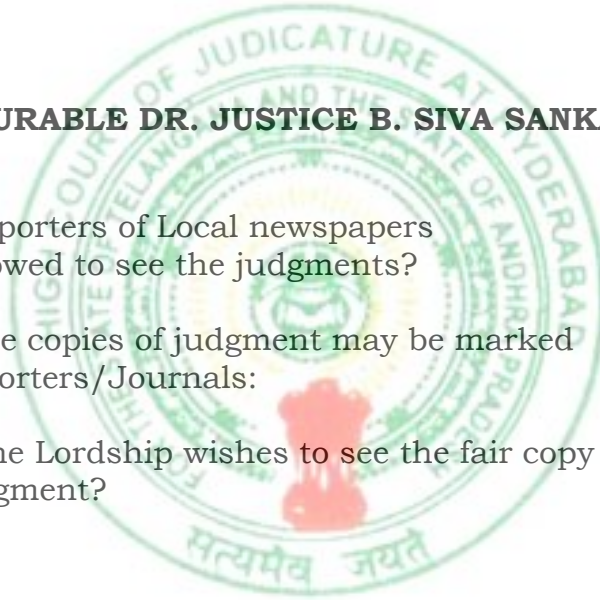
Peddireddigari Ramachandra Reddy and 7 others

.....Respondents

Date of Judgment pronounced on : 15-12-2018

HONOURABLE DR. JUSTICE B. SIVA SANKARA RAO

1. Whether Reporters of Local newspapers : Yes/No
May be allowed to see the judgments?
2. Whether the copies of judgment may be marked : Yes/No
to Law Reporters/Journals:
3. Whether The Lordship wishes to see the fair copy : Yes/No
Of the Judgment?



*** HONOURABLE DR. JUSTICE B. SIVA SANKARA RAO****+ ELECTION PETITION No.8 of 2014**

% 15-12-2018

Between:

Madiraju Venkata Ramana Raju

.....Petitioner

And

\$ Peddireddigari Ramachandra Reddy & 7 others

.....Respondents

< GIST:**> HEAD NOTE:**

! Counsel for the petitioner : Sri MP Chandra Mouli

^ Counsel for the respondents : Sri DV Sitarama Murthy for Sri
VRN Prasanth for R.1
Learned GP for GAD

? Cases referred

1. 2018 Law Suit (SC) 236
2. 2015 (1) SCC 129
3. AIR 2016 SC 3282
4. AIR 2005 SC 3353
5. AIR 1968 SC 647
6. AIR 1975 Bombay 120
7. AIR 2015 SC 16
8. 2012 (12) SCC 27
9. 2012 (3) SCC 314
- 10.2001 (3) SCC 290
11. 1997 (2) SCC 228

HONOURABLE Dr. JUSTICE B.SIVA SANKARA RAO**ELECTION PETITION No.8 of 2014****ORDER:**

One Sri Madiraju Venkata Ramana Raju filed this election petition under Sections 81 r/w 83, 100(1)(a) and (d) Clause (i) of the Representation of People Act, 1951 (for short 'the RP Act'), against eight(8) respondents on 26.04.2014 viz., (R.1)-Sri P.Ramachandra Reddy, (R.2)-Sri S.K.Venkatramana Reddy, (R.3)-Sri G.Ramesh Babu, (R.4)-Sri O.Altaf Basha, (R.5)-Sri S.Noushand, (R.6)-Sri C.S.Pavan Kumar Reddy, (R.7)-Sri A.Prameela and (R.8)-Sri K.S.Rama Rao. The Returning Officer-R8 was deleted from the array as per orders of this Court dated 08.08.2018 in I.A.No.1 of 2018 for no necessity to implead the Returning Officer as party to the election petition.

1(a). All the respondent Nos.1 to 7 supra and the election petitioner were the contested candidates for the election of the Punganur Assembly Constituency No.284, held on 07.05.2014 viz., the election petitioner was fielded by Telugu Desam Party(TDP) and 1st respondent to the election petition was fielded by Yuva Jana Shramika Rythu Congress Party(YSRCP) leave about some of the others are even independent candidates. The election results that were declared on 16.05.2014 shows R.1-Sri P.Ramachandra Reddy got 1,04,587 votes and was declared as duly elected, for the petitioner Sri M.V.Ramana Raju could get 72,856 votes came in second and all other contesting candidates(R.2 to 7) lost their deposits.

2. The election petitioner challenges the election mainly on the ground that the Returning Officer-R.8 supra, instead of rejecting has improperly accepted the 2 sets of the nominations to the Assembly Constituency supra of the 1st respondent-Sri P.Ramachandra Reddy on 21.04.2014 despite written objections raised by the election petitioner-Sri MV.Ramana Raju and said order of the Returning Officer rejecting the objections in accepting the 2 sets of the nominations of 1st respondent supra is contrary to the mandate in the conducting of elections covered by the Rules as well as guiding principles and instructions given to the Returning Officer by way of compendium instructions.

2(a). Prayer in the election petition thereby is as follows:

- a) To declare the election of Sri P.Ramachandra Reddy (R.1) to the 284-Punganur Assembly Constituency to be null and void and set aside the same,
- b) Further to declare that the election petitioner-Sri M.V.Ramana Raju has been duly elected as MLA of said 284-Punganur Assembly Constituency under Section 84 of the RP Act;
- c) To award costs of the petition; and
- d) Pass such other order or orders as deems fit and proper in the circumstances of the case.

3. As part of the election petition pleadings the Annexures I to XIII were referred and enclosed having been duly verified, which are marked with consent of both sides as Exs.A.1 to A.13.

4. The election petition was filed on 26.06.2014 though verified and signed on the previous day, Court stamp clearly speaks the filing on 26.06.2014 and the election petition was admitted on 08.10.2014 by ordering notice to the respondents. Originally one Sri V.Surendra Reddy was the advocate for the election petitioner at the time of filing the election petition and before trial there was change of advocate and the present advocate to the election petitioner is Sri M.P.Chandramouli from 29.03.2018.

5. The 1st respondent put forth his appearance as per summons in the election petition on 24.10.2014 and another vakalat filed on 15.10.2015 through his advocates Sri VRN Prashanth, R.Vivekananda and K.Vijay Bhaskar Reddy. For respondent No.8-Returning Officer, learned Government Pleader for GAD filed vakalat on 18.12.2014. Now R.8 is deleted from the array, as per the recent order of this Court referred supra. Among respondent Nos.2 to 7, only respondent No.5 is appearing through his advocates Sri J.Sampath Kumar and J.Satyam and not others.

5(a). On 06.02.2015, even three months already expired before that to file counter of respondent No.1 in the main petition, it was with a request to file petitions raising preliminary objections on maintainability of the main petition, 1st respondent has taken time and the Court ordered to post after two weeks and again at request of 1st respondent from 20.02.2015 to 09.03.2015, again to 01.04.2015, again to

04.06.2015, again to 12.06.2015 and from 12.06.2015 again at request ordered to post after two weeks. It appears only later the applications filed in E.A.Nos.329 & 330 of 2015 to reject the election petition for want of material particulars and cause of action and to strike down part of petition pleadings. The matter when called on 06.07.2015 in the said applications posted for counter and hearing to 24.07.2015 and therefrom to 14.08.2015. In the main election petition at request of respondent No.1 for filing counter posted to 04.09.2015. On 04.09.2015, E.A.Nos.329 & 330 of 2015 came for hearing and adjourned to 22.09.2015 and therefrom to 30.09.2015 when heard in part and posted to 06.10.2015, again to 12.10.2015, again to 02.11.2015, again to 13.11.2015 and again to 04.12.2015 along with E.A.Nos.623 and 1410 of 2015 as part heard for continuation and again from 07.01.2016 to 22.01.2016 and again for filing counter of 1st respondent in main petition posted to 05.02.2016, again to 19.02.2016 and it is only on 19.02.2016 counter of 1st respondent-Sri P.Ramachandra Reddy filed in the main petition and learned counsel for the election petitioner did not raise any objection to the receiving of counter in main case for three months expired more than an year back and that too without any petition to receive counter, but for sought time to file rejoinder in main case and it was therefrom posted to 25.02.2016, therefrom to 08.03.2016, 15.03.2016, 16.03.2016, 17.03.2016, 23.03.2016 and ultimately to 29.03.2016, when court reserved for orders in

E.A.Nos.329 & 330 of 2015 and matter reopened for further hearing on 11.07.2016 and posted to 13.07.2016 and reserved ultimately on 13.07.2016 and orders pronounced on 02.08.2016, allowing E.A.Nos.329 & 330 of 2015 holding not containing material facts, no cause of action and part of election petition averments Para Nos. 2, 9 to 11 by striking out as frivolous and vexatious, in rejecting the main election petition No.8 of 2014. Against the rejection of the main election petition and other petitions orders supra, the election petitioner moved the Apex Court by Civil Appeal cases 9466, 9467 & 9468 of 2016 and the same was decided by the Three Judge bench of the Apex Court on 21.03.2018 between **Madiraju Venkata Ramana Raju Vs. Peddireddigari Ramachandra Reddy**¹, setting aside the rejection of the election petition and allowing of E.A.Nos.329 & 330 of 2015 etc., supra and by restoring the election petition.

The observations of the Apex Court, from Paras 40 to 44 of the order supra, for more clarity is reproduced hereunder:

“40. Taking any view of the matter, therefore, the impugned judgment of the High Court in allowing both the applications filed by respondent no.1 cannot stand the test of judicial scrutiny. For, we do not find any merit in the plea of the respondent No.1 that paragraphs 2 & 9 to 11 of the election petition are frivolous and vexatious, which contention erroneously commended to the High Court. On the other hand, we are of the considered opinion that the subject election petition plainly discloses cause of action for filing of the election petition to declare the election of respondent No.1 to be void on the ground of improper acceptance of his nomination.

¹ 2018 Law Suit (SC) 236

41. We make it clear that we may not be understood to have expressed any opinion on the merits of the other issues to be decided by the High Court. In other words, our analysis is limited to the threshold matter considered in this judgment about the striking off of the pleadings and rejection of the election petition in limini.

42. In light of the above, we hold that E.A. No.329 of 2015 and EA No.330 of 2015, both filed by respondent No.1 in the subject election petition, deserve to be rejected. Further, the Election Petition No.8 of 2014 shall stand restored to the file of the High Court to its original number for being proceeded further in accordance with law. Similarly, the applications filed by the appellant shall stand restored (except the application for early hearing), to their original numbers to be decided by the High Court in accordance with law.

43. As regards the application for early hearing of the election petition filed by the appellant before the High Court, the same be treated as disposed of in terms of this order. The imperativeness of expeditious disposal of the election petition is underscored in Section 86(7) of the 1951 Act. As per the said provision, the trial of the election petition is required to be disposed of preferably within six months from the date of its presentation before the High Court. Besides, this Court in the case of Mohd. Akbar(supra) has highlighted the necessity of discharging the pious hope expressed by the Parliament. Therefore, we may only request the High Court to expeditiously dispose of the election petition preferably within three months from the production of a copy of this judgment by either party before it.

44. Accordingly, these appeals are allowed in the above terms with no order as to costs.”

6. Now coming to the election petition averments with the 13 annexures shown as list of documents filed with the election petition and same also separately referred with respective verifications to the claim as part of the election petition pleadings (Exs.A.1 to A.13) and counter contest of 1st

respondent and rejoinder of election petitioner only to the extent specifically answer the facts covered by Counter concerned;

6(a). Annexure-I is no other than copy of Form-20 final result sheet as per Rule 56(C)(2)(C) of the Election Rules proceedings of the Returning Officer discloses the same, not in dispute.

6(b). Annexure-II notice of election along with attached form-I contemplated under Rule 3 of the Election Rules filed shows- same was duly published on 12.04.2014 by the Returning Officer with date affixed for nomination papers is not later than 19.04.2014, scrutiny to be taken up at the Office of Returning Officer lying at Tahsildar Office, Punganur on 21.04.2014, notice of withdrawal of candidates either by candidate or his proposer or his duly written authorized election agent to be delivered at the Office supra before 03.00 PM on 23.04.2014 and poll to be taken on 07.05.2014 between 07.00 AM to 06.00 PM.

6(c). Nominations of the election petitioner and respondents 1 to 7 supra as contesting candidates were declared as valid after scrutiny as per Annexure-III dated 23.04.2014 duly signed by the Returning Officer.

7. Para 2 of the election petition reads further that the election petitioner precisely challenges the election on the ground that the Returning Officer-R.8 supra improperly accepted the 2 sets of the nominations to the Assembly Constituency supra of the 1st respondent-P.Ramachandra

Reddy on 21.04.2014 despite written objections raised by the election petitioner (MV.Ramana Raju) covered by Annexure-IV (document No.4) that also referred in the verification.

7(a). The 5 objections raised by the election petitioner against the 1st respondent's 2 sets of nominations in the Annexure-IV are:

“Objection No.1: The 1st respondent who filed nominations has failed to sign on bottom of each and every page of the affidavits in Form-26 as contemplated under Civil Rules of Practice and also deliberately violated the conduct of Election Rules.

Objection No.2: The 1st respondent as a candidate failed to fill up the affidavit at

a. The Column No.4 and Column No.2 under the head of total income shown in Income tax returns.

b. The two sets of affidavits at column No.6 have not properly strike off which ever not applicable.

c. The respondent No.1 in his two sets of affidavits kept blank at column No.8(B)(III), where the words stand of **“Approximate Current market price of”** at Part-B of (11) abstract of the details given in (1) to (10) of Part-A. This is mandatory as per the Conduct of Election Rules and also the recent Apex Court judgment, circulated under instruction No.18 to the Returning Officer.

Objection No.3: The respondent No.1 has not signed on each and every page in the affidavit of Form-26 as contemplated under Civil Rules of Practice and also contemplated under Hand Book of Returning Officers-2014 under Chapter 5.20.1.

Objection No.4: The respondent No.1 in his affidavit at column No.6 has not properly struck off “which ever not applicable”.

Objection No.5: The proxy of the 1st respondent namely P.Dwarakanath Reddy did not file his affidavit properly and also not put his signatures and date on each and every page of Form-26. Later he has withdrawn his nomination.”

7(b). According to the election petition averments, the petitioner's above 5 objections are crystal clear and categorical as contemplated by Rule 35 of the Civil Rules of Practice and also Rule 4A of Conduct of Election Rules 1961 to reject the nominations. It is averred that the affidavit/nomination/Form-26 has to be signed on each and every page at the bottom of the pages and it ought to be indexed with page-wise having reproduced said objections.

7(c). Para 3 of the election petition averments show that despite the election petitioner raised the objections supra on 21.04.2014 before the Returning Officer(R8) and R.1-Sri Ramachandra Reddy has given authorization, (covered by the Annexure-V enclosed as document No.5) to one Sri V.Sreerami Reddy, Advocate, to answer the objections and consequently he filed counter to the objections which is referred in Annexure-VI (also enclosed as document No.6 to the election petition) which reads as follows:

"Counter filed on behalf of the 1st Respondent:

1. The above Objection is not maintainable either in law or on facts and the same is liable to be rejected.

2. The respondent filed other set of nomination also in addition to 2 sets as alleged in Para 1 of the petition. Further the petitioner contended that there are no page numbers in affidavit, but in each and every affidavit it is clearly mentioned the said number of pages as per the guidelines issued by the Election Authority and the contents of the affidavit.

3. Further the respondent submits that the affidavit contains the signature in nomination Form issued by the Hon'ble Election Commission. It is utterly false to say that the respondent violated conduct of Election Rules.

4. Further the Petitioner failed to see all sets of nomination Forms with Affidavit duly attested by Notary. Further the respondent has not mentioned the page numbers by type mistake only not intentional as alleged by the petitioner.

5. Further the respondent signed on end of affidavit stating that all the facts and contents stated in affidavit are true and correct.... The of denying the contents of affidavit does not see the allegation made in Para 3 of the petition are also false.

6. Further the notary signed as per the rules only. Further the particulars basing on the accused of criminal case in Chowdepalle Police Station raised unsustainable Objections which are liable to be rejected. The Petitioner failed to see the affidavits, nomination papers which are in accordance with the Election Commission Rules.

7. In view of the facts stated as per the objections raised by the petitioner are technical, typed erroneously. Hence the objections raised by the Petitioner are not sustainable, liable to be rejected and First Respondent Nomination may be accepted.

8. It is therefore most humbly prayed that the Hon'ble Authority may kindly reject the objections raised by the petitioner and first respondent nomination may kindly accepted in the interests of justice."

7(d). The Para 3 of the election petition averments therefrom further says, the counter of R1(Annexure-IV, document No.6) supra simply denied the objections as purely on technical grounds in sought for rejection of the objections.

7(e). The election petition Para 4 averments read that the Returning Officer by his proceedings in Roc.No.128/EDT/2014 dated 21.04.2014 rejected the objections by his written order duly signed which is referred in Annexure-VII and enclosed as document No.7 which reads as follows:

“Proceedings of the Returning Officer, 284-Punganur Assembly
Constituency, Punganur

Present:: Sri.K.S.Rama Rao, M.A.,B.Ed.,

RocNo.128/EDT/2014

Dated:21-04-2014

Sub: Elections-2014-284-Punganur Assembly Constituency-
Scrutiny of Nominations held on 21-04-2014 — Objection filed
by Sri.M.Venkata Ramana Raju, a candidate for TDP leveling
certain objections on the Affidavit filed by Sri.P.Rama Chandra
Reddy, a candidate for YSRCP and Sri.P.Dwarakanath Reddy
another candidate for YSRCP Objections over ruled- Reg.

Read: 1) Nomination filed by Sri.P.Rama Chandra Reddy, a
candidate for YSRCP on 12/04/2014 and 17-04-2014

2) Nomination filed by Sri.P.Dwarakanath Reddy a candidate
for YSRCP on 17/04/2014

3) Objection petition filed by Sri.Venkata Ramana Raju, a
candidate for TDP through his counsel (authorized person) on
21-04-2014 at the Scrutiny.

Order:

On 21-04-2014 at the time scheduled for Scrutiny Of
Nominations, Sri.Venkata Ramana Raju, a candidate for TDP has
filed an objection petition through his counsel levelling certain
objections on two affidavits filed by Sri.P.Rama Chandra Reddy, a
candidate for YSRCP and one affidavit filed by Sri.P. Dwarakanath
Reddy, another candidate for YSRCP as detailed below.

Sri.P.Rama Chandra Reddy and P.Dwarakanath Reddy also
filed counter against the objections filed by Sri. Sri.Venkata Ramana
Raju, a candidate for TDP through their counsel during the time of
Scrutiny of Nominations.

Perused both the objection petition and counter and examined
with reference to the rules framed by Election Commission of India.
The objections with reference to the rules are discussed below.

Objection No.1 (Para 1):

It is pointed out that, Sri.P.Ramachandra Reddy who filed
nominations has failed to sign on bottom of each and every page of
the affidavits in form-26 as contemplated under Civil Rules of
Practice.

A perusal of Hand Book for Returning Officer-2014 under
chapter 5.20.1 second Para reveals that "The affidavit should be

sworn before a Magistrate of the First Class or before a Notary public or a Commissioner of Oaths appointed by the High-court of the State concerned, on the last page of the affidavit."

Here in this case, the above two affidavits filed have been signed on the last page duly sworn before the Notary Public as contemplated under Hand Book for Returning Officer-2014 under chapter 5.20.1 second Para.

Objection No.2 (Para 1):

It is pointed out that, in the affidavit filed by Sri.P.Ramachandra Reddy, a candidate set up by YSRCP party failed to fill up

- a) The column NO 4 and Column No.2 under the head of Total income shown in Income tax returns
- b) Both affidavits columns No.6 has not properly strike off which ever not applicable.
- c) In both affidavits in Part-'B'(II) abstract of the details given in (1) to (10) of Part A Col.8 B. III column is totally kept blank.

With regard to the objection 2(a), a perusal of the affidavit filed Sri.P.Ramachandra Reddy on 12/04/2014, the column NO 4 and Column No.2 has been filled in as "Not applicable". But in the subsequent affidavit filed on 17-04-2014 the column NO 4 and Column No.2 is kept blank. As the affidavit filed on 12-04-2014 is in order and hence the objection raised in this regard could not stand to legal scrutiny.

With regard to objection-2(b) mentioned above, though the relevant word under column no. 6 have not been struck off, but the points mentioned below the para as (a)(b)(c) and (d) have been duly filled in as "Not Applicable". It clearly reveals that, the candidate has clearly mentioned that he has not been convicted in any offence. Hence the objection raised in this regard could not stand to legal scrutiny.

With regard to objection 2(c) mentioned above, Part-B (11) abstract of the details given in (1) to (10) of Part A Col.8 III, is a heading to the below mentioned (a) and (b) and all column of (a), (b) are filled in. Hence the objection raised in this regard could not stand to legal scrutiny.

Objection No.3 :(Para 2):

It is pointed out that, Sri.P.Dwarakanth Reddy has filed nomination set up by YSRCP party has failed to sign on bottom of each and every page of the affidavits in form-26 as contemplated under Civil Rules of Practice.

A perusal of Hand Book for Returning Officer-2014 under chapter 5.20.1 second Para reveals that "The affidavit should be sworn before a Magistrate of the First Class or before a Notary public or a Commissioner of Oaths appointed by the High court of the State concerned, on the last page of the affidavit."

Here in this case, the above affidavit filed has been signed on the last page duly sworn before the Notary Public as contemplated under Hand Book for Returning Officer-2014 under chapter 5.20.1 second para. Hence the objection raised in this regard could not stand to legal scrutiny.

Objection 4: (Para 2)

The affidavit columns No.6 has not properly struck off which ever not applicable.

With regard to objection 4 mentioned above, though the relevant word under column no.6 have not been striked off, but the points mentioned below that para as (a)(b)(c) and (d) have been duly filled in as "Not Applicable". It clearly reveals that, the candidate has clearly mentioned that, he has not been convicted in any offence. Hence the objection raised in this regard could not stand to legal Scrutiny.

Objection 5 :(Para 2)

It is pointed out that, Sri.P.Dwarakanth Reddy has failed to affix date on the affidavit in deponent column.

A perusal of last page of the affidavit in Form -26, the candidate has affixed date and the candidate has not mentioned the date on the affidavit meant for Criminal antecedents which is filed additionally along with main affidavit in form-26. But the Notary Public clearly mentioned the date in the affidavit meant for Criminal antecedents as '12/04/2014'. The candidate already furnished all the information required under the law in the affidavit in Form 26 (main affidavit) and more over Notary Public has clearly mentioned the date on the additional affidavit, and hence the objection raised in this regard could not stand to legal scrutiny.

Objection 6 :(Para 3)

It is pointed out that, the Notary has not signed in the places/ columns in the above three affidavits.

A perusal of three affidavits reveals that, the Notary has properly signed in the relevant places/ Columns. Hence the objection raised in this regard could not stand to legal scrutiny.

In the circumstances stated above, the objection petition needs no consideration and hence the objections raised are hereby over ruled.

Typed to dictation and signed on this 21st day of April 2014.

Sd/-
Returning Officer
284-Punganur A/C
&Executive Director, SC Corporation
Chittoor.”

8. It is averred in Para 4 of the election petition impugning said order of the Returning Officer rejecting the objections as contrary to the mandatory conduct of election Rules as well as guiding principles and instructions given to the Returning Officer by way of compendium instructions, Volume-2 supplied to each of the Returning Officer in the light of the Apex Court judgment regarding the affidavits and blank columns. The Returning Officer also circulated the do's and do-not's along with check list to each of the candidates, where it is specifically says, each of the candidates have to strictly follow the procedure contemplated under the Election Rules and the said instructions are supplied along with set of nomination papers quoted is the spirit of the Apex Court judgment rendered in **Resurgence India Vs. Election Commission of India** in W.P.(C).No.121 of 2008 dated 13.09.2013, regarding the blanks in the nomination form contemplated under Form-26.

9. It is averred in Para 5 of the election petition that after rejection of the objections, the election petitioner made an application to the Returning Officer to issue certified copies to his objections, authorization given to third party by 1st respondent and counter to the objections which copy application is referred with verification in Annexure-VIII covered by document No.8 dated 21.04.2014. Annexure-IX is the Gazette notification in the Gazette of India No.1433 dated 01.08.2012. In form-26 as per Rule 4-A prescribed under Section 169 of Representation of Peoples Act, covered by the notification SO/1723-E of 01.08.2012 by the Central Government after consulting the Election Commission by amending the conduct of Election Rules 1961 by amending Rules 2012 and the Form-26 also speaks affidavit to be filed by the candidate with nomination papers before the Returning Officer for election by naming house and constituency and the Form-26 prescribes part-A of the facts on oath of the name, address, PAN number of him/her spouse and dependents and whether accused or not of any offence for 2 years or more in a pending case if any also to furnish the particulars of FIR, police station, District and State, Sections of law with which charged and name of the court with case number of any order of cognizance taken and charges framed if any and whether proceedings stayed if any and details of any appeal or application or revision pending against cognizance/charges if any and convicted if any in any offence so far and appeal

pending if any and details of movable and immovable properties of him or her spouse and dependents as prescribed of the information required on 8 counts with total value of movables and 5 counts total value of immovable properties and liabilities or dues to the public financial institutions and Government with details on 2 counts with total and any other liabilities in dispute, details of profession or occupation of self and spouse, educational qualifications. Part-B of the Form-26 prescribes name, address, name of the constituency, State and name of the political party which setup the candidate or contesting as independent and total number of pending cases with charges framed if any for offence with imprisonment of 2 years or more and total number of pending cases where Court taken cognizance other than above and total number of cases in which convicted and sentenced to imprisonment for one year or more other than referred pending above and except for offence under Section 8(1)(2)&(3) of the RP Act and PAN number, particulars of income tax returns with total income of the candidate, spouse, dependants and details of their assets and liabilities, movable assets, immovable assets with development construction current value self acquired assets, liabilities, government dues, loans from banks and financial institutions and liabilities other than under dispute to Government or bank or financial institutions and higher educational qualifications and ultimately verification with signature of the deponent with date and place of verification. There are 4 notes appended to the

Form-26 underneath the verification column prescribed. Note-I reads affidavit should be filed latest by 3 PM on the last date of filing nomination. Note-II reads affidavit should be sworn before the Oath Commissioner or Judicial First Class Magistrate or before the Notary public, Note-III speaks all columns should be filled up and no column should be left blank. If there is no information to furnish in respect of any item either “nil or not applicable as the case may be should be mentioned” and Note-IV speaks affidavit should be either typed or written legible neatly. There is another note which says the principal Rules were published vide notification No.S.O.859 dated 15.04.1961 and last amended vide notification-I S.O.728(E) dated 08.05.2007 and notification-II No.S.O.425(E) dated 23.02.2011.

10. Coming back to the election petition further averments from Para 6 onwards that the election petitioner stood second highest to the declared elected candidate (R.1) in the elections held to the 284-Punganur Constituency as shown in Annexure-I for petitioner Sri M.V.Ramana Raju secured 72,856 votes with 415 postal ballots and R.1-Sri P.Ramachandra Reddy secured 1,04,587 in 640 postal ballots; whereas other respondent Nos.2 to 7 secured below 2220 votes and below 15 or nil postal ballots.

11. Para 7 of the election petition averments show that the election petitioner on advice submits that the Government of India issued notification on 01.08.2012 the Form-26 under Rule 4A of the Conduct of Election amended Rules 2012 as per

Section 169 of the RP Act, that was published and is covered by Annexure-IX referred supra for better appreciation by also appended the note Nos.1 to 4 referred supra as relevant to accept as valid Form-26 by the Returning Officer.

12. In Para 8 of the election petition, the election petitioner submits that subsequent to the said notification covered by Form-26 in Annexure-IX (document No.9) appended to the election petition, the Election Commission of India issued proceedings vide No.3/4/2012/SDR dated 24.08.2012 covered by Annexure-X filed as document No.10 directing all the Election Commissions, political parties and other organizations to follow the single affidavit strictly in accordance with Form-26. For more clarity same covered by Annexure-X document No.10 reproduced hereunder (rule 3 underline).

“INSTRUCTION Sl. No. 19

ELECTION COMMISSION OF INDIA

NIRVACHAN SADAN, ASHOKA ROAD, NEW DELHI-110001

No. 3/4/2012/SDR

Dated: 24th August, 2012

To,

Chief Electoral officers
of all State and Union Territories

Sub:-Affidavit to be filed by the candidates with their nomination paper- modification of format - regarding.

Sir/Madam,

The candidates at elections to the Parliament and the State Legislatures hitherto were required to file two affidavits: one, in Form -26 appended to Conduct of Elections Rules 1961 and the other, in the Form prescribed by the Commission, vide its Order No. 3/ER/2003 dated 27.03.2003, as subsequently modified by the letter of even number dated 25.02.2011. In the affidavits, the candidates

are required to declare information about their criminal background, if any, assets, liabilities and educational qualifications.

2. On a proposal moved by the Commission for amalgamating the two affidavits into one format, the Govt. has amended Form 26 so as to include in it all the information that was sought in the two separate affidavits. The Ministry of Law and Justice have notified the revised format of Form 26 in the Gazette of India on 01.08.2012. A copy of the said notification dated 1st August, 2012 is enclosed herewith.

3, In view of the amendment to Form-26, all candidates shall, hereafter, file only one affidavit in the revised Form 26 notified on 01.08.2012 (at elections to the Parliament and State Legislatures), The requirements to be followed while filing the affidavit have been mentioned in the notes given at the end of the format. Further, as already directed in the Commission's letter No. 3/ER/2011/SDR, dated 1st September, 2011, the affidavit should be on stamp paper of such denomination as prescribed under the State Act on the subject.

4. The Commission has directed that the revised format of the affidavit should be brought to the notice of the Returning Officers for all elections conducted by the Commission, including elections to Rajya Sabha and Legislative Councils (in the States having Legislative Council) with instructions to ensure that this is brought to the notice of all concerned. You may kindly ensure that all the Returning Officers, including Returning Officers for elections to Council of States and Legislative Councils, receive a copy of this letter along with the notification of amended Form-26 and acknowledgement of receipt be obtained from every Returning Officer in the State. A consolidated certificate that all the Returning Officers have received the instructions may be forwarded to Commission within one month of receipt of this letter,

5. You are also requested to furnish a copy of this letter along with copy of the enclosed notification to every political party (including registered unrecognized parties) having headquarters in your State/UT, including the State Units of recognized National and State political parties.

Yours faithfully
(AshishChakraborty)
Secretary”

13. From the above now coming to the core of the contentions material in the election petition mainly against the 1st respondent and pointing out how his nomination liable to be rejected and how the Returning Officer failed to consider in accepting the 2 sets of nominations instead of rejection, by considering the election petitioner's objections, rather rejecting his objections, pleaded in Paras 9 to 11 of the election petition as follows:

"9. The Petitioner submits that all the objections raised by the petitioner through Annexure-IX, is not considered by the 8th respondent herein, which is straight away contrary to the recent Apex Court judgment regarding the affidavits and blank columns recently held in Resurgence India Vs Election Commission of India & Anr., held in Writ Petition (Civil) No. 121 of 2008 dt. 13.09.2013. The Hon'ble Supreme Court clarified the same in the instant judgment at Para 27 are so relevant to this context of this matter and the relevant portions of Para 27 of judgment are extracted hereunder:

27. What emerges from the above discussion can be summarized in the form of following directions:

(i)

(ii)

(iii) **Filing of an affidavit with blank particulars will render the affidavit nugatory.**

(iv)

(v)

(vi) The candidate must take the minimum effort to explicitly remark as "NIL" or "Not Applicable" or "Not known" in the columns and not to leave the particulars blank.

(vii) **Filing of affidavit with blanks will be directly hit by Section 125A(I) of the RP Act.** However, as the nomination paper itself is rejected by the Retuning Officer

Thus, the above said spirit of the judgment was circulated along with the nominations papers by the Respondent No.8 to each of the candidates So, the Respondent No. 1 was cautious about this

aspect. The Respondent No. 1 has not signed on each of the pages of Form-26 in both sets of Nominations papers filed before the 8th Respondent. The two sets of nomination papers are attested by the very same Notary on the last page of both the sets of nomination papers. So, the omission of signature and blank columns are not the technical mistakes at all.

10. The petitioner on advice submits that in the light of the above said Apex Court judgment, the 8th respondent should have been rejected the improper nomination of the Respondent No. 1 on 21.04.2014 itself at the threshold as contemplated under Section 100 (1)(d)(i) of Representation of Peoples Act. The 8th respondent is so cautious about this aspect even according the circulation of all election material such as Handbook for Returning Officer-2014 and General Elections-2014 Compendium Instructions Volume-2 well in advance to the 8th respondent. The Election Commission Of India already circulated the text of the above said Judgment through Instruction Sl.No.32 by way Of Compendium Instruction Volume No.2 to the 8th respondent/ Returning Officer read as **Annexure-XI**. So, the 8th respondent was so cautious of the above said extracted judgment, but favoured the Respondent No. 1 by accepting the improper nomination enable to win the election to the Punganur (284) Constituency to Andhra Pradesh State Legislative. The said declaration of election by the 8th respondent is nothing but clear abuse of process of law in the light of the above extracted Apex Court judgment. The Respondent No.1 misrepresented the Election Commission and as well the 8th respondent with a causal manner giving false information at Para 7A of details of Immovable Assets in his two sets of affidavit under Form-26 by showing the Gross Total Value of Rs. 2,79,67,680 instead of 3,00,67.680 and deliberately did not count the column amount at 7 (vii) of Rs. 21,00,000/-

11. The Petitioner submits that the Petitioner's nomination of Form No.26 may be read as **Annexure-XII** and the Respondent No. 1 Form No.26 of two sets of nomination papers may be read as **Annexure-XIII** herewith for prosecution of the above said Election Petition along with the grounds of the Election Petition.

GROUND

a). Whether the 8th Respondent has ignored the Constitutional Spirit of Representation of the People Act (Act 43 of 1950) and Act 43

of 1951 with allied Acts, Rules, Orders, Model Code of Conduct for Guidance of Candidates supplied by the Election Commission for the Election 284, Punganur Assembly Constituency failing to conduct a fair scrutiny in accordance with the law while conducting a fair scrutiny of the nomination of the Respondent No. 1 Form-26 in accordance with law?

b). Whether the 8th Respondent acceptance of the improper nomination of Form-26 application as contemplated despite the fatal omission of blank column under Section 100 (l) (d) (i) of Representation of the People Act, 1951 of the two sets of affidavits of the Respondent No. 1 kept in blank at Column No.8 (B) (III), where the words stand of "Approximate Current market Price of..." at Part-B of (11) abstract of the details given in (1) to (10) of Part-A ?.

c). Whether the Respondent No.1 election to 284, Punganur Assembly Constituency can be set aside on the grounds that the Respondent No.8/ Returning Officer has accepted the improper nomination Form vide Form-26 with omissions of not signing on each and every page of the affidavit and not keep intact of filling of the blanks contrary to the spirit of the Apex Court Judgment rendered in Resurgence India Vs Election Commission of India & Anr., held in Writ Petition (Civil) No. 121 of 2008 dt.13.09.2013?

d) Whether the Respondent No.1 Affidavit with blank particulars will render the affidavit nugatory and hit by Section 125 A(i) of Representation Of Peoples Act, 1951 directly and has to set a side the election?"

14. Thus the Form-26 affidavits of the 2 sets of nomination of the 1st respondent-Sri P.Ramachandra Reddy referred supra in Paras 9 to 11 are covered by verified Annexure-XIII. The petitioner's nomination Form-26 is covered by Annexure-XII document No.12. The Election Commission of India instructions serial No.32 to all the Returning Officers to follow the letter of spirit of Apex Court judgment regarding the scrutiny of the nomination papers respect to said legislature

and also to the Parliament is referred and verified in Annexure-XI enclosed as document No.11 which reads as follows:

“INSTRUCTION Sl. No. 32

ELECTION COMMISSION OF INDIA

NIRVACHAN SADAN, ASHOKA ROAD, NEW DELHI-110001

No. 576/3/2013-SDR

Dated: 30th

September, 2013

To

The Chief Electoral Officers of
all States and Union Territories,

Sub: Judgment dated 13-09-13 of the Hon'ble Supreme Court in WP (C) No. 121 of 2008- Resurgence India vs. Election commission of India and other, regarding filing of incomplete affidavit of candidates.

Sir/ Madam,

I am directed to enclose herewith a copy of the abovementioned judgment of the Hon'ble Supreme Court. It would be seen that by this judgment, the Hon'ble Supreme Court has held that the voter has the elementary right to know full particulars of a candidate who is to represent him in the Parliament/ Assemblies and such right to get information is universally recognized natural right flowing from the concept of democracy and is an integral part of Article 19(1)(a) of the Constitution.

2. The Hon'ble Court has accordingly held that in the affidavits filed by candidates along with their nomination paper, the candidates are required to fill up all columns therein and no column can be left blank. Therefore, at the time of filing of affidavit, RO has to check whether all columns of the affidavit filed with the nomination paper are filled up. If not, the RO shall give a reminder to the candidate to furnish information against blank columns. The Hon'ble Court has held that if there is no information to be furnished against any item, appropriate remarks such as 'NIL' or 'Not Applicable' or 'Not Known' as may be applicable shall be indicated in such column. They should not leave any column blank. If a candidate fails to fill the blanks even after reminder, the nomination paper will be liable to be rejected by the RO at the time of scrutiny of nomination papers.

3. The Hon'ble Court has observed that another clause may therefore be inserted in the standard draft format already prescribed by the Commission for reminding the candidates to fill the blanks with the relevant information thereby conveying the message that no affidavit with blank particulars will be entertained. The Hon'ble Court has categorically mentioned that it is the duty of the Returning Officer to check whatever the information required is fully furnished at the time of filing of affidavit with the nomination paper since such information is very vital for giving effect to the 'right to know' of the citizens. If a candidate fails to fill in the blanks even after the reminder by the Returning Officer, the nomination paper is fit to be rejected.

4. The relevant extracts from the judgment are reproduced below:

(i) The voter has the elementary right to know full particulars of a candidate who is to represent him in the Parliament/Assemblies and such right to get information is universally recognized. Thus, it is held that right to know about the candidate is a natural right flowing from the concept of democracy and is an integral part of Article 19(1) (a) of the Constitution.

(ii) The ultimate purpose of filing of affidavit along with the nomination paper is to effectuate the fundamental right of the citizens under Article 19(1)(a) of the Constitution of India. The citizens are supposed to have the necessary information at the time of filing of nomination paper and for that purpose, the Returning Officer can very well compel a candidate to furnish the relevant information.

(iii) Filing of affidavit with blank particulars will render the affidavit nugatory.

(iv) It is the duty of the Returning Officer to check whether the information required is fully furnished at the time of filing of affidavit with the nomination paper since such information is very vital for giving effect to the 'right to know' of the citizens. If a candidate fails to fill the blanks even after the reminder by the Returning Officer, the nomination paper is fit to be rejected. We do comprehend that the power of Returning Officer to reject the nomination paper must be exercised very sparingly but the bar should not be laid so high that the justice itself is prejudiced.

(v) We clarify to the extent that Para 73 of People's Union for Civil Liberties case (supra) will not come in the way of the Returning Officer to reject the nomination paper when affidavit is filed with blank particulars.

(vi) The candidate must take the minimum effort to explicitly remark as 'NIL' or 'Not Applicable' or 'Not known' in the columns and not to leave the particulars blank.

(i) Filing of affidavit with blanks will be directly hit by section 125A(i) of the RP Act However, as the nomination paper itself is rejected by the Returning Officer, we find no reason why the candidate must be again penalized for the same act by prosecuting him/her.

5. The CHECK LIST of documents required to be filed by a candidate along with the nomination paper was prescribed by the Commission vide letter No.576/3/2009/SDR dated 10-02-2009 in order to ensure transparency and accountability and to streamline the procedure of filing of nomination and scrutiny of nomination papers. The CHECK LIST was modified in pursuance of Hon'ble Supreme Court judgment dated 09-12-2011 in CA No.4956 of 2010 — Ramesh Rout Vs. Ravindra Nath Rout and circulated vide letter No.576/3/2013/SDR dated 21-01-2013. The same CHECK LIST is now further amended to comply with the direction of the Apex Court in the instant case to insert another clause for reminding the candidates to fill in the blank columns, if any, in the affidavit. A revised format of the CHECK LIST is enclosed herewith. Please replace the existing Format of Check List in the ROs Handbook as well in other records where the Check List is kept.

6. The Commission has directed that the revised format of the CHECK LIST should be brought to the notice of the all Returning Officers for all elections conducted by the Commission, including elections to Rajya Sabha and Legislative Councils (in the States having Legislative Council). You may kindly ensure that all the Returning Officers, including Returning Officers for elections to Council of States and Legislative Councils (in States where Legislative Council is in existence), receive a copy of this letter along with the revised CHECK LIST and acknowledgement of receipt be obtained from every Returning Officer in the State. A consolidated certificate that all the Returning Officers have received the instructions may be

forwarded to the Commission within one month of receipt of this letter.

Kindly acknowledge receipt.

Yours faithfully
(AshishChakraborty)
Secretary”

15. From this coming to the contest of the 1st respondent in his counter affidavit, he denied the material averments in the Election Petition as not true, that the Election Petition is liable to be dismissed in limini for want of cause of action and from lack of basic and material facts. It is further contended that:

“a) The Election Petition filed under Section 100 (l) (d) (i) of the Representation of the People Act, 1951, is not maintainable as the same does not disclose the basic ingredients/material facts which are required under the said Sec.83(a) of the Representation of the People Act 1951.

b) The main allegation of the Election Petitioner is that the nomination of this Respondent has been improperly accepted. However there is no pleading of whatsoever nature, in the Election Petition that the acceptance of the nomination of this Respondent, has materially affected the result of the election, which is the statutory requirement under Section 100 (l) (d) (i) of the Representation of Peoples Act 1951 and failure to plead the same with material facts was held to be fatal as per several judicial pronouncements.

c) It has been held by this Hon’ble Court as also the Hon’ble Supreme Court that even if the nomination of a returned candidate has been improperly accepted, the same per se cannot be a ground for setting aside the election of a returned candidate, who has been elected by the people of Constituency in a democratic manner. Unless there is a specific plea based on material facts contending that the result of the election has been materially affected, on improper acceptance of such a nomination.

d) Section 100(l)(d)(i) is not at all applicable to the facts and circumstances of the present case as there not even an allegation necessary to attract the said provision.

e) The present Election Petition lacks basic material facts which are necessary to create cause of action to maintain Election Petition and the same is liable for rejection in limini.

f) This Respondent has filed applications in E.A.No.319 of 2015 and E.A.No.320 of 2015 for striking of the pleading as also dismissing the Election Petition as being without a cause of action. The said applications are required to adjudicate in the first instance, however in deference to the direction of this Hon'ble Court this counter affidavit is being filed, without prejudice to the contentions raised in the above applications and praying this Hon'ble Court to take up the said applications for adjudication before taking further steps in the above EP.

g) The Election Petitioner has filed the above EP by misinterpreting and misconstruing the provisions of the Representation of People Act, Rules, and notifications and judicial pronouncements applicable, in order to create grounds and cause of action to maintain the EP and to harass this Respondent and therefore the above EP is in abuse of the process of law.

h) Respondent No.8 is neither a necessary nor a proper party and the Election Petition is liable to be dismissed for misjoinder of the parties”.

16. The further contest is that the allegations and contentions in paragraphs 2, 3 and 4 of the Election Petition are merely stated as the details of objections raised by petitioner before the Returning Officer with regard to submission of nomination papers by and on behalf of the 1st Respondent, but counter filed on behalf of the 1st Respondent and findings given by the Returning officer on said objections raised. The Election Petition is also silent on the crucial material facts as to how the elaborate findings given by the Returning officer are not correct

in the eye of law. In the Election Petition it was simply stated that the 1st Respondent denied the objections on purely technical grounds enclosing Annexure-VI and that Returning Officer has rejected objections through Annexure -VII. In this regard also the Election Petition lacks basic material facts i.e. what are the findings of the Returning officer for each objection raised by him and how they are contrary to the provisions of the RP Act, Rules, and instructions as also the judgment of the Apex Court as alleged. The Returning officer has given elaborate reasons for over ruling the objection raised by the Election Petitioner by his proceeding dated 21-04-2014, which is filed along with the Election Petition as Annexure-VII. The reasons set out by the Returning Officer are in accordance with law. Even assuming without considering that they are contrary to law, the same cannot be questioned in this Election Petition but before an appellate authority, unless otherwise the same are shown to have affected the result of the election as required under law. For his five objections reply of the 1st respondent was the following:

“(a). With regard to objection no.1 and 3 this respondent failed to sign on bottom of each and every page of the affidavits in Form 26 as contemplated under Civil Rules of Practice and deliberately violated the Conduct of Election Rules, this respondent submits that the said objection is wholly misconceived and untenable. None of the provisions contained therein mandate signing of affidavit on each and every page of the affidavit in Form 26. Reference to Rule 35 of Civil Rules of Practice by the petitioner is wholly misconceived as the said Rule is inapplicable. As per the relevant Rules, which are mentioned

infra, this respondent is not required to sign the affidavit in Form 26 on each and every page. As per Rule 5.20.1 of Handbook for Returning Officer, 2014, which is extracted hereunder, this respondent is required to sign on the last page of the affidavit:

***“5.20.1 Every candidate makes a declaration in his nomination paper that he is qualified and not disqualified for being chosen at the election. Among other disqualifications mentioned in Articles 102(1) and 191(1) of the Constitution and Chapter III of Part II of the Representation of the People Act, 1951, section 8 of the said Act lays down the disqualification on conviction for offences specified therein. Along with the nomination paper, every candidate is required to file an affidavit in Form 26 (Annexure 11-C, 12).*”**

***The affidavit should be sworn before a Magistrate of the First Class or before a Notary Public or a Commissioner of Oaths appointed by the High Court of the State concerned, on the last page of the Affidavit. The duly sworn affidavits should be on stamp paper of such denomination as prescribed under the state law of the state concerned (ECI Lr No 3/ER/2011/SDR dt.01.10.2011 and ECI letter no 3/4/2012/SDR dt.24.08.2012)*”**

Rule 4A of Conduct of Election Rules, 1961, which is also extracted hereunder, provides that the candidate shall deliver an affidavit in Form 26.

“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 subsection (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.”

The 1st respondent delivered an affidavit in Form 26 by subscribing his signatures wherever required, which is in conformity with the above mentioned Rules. Rule 4A of Conduct of Election Rules, 1961 or Rule 5.20 of Handbook for Returning Officer, 2014 does not mandate signing of each and every page. The said Rules provide for filing an affidavit in Form 26. The 1st

respondent filed the affidavit in Form 26 in appropriate manner by duly signing at the verification column, which is the only place where this respondent has to subscribe his signature. Thus the 1st respondent filed duly filled affidavit in Form 26 and signed at the verification column by declaring that the contents of the said affidavit to be true and correct and as such, the same is in order and valid. Therefore, the 1st objection of the Petitioner is misconceived, unsustainable and frivolous.

(b) As regards Objection No.2 and 4 of the 1st respondent failed to fill up the affidavit at (a) column no.4 and column no.2 under the head of total income shown in Income Tax Returns, it is submitted that the said columns have been duly filled up and the 1st respondent has given the requisite details and also those of his wife. It is not known what further more needs to filled up. While 1st respondent has shown Rs.22,83,734 as the total income shown in the income tax returns, his wife's total income was shown as not applicable as no returns have been filed. However due to inadvertence the said column in the 2nd affidavit in respect of the 1st respondent's wife was not filled up. It is a matter of record and admitted fact that 1st respondent's wife did not file income tax returns and as such, the question of disclosing any income as per the income tax returns does not arise. Therefore, nothing was suppressed by this respondent. Therefore the said allegation of not filling up is wholly vexatious and devoid of any merit and substance.

As regards the striking of whichever not applicable at Column no.6, it is respectfully submitted that the same is false and baseless. Column No.6 deals with the disclosure of criminal cases which stood concluded, the 1st respondent categorically mentioned that the said column is not applicable, which explicitly makes it clear that he has not been convicted of any offences. It is also pertinent to mention at this juncture that even the petitioner did not fill up a column and also did not strike of at column no.5. As the same does not have any significance, the 1st respondent did not lay any challenge to the same.

With regard to the objection that Column No.8(B)(III) where the words stand of "Approximate Current Market Price of . . ." at Part-B of (11) abstract of the details given in (l) to (10) of Part-A

has been kept blank, it is respectfully submitted that the said objection cannot be sustained and does not merit consideration. "Approximate current/market price of" at III of 8 (B) (III) is the Heading, which again is dichotomized into such sub-heading as "(a) Self Acquired assets (total value) and "(b) inherited assets (Total Value)". Thus, a candidate is required to fill up Columns 8(B)(III) (a) and 8(B)(III) (a) (b), which admittedly were filled up. Column 8(B)(III) is complete once (a) and (b) are filled up. Therefore, there is no violation of any of the Rules or Regulations as alleged.

(c) As regards Objection No.5 that proxy of the 1st respondent namely P.Dwrakanath Reddy did not file his affidavit properly and also not put his signature and date on each and every page of Form- 26, it is submitted that the said objection is wholly irrelevant and does not have any bearing on the Election Petitioner. Admittedly, the said affidavit has been withdrawn.

6. **It is also submitted that even according to Section 36(4) of the Representation of Peoples Act, 1951, the Returning Officer shall not reject any nomination paper on the ground of any defect which is not of a substantial nature.** It is nowhere stated as alleged by the petitioner that non-filling of blanks in the nomination paper entails in rejection of the same. The instructions of Election Commission of India dated 30-09-2013 only state that in case candidate fails to fill the blanks even after reminder by the Election Officer, the nomination paper would be liable to be rejected by the Returning Officer at the time of scrutiny of nomination papers. In the said instruction dated 30-09-2013, the judgment dated 13-09-2013 of the Hon'ble Apex Court in W.P.(c) No. 121/2008 has been quoted and relevant portion of judgment has been extracted. The relevant portion of judgment relied and extracted in the said instruction, categorically states and cautions Returning officers in the following manner:

"If a candidate fails to fill the blanks even after the reminder by the Returning Officer, the nomination paper is fit to be rejected. We do comprehend that the power of Returning Officer to reject the nomination paper must be

exercised very sparingly by the bar should not be laid so high that the justice itself is prejudiced.”

The Election petitioner is misinterpreting the instructions as well the judgment of Apex Court to mislead the Hon'ble court in order to maintain the Election petition with an intention to harass the 1st respondent distracting him and disabling him from devoting all his time and energy to the needs of the people of the constituency as an elected MLA. It is not at all the contention of the Election Petitioner at any point of time that the 1st respondent failed to fill the blanks even after remainder by the Returning officer and the same has affected the result of election leading to his defeat to attract the said instructions and Judgment of Hon'ble Apex Court. As already stated there is a caveat in the judgment of Hon'ble Apex Court that rejection of nomination paper must be exercised very sparingly and the same should not prejudice the democratic process. Hence, alleged irregularities which are inconsequential and do not affect the result of the election and which are not substantial in nature cannot be treated as grave requiring the Returning Officer to reject the nomination. It does not also provide a cause of action to the petitioner to file an election petition to set-aside the election of a candidate who won the same in a democratic way.

The averments in paragraphs 5 & 6, relate to making application to get certified copies of objections, giving of authorization, filing of counter before Returning officer and sharing of votes between candidates etc., which are matters borne out by record, hence need no traverse save and except that true and correct facts are as contained in the records. Here also the Election Petitioner failed to plead how the election of the returned candidate has been materially affected by the decision of the Returning Officer enabling him to file the present election petition under Section 100 (l) (d) (i) of the Representation of the People Act, 1951. In reply to paragraphs 7 & 8 of the Election Petition it is submitted that the averments therein are matters of record and the same are denied in so far as they are contrary to record.

In reply to paragraph 9 of the Election petition, Respondent No. 1 specifically denies the averments that all the objections raised by the Election Petitioner through Annexure — IV were not considered by the Returning officer and the same is contrary to the judgment of the Apex Court etc, as false and contrary to the record, particularly Annexure-VII filed along Election Petition. As stated above the Returning officer has considered the objections in proper perspective and over ruled the same by giving elaborate reasons, hence it cannot be said that he has not considered the objections. As stated above the spirit of the Judgment of the Apex Court is that nomination papers shall be rejected only when candidate fails to fill the blanks even after reminder by the Returning Officer and that the same must be exercised sparingly. Here in this case, it is not the allegation of the Election Petitioner that the 1st respondent failed to fill the blanks after reminder by the Returning Officer and there is no pleading to the effect that the reasons given by the returning officer are contrary to law and the same has materially affected the result of the election to maintain Election Petition. Hence the said judgment relied by the Election petitioner far from assisting the Petitioner supports the case of the 1st respondent. It is also false and baseless to say that candidate should sign on each and every page of Form -26. In the Form -26 the place where candidate is required put his signature is specifically mentioned and the 1st respondent has signed at the place indicated in the said Form, hence it cannot be contended that the nomination is to be rejected for absence of signature on each page of Form -26. On legal advice the 1st respondent submits that it is false and against law to state that the 1st respondent violated the Civil Rules of Practice in not signing on bottom of each page of Form -26. It is pertinent to mention that an Election Petition is required to be considered and decided in accordance with the procedure laid down in the Representation of People Act, 1951 which is a complete self-contained code. The Hon'ble Supreme Court has held that an election petition is not an action at common law, nor in equity. It is a statutory proceeding to which neither the common law nor the principles of equity apply but only those rules which the statute makes and applies.

The Returning Officer has been arrayed as 8th respondent in the Election Petition, even though he is neither a necessary nor a proper party to the Election Petition as per Section 82 of the Representation of Peoples Act, 1951. The 1st respondent apprehends that Election Petitioner who belongs to the ruling party may try to influence the Election Officers to get undue favour in the Election Petition. In reply to paragraph 10 of the Election Petition it is submitted that the statements of the Election Petitioner that Returning officer should have rejected the nomination at the threshold in accordance to the judgment of Apex Court and also under Section 100 (l) (d) (i) of the Representation of Peoples Act etc are untenable as being contrary to law. The Returning officer examined each and every objection of the Election Petitioner and given elaborate findings and only thereafter accepted the nomination of the Respondent No. 1 in accordance with law. As stated above not only the Apex Court Judgment but also provisions of the Representation of the People Act, rules and regulations made there under fully support the case of the 1st respondent and Election Petitioner is misinterpreting the same for the purpose of maintaining the Election Petition. The statement that the 1st respondent misrepresented to the Election Commission and the Returning officer and in a causal manner gave false information in two sets of Form -26 by showing the Gross total value of Rs.2,79,67,680/- instead of 3,00,67,680/- and deliberately did not count the Column amount at 7 (vii) of Rs. 21,00,000/- is wholly false and baseless. On the Petitioner's own showing it is only an arithmetical error and there is nothing, which has been suppressed by this respondent. Election Petitioner has not made any allegations of corrupt practice against the respondents in doing so and has not filed the present petition under the provisions deals with corrupt practice, hence mere irregularities by oversight cannot be treated as substantial to reject the nomination. Moreover, Returning officer has given valid reasons in accepting nomination of the 1st respondent and Election Petitioner has not pleaded anything against any reasons given by the Returning officer in accepting the nomination of the 1st respondent and also not pleaded to say that the same has

affected the result of the election with necessary material facts. In reply to paragraph 11 of the Election Petition it is submitted that the documents filed under Annexure- XII and XIII clearly show where the deponent has to sign and also the information given by the 1st respondent substantiating the findings of the Returning officer in accepting the nomination of the 1st respondent as valid. The grounds set out in sub-paras (a) to (d) of para I 1 are untenable, without substance and not based on material facts. The 1st respondent has answered the same in great detail in the preceding paras of this counter and the same are therefore not reiterated once again herein.

In reply to paragraphs 12 to 16, the 1st respondent denies the averments therein and states that there is absolutely no cause of action for filing of the Election petition. Election Petitioner has not even pleaded basic material facts to say that the result of election has been materially affected by the reason of by the Returning Officer accepting the nomination of the 1st respondent to attract section 100 (l) (d) (i) of the Representation of People Act. Election Petition is also silent with regard to findings given by the Returning Officer how they are contrary to provisions of law under the R.P. Act, Rules and Notifications. Election Petitioner has not alleged any malafides and corrupt practice against the Returning officer to question his decisions in the Election Petition. In view of the aforesaid facts emanating out of the election petition, it is clear and evident that the election petition is based on false, flimsy, grounds, and is vexatious and does not disclose any cause of action. The same has not been filed in accordance with the provisions of the Act, particularly Section 80, 82 and 83 of the Act. The facts necessary to formulate a cause of action are clearly lacking and the Election Petition is bad and deserves to be rejected. The 1st respondent respectfully submits that a reading of the contents of Election Petition shows that the same is in the realm of conjecture and surmises. This Election Petition has been just filed on the basis of irrelevant facts and grounds which are not at all maintainable in law, Election Petitioner has not complied with the mandatory provisions of the law in filling the election petition and hence the election petition itself is barred by law as not maintainable and

deserves to be rejected in limini. Verification of Election petition also does not disclose which of the facts stated in the Election petition are within the knowledge of Election Petitioner and what are the facts stated on legal advice etc as required under the provisions of the Act. The 1st respondent submits that he filed a valid nomination which unambiguously discloses the details of his assets and liabilities and his qualifications and that the 1st respondent has no criminal antecedents that a reading of the said affidavit would disclose all the essential features, which are required for voters to take appropriate decision to assess his candidature while deciding to cast their respective votes. As stated, the Election Petition is not in conformity with Sections 82, 83 and 100 (l) (d) (i) of the Representation of People Act. The Petitioner is not entitled to any relief prayed for. Hence Election Petition is liable for rejection/dismissal in limini in the interest of justice.”

17. The Reply Affidavit filed by the Election Petitioner, from the permission accorded in I.A.No.1 of 2016(252 of 2016) only to traverse any factual assertions in the counter filed by the 1st respondent, in nutshell reads that the counter cannot be taken on file as it was filed beyond the time and no permission was sought to file the counter for there is no provision under Part-VI, Chapter-II of the R.P. Act enabling the 1st respondent to file counter or written statement. It is only by virtue of Section-87 of the R.P. Act following the provisions of CPC the Written Statement or Counters are to be filed and issues are being framed. The Election Petition being in the nature of suit, the defence shall be in the form of a Written Statement under Order-XVIII Rule-1 CPC and it shall be filed within 30 days from the date of service of notice and with in 90 days with permission of the Court. In this case the 1st respondent filed an affidavit

called counter affidavit without seeking leave of the court and therefore there is no written statement or Counter on file in the Election Petition. Without prejudice to the above statement with reference to various averments in the counter, he states as under:

“a. The averments in Para-3 (a) to 3 (g) of the counter affidavit are no longer in issue in View judgment of the Hon’ble Supreme Court dated 21-03-2018 in Civil Appeal No:(S) 9466-9468/2016 and hence they need not be traversed.

b. With reference to the averments in Para-4 of the Counter Affidavit I submit that the Election Petition is not an appeal against the orders of the Returning Officer. The election can be called in question without even filing objection before the returning officer. The test in the Election Petition is whether the acceptance of nomination of the 1st respondent by the returning was proper, with reference to the Act, Rules, instructions and the Laws as applicable to the file, scrutiny and acceptance of nominations. I submit that there are two methods of referring to the documents. One way is by incorporating the contents of the documents in the pleading and the other way is by referring to the document in the pleading and filing as annexure making it as integral part of the pleading I submit that Annexure-IV, VI, VII are made integral part of the petition therefore their details need not be pleaded further.

c. With reference to Para-5 (a) of the counter affidavit I submit that signing of an affidavit is different from swearing of an affidavit. I submit that Rule-35 of Civil Rule of Practice deal with form of affidavit and signing by the deponent on each page of the affidavit. Where as Rule-38 deals with swearing of affidavit before the Court Magistrate, Notary and other officers. I submit that the 2nd part of Rule-5.20.1 of the Hand Book of the Returning Officer 2014 deal with swearing of the affidavit which corresponds to Rule-38 of Civil Rules of Practice Similarly Rule 4-A also refers to swearing of the affidavit. I submit that signing on the each page of the affidavit is different to swearing of the affidavit on the last page before the oath Commissioner or the Notary or other

prescribed authority. I submit that Rule-12 of the Rules framed by the Hon'ble Court to Regulate the Trial of Election Petition under R.P. Act stipulate that the Rules of High Court on the original side shall apply as far as may be to the proceedings under the Act. Thus the contention of the respondent that Form-26 filed by him is in accordance with rules and Civil Rules of Practice has no application is untenable. I submit that the counter of the 1st respondent with reference to objection 2 and 4 are matters of record and therefore they need not be traversed. But the respondent is trying to avoid the defect in the affidavit by stating that due to inadvertence the Colum in the 2nd affidavit was not filled. But the further statement that it is a matters of record and admitted fact that the 1st respondents wife did not file income tax returns and as such the question of disclosing any income as per the income tax return does not arise is not sustainable. He has not stated as to who admitted and where is the record to show that she did not file income tax returns. Therefore there is no substance in the contention. The further allegation that my averments with regard to column No:6 are false and baseless is without any substance. It is on record as seen from the two affidavits filed by him that he has not struck out the inapplicable portion and against clause a to d he stated "in applicable" instead of 'NIL' as mandated at the bottom of the Printed Form of affidavit. The further contention with regard to Colum No:8 (B) (III) and keeping it blank is not sustainable. The Colum approximate market value is not heading. Against this Colum the approximate current market price of all immovable assets has be given and under sub-Colum (b) the total value of inherited assets has to be given. I submit that against Colum B(II) the 1ST respondent has not disclosed the development construction cost of immovable property after purchase. He has shown NIL against this Colum. Whereas under Clause-IV residential buildings including apartments he has shown Rs.2,12,72,000/- as investment on the land by way of development. Therefore the contention that the Column is heading and it is dichotomized into a & b are filled up there is no violation is unsustainable.

d. With reference to the averments in Para-6 of the Counter Affidavit I submit that the contention based on Section-36(4) and the extract of Supreme Court Judgment has no relevance to this case. The defects in the affidavits filed along with nomination dated 12-04-2014 and nomination dated 17-04-2014 are not trivial but they are of substantial nature. It is not a case challenging rejection of nomination, but improper acceptance of nomination. For trying the Election Case of this nature the action of the returning officer in accepting the nomination is tested on the statutory requirement.

e. With reference to the averments in Para-7 of the counter affidavit I submit that this contention is already answered by the Hon'ble Supreme Court in Civil Appeals No: 9466-9468 of 2016.

f. With reference to the averments in Para-8 of the counter affidavit I submit that the respondent denies my contentions and states his case and they do not call for any reply.

g. With reference to the averments in Para-10 I submit that if 8th respondent (Now deleted) is amenable to ruling party I could have got the nomination of the 1st respondent rejected. On the other hand he illegally admitted both nominations dated 12-04-2014 and 17-04-2014.

h. The contention in Para-II of the counter affidavit that the election petitioner is misinterpreting the Act, Rules and Regulations is without any substance. The non inclusion of Rs.21,00,000/- of the assets of the spouse in her total assets is not arithmetical error, but it amounts to suppression.

i. With reference to the averments in Para-12 of the counter affidavit I submit that the documents filed as Annexure-XII and XIII being integral part of the Election Petition they become part of the pleadings and therefore the defects in them are pleaded and the 1st respondent has not dealt with all the defects in the affidavits.

j. With reference to the averments in Para-14 of the counter affidavit I submit that they are covered by E.A. No:329 of 2015 and E.A. No: 330 of 2015 and hence they need not be traversed. I submit that the defect if any verification is not fatal and it is curable.”

18. It is from the respective pleadings supra and after hearing both sides, this Court framed on 10.09.2018 the following issues for decision:

- 1) Whether the nomination of the 1st respondent along with affidavit in Form-26 and from the format under Rule 4-A with Rule 35 of the Civil Rules of Practice is improper so also the acceptance and with what effect on the result of the election of the 1st respondent including from the expression of the Apex court in Civil Appeal Nos.9466 to 9468 of 2016 dated 21.03.2018?
- 2) Whether the election petitioner is entitled to the declaration that the election of the 1st respondent as returned candidate from No.284, Punganur Assembly Constituency, at the general election held on 16.05.2014 accepting the nomination paper of the 1st respondent as null and void?
- 3) Whether the election petitioner is entitled to get himself declared as elected in the event of his succeeding in unseating the 1st respondent on the sole basis that he had secured the next higher votes than the 1st respondent?
- 4) Whether the election petition is in compliance with Section 83 of the Representation of the Peoples Act? &
- 5) What relief, if any, the election petitioner is entitled to?

19. A Joint memo was filed on 06.09.2018 itself by the election petitioner and the 1st respondent saying here is no requirement of any oral evidence for disposal of the election petition as can be based on records. Same is recorded and posted therefrom for marking of the documents after hearing and for hearing arguments to 10.09.2018. Pursuant to the issues settled and from the joint memo supra, after hearing, the documents marked for election petitioner as Exs.A1 to A13 by consent are the following:

19(a). Ex.A1 is Form-20, Ex.A2 is election notice, Ex.A3 is the declaration of the candidates, Ex.A4 is the objections raised by the petitioner, Ex.A5 is the 1st respondent's authorization, Ex.A6 is the 1st respondent's counter to the objections, Ex.A7 is the RO's rejection order of the objections, Ex.A8 is the application of the petitioner for certified copies, Ex.A9 is the Gazette notification in Form-26, Ex.A10 is the election commission's letter No.3/4/2012/SDR regarding affidavits, Ex.A11 is the instructions No.32 of the election commission regarding affidavits and Form-26, Ex.A12 is the Form-26 of the petitioner and Ex.A13 is the Form-26 of the 1st respondent in two sets.

19(b). The documents petition filed by the petitioner to receive further documents in E.A.No.623 of 2015 was closed consequently.

19(c). It is therefrom, arguments heard thereafter from 17.09.2018 till 26.10.2018 on different dates in detail and received the written submissions of the petitioner and the 1st respondent respectively with decisions referred therein and relied therefrom.

19(d). The written arguments referred as brief Note of the Election Petitioner reads as follows:

“The scrutiny of nomination is perfunctory (See ground (a))

1. The Returning Officer has not taken the minimum care to see that the nomination is proper or not in as much as the affidavit in Form-26 is not filled up properly. There are several blanks in the affidavit. The nomination and the affidavit have to be scrutinized to see as to whether it is not in conformity with the requirement of law and the guidelines/instructions of the Election Commission.

2. The nomination presented under Section-33 of the Act the returning officer shall under sub-section-4 satisfy himself that the names and electoral roll numbers of the candidate and his proper as entered in the nomination are the same as entered in the electoral roll. The proviso to the sub-section says that any clerical, printing errors shall be over looked. Subsequent to the judgment dated 2-05-2002 of the Hon'ble Supreme Court in Union of India vs. Association for Democratic Reforms reported in 2002 (5) SCC Pg.294 which held that the voters right to know antecedents including criminal past of a candidate to parliament or assembly is a fundamental right conferred under Article-19-(1) (a) of the Constitution of India. Section-33-A was introduced by Act-72 of 2002 which came into effect from 24-8-2002. As per Sub-Section-1 of (this provision – sec 33A) the candidate has to furnish information as to whether he is accused of any offence and the candidate has been convicted for any offence and the candidate has to file an affidavit sworn by him in a prescribed form. Consequently there arose a necessity to frame Rule and the form. Therefore Rule 4-A was introduced in the conduct of Election Rules, 1961 which came into effect from 3-9-2002. The affidavit was prescribed in Form-26. In this affidavit the candidate has to furnish information as required under Sub-Section-1 of 33 and also information regarding the movable assets, immovable assets and liabilities, educational qualifications etc., as stipulated by the Supreme Court in 2002 (5) SCC Page:294. The Returning Officer shall display the information for the information of the electors. Then the scrutiny of the nomination is taken up under Section-36. The scrutiny is either on his own or on objections.

3. Then scope of enquiry and powers of the Returning Officer are dealt with in various judgments of the Supreme Court. After the judgments of the Supreme Court there arose three different situations: with regard to scrutiny and the challenge in the election petition.

A) Effect of non disclosing the Criminal antecedents: It is dealt with in the case of Krishna Murthy Vs. Siva Kumar reported in 2015 (3) SCC Page:467. The Hon'ble Supreme court held that the non-discloser amounts to undue influence and therefore the election has to be declared as null and void under Section-

100 (1) (b) of the 1951 Act. It has to be decided in an election petition.

B) Non disclosure of Assets and liabilities: This issue is dealt in the judgment reported in Kishan Shankar Kathore Vs. Arun Dattatray Sawant reported in 2014 (14) SCC Page: 162. The Hon'ble Supreme Court held that non-disclosure of such information leads to setting aside of the election under Section-100 (1) (d) (i) and (iv) of 1951 Act. It has to be decided in Election Petition as held in 2003 (4) SCC Pg. 399.

C) Affidavit filed with the blanks: This situation is dealt with by the Hon'ble Supreme Court in Resurgence India Vs. Election Commission of India reported in 2014 (14) SCC Page: 189. It is held in this judgment that if the nomination is filed with blanks and not striking the inapplicable columns in the affidavit, the nomination is invalid and it has to be rejected by the Returning Officer. If accepted, it forms a ground for challenge in the Election Petition under Section-100 (1)(d)(i) of 1951 Act.

4. Without reference to any of the judgments, the returning officer can reject the nomination under Section-36(2).

1). If the candidate is not qualified or disqualified under Articles 84,102,173 and 191 of the Constitution of India. 2). When there has been a failure to comply with Section-33 or Section-34 of the Act and (3) if the signature on the nomination paper is not genuine. Thus the nomination is liable to be rejected if it does not comply with Section-33 as per point No:2 above. Therefore if the affidavit as required to be filed under Section-33 is not proper the nomination is liable to be rejected.

5. The 1st respondent during the course of arguments contended that the Returning Officer has not pointed out the defects like blanks in the affidavit and therefore the 1st respondent has no opportunity to comply with the defects and relied on Para-23 of Resurgence India case. The answer to the said contention is that along with nomination a check list is provided see instruction-32 dated 30-9-2013 of the Election Commission of India filed as Annexure-XI at Page:65. The check list thus answer the said contention. Even assuming without admission such a default is committed is it apt for the contention that the Returning Officer can't reject the nomination. But when the issue is before the court it can't

vouchsafe the 1st respondent for decision of the court to see whether the acceptance of nomination is proper or improper. The said contention is not available as the whole issue opens before the court.

6. The other contention raised by the 1st respondent is that the blanks pointed out by the petitioner before the Returning Officer and in the election petition are not substantial and hence the nomination was not rejected and its acceptance cannot be regarded as improper. It is submitted that every one of the objections with regard to the non-striking of irrelevant portions leaving the blanks and wrong mentioning of total assets, movables of the spouse are fatal as half information is more dangerous than total absence.

7. The next contention of the 1st respondent is that there is no pleading relating to suppression of the built up area of commercial buildings, the developments on the commercial lands and the annexure can't be relied as part of the pleadings. The said contention has no substance. In the last 6 lines of Para-10 of the petition it is pleaded misrepresentation and false information in respect assets in Para-7 A and immovable assets. When the contents of a document is extracted in the petition, then it is only a document filed in support of the pleading and it is not part of the pleading. Whereas the contents of document are not extracted in the pleadings but annexed to the petition and it is signed by the petitioner and verified in the same manner as the petition as stipulated under Section:-83 (2) then it is pleading itself and shall be part of the petition. This statement is supported by the judgment of the Hon'ble Supreme Court in Ashraf Kakkur reported in 2015 (1) SCC Page: 129.

8. The next contention is that there is no pleading that improper acceptance of nomination of the 1st respondent has materially affected the results of the election in so far as it concerns a returned candidate. It is submitted that the question of pleading and proof that the improper acceptance of nomination has materially affected the result would arise if any nomination is improperly accepted (see Section-100 (d) (i)). In such a situation there will be more number of candidates than the winner and the defeated. But in a case where the nomination of the returned candidate is improperly accepted that situation does not arise as his election is void abinitio. This can be explained by an illustration of a case relied on by the 1st respondent 2001 (3) SCC Pg.290. In para-2 of the judgment the facts

are stated. These facts reveal that apart from the returned candidate and the election petitioner there were 3 other candidates. Among the 3 candidates, the nomination of Shri Nikkaram was improperly accepted. In Para-4 the ground of attack in the election petition is restated. In the case on hand the Election Petitioner can't plead and has not pleaded that the improper acceptance of the nomination of the 1st respondent has materially affected the results. The respondent is trying to thrust the pleading on the petitioner and trying to say that there is no pleading and evidence. The 1st respondent is also labouring under misconception that only if there are two candidates there need not be any such pleading. The judgment in Mairambam Prithviraj Case reported in 2017 (2) SCC Pg.487 which is referred in the interparty judgment in Para-34 clinches the issue in Para-23. It is submitted that the petitioner relied on the judgment inter party reported in 2018 Law Suit (SC) Page:234 equal to AIR 2018 S.C. Pg:3012. The 1st respondent contended that the issue before the Supreme Court is as to lack of cause of action and non disclosure of material facts and therefore the finding on the lack of pleading as to materially affected cannot be relied. It is submitted that the said contention was raised in Para-12 of the affidavit filed in E.A.330 of 2015 filed under Order-VII, Rule-II CPC. The Supreme Court in the inter parte judgment in Para-34 referred to the contention of the respondent with regard to materially affecting the result and answered the question raised and therefore the respondent cannot re-agitate the issue.

9. The other contention raised by the 1st respondent is that the affidavit in Form-26 need not be signed on each page as it is sworn before the notary as per the instructions of the election in Para-5.20.1. This contention is untenable. The signing of the affidavit on each page is different from swearing of the affidavit before the designated office. It is submitted that Rule-35 of Civil Rule of Practice deal with form of affidavit and signing by the deponent on each page of affidavit. Where as Rule-38 deals with swearing of affidavit before the Magistrate, Notary and other officers. The 2nd part of Rule-5.20.1 of the Hand Book of the Returning Officer 2014 deal with swearing of the affidavit which corresponds to Rule-38 of Civil Rules of Practice. It is further submitted that Rule-12 of the Rules framed by the Hon'ble Court to Regulate the Trial of Election Petition under R.P.Act

stipulate that the Rules of High Court on the original side shall as far as may be are applicable to the proceedings under the Act.

10. The Hon'ble Supreme Court in the case of Kailash reported in 2005(4)SCC Pg.480 at Para's 8 to 12 has held the Rules framed by the High Court under Article-225 or 129 CPC for the Trial of Election Petition would apply. Therefore Rule-12 stated supra of the Civil Rules of Practice will apply for affidavits in Election Matters.

11. It is further submitted that the 1st respondent has not filed the counter in the election petition within 30 days or within 90 days with the permission of the court from the date of receipt of notice as contemplated under Order-VIII, Rule-1 CPC. The petitioner filed the petition on 25-06-2014. The 1st respondent filed his counter on 18-2-2016 and it is far beyond the prescribed period. The Hon'ble Supreme Court in Kailash case stated supra held that counter can be filed even beyond the time limited under Order-VIII, Rule-I CPC with the permission of the court. In this case on hand the 1st respondent has not taken permission of this Hon'ble Court for filing the counter and therefore there is no counter in this case and the case of the petitioner goes un-rebutted.

12. The 1st respondent relied on the judgment of the Hon'ble Supreme Court R.K.Roja Vs. U.S. Rayudu reported in AIR 2016 SC Pg:3282 and contended that the right to file counter is saved till disposal of the petition filed under Order-VII, Rule-II CPC were filed and therefore the contention of the petitioner is not sustainable. It is submitted that the petition in E.A.329 of 2015 under Order-6, Rule-16 and E.A.330 of 2015 under Order-VII, Rule-II CPC on 16-03-2015. As already stated the Election Petition was filed on 25-06-2014. Notice was served on the respondent on 25-10-2014. The 30 days expired on 24-11-2014 and 90 days expired on 22-01-2015. Then it amounts to a ruse for retrieving the lost opportunity to file the written statement as observed by the Hon'ble Supreme Court in Para-7 of the Judgment. In R.K.Roja's case the petition was filed with 30 days of service of summons. Therefore the judgment in R.K.Roja's case is of no help to the 1st respondent."

19(e). The written submissions of the 1st respondent read as follows:

“1. The Election Petitioner instituted the above E.P. under Sections 81 r/w Section 83, 100 (l)(a), d(i) of Representation of People Act, 1951 (hereinafter referred to as RP Act, 1951) calling in question the election of the 1st Respondent as member of the legislative assembly form 284 Punganur Assembly Constituency, Chitoor, Andhra Pradesh.

2. The election was challenged on the ground that the acceptance of the nominations of the 1st Respondent to 284 Punganur Assembly Constituency on 21.04.2014 was illegal as the 1st Respondent failed to sign on bottom of each and every page of the affidavit in Form-26 as contemplated under the Civil Rules of Practise. That the 1st Respondent failed to fill up the affidavit under the head of income shown in Income Tax returns; at column no.6 the Petitioner/1st Respondent did not strike of whichever is not applicable and kept blank column no. 8(d)(iii) and etc.

3. This Respondent filed EA.No.329 of 2015 under Order 6 Rule 16 of CPC for striking out averments made in para 2 and 9 to 11 of the Election Petition and also EA.No.330 of 2015 under Order 7 Rule 11 of CPC for dismissal of the Election Petition for failure to disclose the cause of action, the said applications came to be allowed by order dated 02.08.2016 by this Hon'ble Court. Thereupon the Election Petitioner carried the matter by way of an Appeal to the Hon'ble Supreme Court of India in CA.Nos.9466 — 9468 of 2016. The Hon'ble Supreme Court allowed the said applications by Order dated 21.03.2018. At para 41 of the said order the Hon'ble Supreme Court made it clear that it may not be understood as to have expressed any opinion on the merits of the other issues to be decided by the High Court and its analysis was limited to the threshold matter considered in the judgment about the striking of the pleadings and rejection of the Election Petition in limine. In para 42 it was further stated that the Election Petition shall stand restored on the file of the High Court to its original number for being proceeded further in accordance with law. From this it is clear that the Election Petitioner is required to substantiate the grounds of challenge relating to improper acceptance of the nomination of the 1st Respondent in terms of Section 100(l)(d)(i) of the Representation of People Act, 1951 and no reliance can be placed on any of the observations or the findings of the Hon'ble Supreme Court in Civil Appeal Nos.9466-9468 of 2016.

4. Part V of the RP Act, 1951 related to Conduct of Elections and Chapter I contains the provisions relating to Nomination of Candidates. The Returning Officer under proviso to Section 33 (4) of the Act, 1951 shall permit any misnomer or inaccurate description or clerical or technical error to be corrected and where necessary, the said errors can be **overlooked** and that as per Section 36 (4) of the Act, 1951, the Returning Officer shall reject a nomination paper only when the said nomination suffers from a defect which is of a substantial character. Further, Rule 6.7 & 6.9 of the Handbook for Returning Officer, 2014 issued by the Election Commission of the India also instruct the Returning Officer to adopt a liberal approach in dealing with minor technical or clerical errors and that any mistake or error of a technical or clerical nature should be ignored by the Returning Officer. Rule 6.95 further states that unjustifiable and improper orders of rejection on technical grounds lead to a large number of Election Petitions and eventual setting aside of several elections with consequent waste of time, money and labour for all concerned. Thus the legislative mandate under Section 36(4) is that the Returning Officer shall not reject any nomination paper on the ground of **any defect which is not of a substantial character**.

5. In the instant case, the Returning Officer carefully considered the said objections in the light of the above said provisions and on a finding that the said objections were not of substantive character so as to direct the candidate to furnish information stated to be left-out in the blanks or to reject the nomination of 1st Respondent. The Returning Officer thereon passed a detailed order rejecting the objections.

6. The defects pointed out by the Election Petitioner in the Nomination Paper of the 1st Respondent, were as follows:

i.) **Defect:** Income Tax Returns column pertaining to 1st respondent's wife at Para 4 of the Affidavit at Page 96 has been left blank.

Explanation: The 1st Respondent under the column "the financial year for which the last income tax return has been filed" specifically stated that the same has not been filed, in that view of the matter, the next column "total shown in income tax return in rupees" could not have contained any further details. The 1st Respondent did not fill up the said column, which is only consequential and therefore

not filling up the said blank with “not applicable” is not fatal. As the previous column states that no income tax returns of the 1st Respondent’s wife have been filed, the same amounts to substantial compliance. Moreover, the 1st Respondent in the Affidavit dated 12.04.2014 at Page 82 under the column “total shown in income tax return in rupees” filled the column as ‘Not Applicable’ and therefore the blank left in the Second Affidavit cannot be held to concealment or failure to disclose information so as to reject the nomination of the 1st Respondent.

ii.) **Defect:** 1st Respondent did not strike off “I am / am not accused”. Below the same, the candidate has filled up “No” instead of “Not Applicable” at Para 5 of the Affidavit and that the 1st Respondent did not strike off “I have been / have not been convicted” at Para 6

Explanation: Though the 1st Respondent did not strike off “I am / am not accused” and “I have been / have not been convicted has not been struck off”, the tabular forms mentioned under the respective paras, for providing details of the information, have been duly filled up.

Thus the 1st respondent has duly furnished the required information as regards criminal antecedents so as to enable the Voter to exercise informed choice and the complaint of non-striking is totally insignificant and cannot be read in isolation.

A complete reading of para 5 and para 6 would enable the voter to understand that the 1st respondent is neither involved in any criminal cases nor was convicted in any cases.

iii.) **Defect:** Approximate Current/Market price at Part B (11) has been left blank.

Explanation: The Column III. ‘Approximate Current/Market price of’ is only a heading to the below mentioned classification of assets given under columns III (a) & (b) and therefore the tabular forms mentioned under the respective parts, for providing details of the information, have been duly filled up and therefore the same is not of such nature to be held as disclosing or suppressing information.

7. In view of the legislative mandate in Section 36 (4) only if the blanks in the Affidavit are such as do not disclose information required then they are substantive in character entailing in rejection of nomination.

8. What constitutes a substantive defect has explained by the Hon'ble Supreme Court of India as the defect which can be per se noticed and corrected at the stage of Section 33(4) or later at the stage of Section 36(4) without the need to refer to various other documents is said to be a defect of non-substantial character and the defect which cannot be corrected without reference to various other documents is said to be a defect of substantial character.

**Rafiq Khan & Anr. v. Laxmi Narayan Sharma —
(1997) 2 SCC 228 @ para 8 (placitum 'g')**

9. The Election Petitioner contended that the 1st Respondent failed to fill his nomination paper in the prescribed format i.e., at Para 7 A of the Affidavit under columns (iii) & (v) the 1st Respondent mentioned the amounts invested but failed to point out the nature of investment and that at column (vii) the 1st Respondent did not state 50 gms and 1500 gms is jewellery or bullion etc.,

At Para 7 B of the Affidavit under columns (i), (iii) & (iv) the 1st Respondent mentioned the area in Square yards whereas it is to be given in Square Feet

Explanation: The 1st Respondent under the columns of Para 7A clearly set out the financial details as required and also disclosed the amounts invested by him and his wife but the nature of such investment whether in bonds/shares/debentures was not mentioned which was inconsequential as the necessary information to be furnished was whether the 1st Respondent or his wife have invested any amount in any company and the same was furnished.

The 1st Respondent under the columns of Para 7B has clearly disclosed the properties he owns and hold interest over, the mere stating of details in square yards instead of square feet would not make much of a difference so as to hold that the said defect was of substantial character which would entail in rejection of the nomination paper of the 1st Respondent, as the object sought for was complied and every minor departure from the prescribed format cannot be made a ground for rejection of nomination paper.

10. Thus, the defects pointed out by the Election Petitioner to the Returning Officer by way of objections cannot be treated as defects of a substantive character in terms of Section 36 (4) of the RP Act, 1951 and as explained by the Hon'ble Supreme Court of India as to what constitutes a substantive defect in Rafiq Khan & Anr. V.

Laxmi Narayan Sharma reported in (1997) 2 SCC 228 @ para 8, were therefore rightly rejected by the Returning Officer. The Election Petitioner failed to establish by documentary or oral evidence as to how the alleged defects were of a substantive character so as to deprive the voter of necessary information disabling him from making an informed choice in violations of provisions of Article 19(1)(a) of the Constitution of India.

11. While a candidate is not expected to submit an affidavit with blanks which render the affidavit nugatory and is required to furnish all necessary information and indicate columns which are inapplicable, it is not as if leaving blanks in respect of inapplicable columns would entail rejection of nomination paper in terms of the Judgment of the Hon'ble Supreme Court of India in *Resurgence India v. Election Commission of India* reported in (2014) 14 SCC 189. In terms of the instructions issued by Election Commission of India and as per the Directions of the Hon'ble Supreme Court the Returning Officer has a duty and responsibility to call upon a candidate to fill up the blanks in the affidavit and only on the candidate's failure to do so, could the nomination paper be rejected. In the instant case as stated the Returning Officer found the objections raised by the Election Petitioner as regards the blanks in the affidavit etc. were not of a substantive character in terms of Section 36(4) of the RP Act, 1951 and the instructions issued by Election Commission of India.

12. The Election Petitioner raised a ground in challenge to the election that Affidavits have not been signed by the 1st Respondent on each page, as required under Rule 35 of Civil Rules of Practice and as such the nomination paper of the 1st Respondent ought to have been rejected.

Explanation: Civil rules of Practice, as evident from its preamble, has been promulgated for the purpose of guiding the Subordinate Courts and as such the said procedure cannot be made applicable universally and for the same reason Rule 35 of Civil Rules of Practice has no application for scrutiny of nomination of papers before the Returning Officer. Reference to Section 129 of CPC and also Rule 12 of the High Court rules is wholly misplaced for the reason that the same would apply to the trial of Election petitions but not with regard to the affidavits filed before the Returning Officer.

The relevant provisions governing the swearing and signature of affidavit filed along with the nomination paper Rule 5.20.1 of Handbook for Returning Officer, 2014 and Rule 4A of Conduct of Election Rules, 1961 which state that the affidavit should be sworn before the Magistrate of First Class or before a Notary Public or Commissioner of Oaths and signed on the last page of the affidavit. It is not a case of affidavit not being signed at or attested. It was signed on the last page and notarised. Hence, the alleged defect only of form/format but not a defect of content of substantial character.

**Shambhu Prasad Sharma vs.Charandas Mahant and Ors. -
(2012) 11 SCC 390 @ Paras 15 - 18**

13. The contention raised by the Election Petitioner that the Written Statement filed by the 1st Respondent is barred by limitation as the same is filed after lapse of 90 days from the date of notice of the filing of Election Petition is wholly misconceived and unacceptable for the reason that it is settled position of law even as regards Election Petitions that once an application is filed under Order VII Rule 11 of the Code of Civil Procedure, the court has to dispose of the same before proceeding with the trial as there is no point or sense in proceeding with the trial of the case, in case the plaint (Election Petition in the present case) is only to be rejected at the threshold and as such for the said reason the Defendant is entitled to file the application for rejection before filing his written statement. In case, the application is rejected, the Defendant is entitled to file his written statement thereafter.

R.K. Roja vs. U.S. Rayudu- AIR 2016 SC 3282@ para 6

14. The pleading as regard misrepresentation by the 1st Respondent and false information of details of immovable assets is contained in last part of para 10 of the Election Petition and is in following terms

“The Respondent No.1 mis-represented the Election Commission and as well as the 8th Respondent with a casual manner giving false information at Para 7A of details of Immoveable Assets in his two sets of affidavit under Form-26 by showing the Gross Total Value of Rs.2,79,67,680 instead of 3,00,67,680 and deliberately did not count the column amount at 7 (vii) of Rs.21,00,000/-.”

From the above, the alleged false information/ misrepresentation as per the above pleading is that the 1st Respondent instead of showing gross total value of Rs.3,00,67,680 showed in his affidavit under From 26 as Rs.2,79.67,680 and deliberately did not count Rs.21,00,000/- shown at Column 7(2). From the pleading itself, it is clear that this is an arithmetical mistake and since all the figures are stated it is neither misrepresentation nor false information. There is no other documentary or oral evidence as regards any other false information relating to misrepresentation of immovable assets of the 1st Respondent.

15. The Election Petitioner contention that even if there is no pleading in the Election Petition, the Annexures constitute part of a pleading is not tenable for the reason that, if a pleading is broadly set out in the Election Petition, then any complaint that the Election Petition does not comply with the requirements of Section 83 of the RP Act, 1951 can be answered by saying that the material facts and particulars are contained in the Annexures which constitute part of the pleading. In the instant case nothing is stated in the pleadings as to how the blanks are of a substantive character entailing in rejection of the nomination paper of the 1st Respondent.

16. The Election Petitioner relied on *Kisan Shankar Kathore v. Arun Dattatray Sawanth and Others* - (2014) 14 SCC 162 to substantiate his case that failure to disclose to material information as regards assets is a very serious and major lapse and that the voter has the right to know the assets and liabilities of the contesting candidates. That was a case where there was a **specific pleading** that the contesting candidate failed to disclose assets and liabilities and also gave details of such suppression and concealment and **trial** was conducted wherein it was proved that the contesting candidate therein held several assets on his name and holding interest over few others which were not disclosed in the nomination paper and in such circumstances the Hon'ble Supreme Court on facts and **considering the oral and documentary evidence established in the trial** held that failure to disclose was a major lapse. Whereas in the case on hand, there is no pleading of whatsoever nature giving out the details of assets on the name of the 1st Respondent which were not disclosed in the nomination paper much less any pleading that the 1st

Respondent suppressed or failed to disclose any information as regards assets and liabilities. Therefore, when there is no pleading with supporting oral and documentary evidence the said issue cannot be gone into or adjudicated.

17. The Judgment Krishnamurthy v, Shiva Kumar and Others reported in (2015) SCC 467 cannot have any application to the facts of the instant case as the said judgment related to non-disclosure of criminal antecedents of the candidate in entirety and in full detail especially pertaining to serious crimes or those relating to corruption or moral turpitude as mandated by Section 33A Of RP Act, 1951 which created an impediment in free exercise of electoral fights and hence constitutes corrupt practise and undue influence. In the instant case, the 1st Respondent stated 'No' instead of 'Not Applicable' as regards the criminal cases and sentences. Hence the voter was conveyed the information that there are no criminal antecedents as regards the 1st Respondent.

18. The main allegation of the Election Petitioner is that the nomination of this Respondent has been improperly accepted. However there is no pleading of whatsoever nature, in the Election Petition that the acceptance of the nomination of this Respondent, has materially affected the result of the election, which is the statutory requirement under Section 100 (l) (d) (i) of the Representation of Peoples Act 1951 and failure to plead the same is fatal to the Election Petition.

19. It has been held by this Hon'ble Court as also the Hon'ble Supreme Court that even if the nomination of a returned candidate has been improperly accepted, the same per se cannot be a ground for setting aside the election of a returned candidate, who has been elected by the people of Constituency in a democratic manner, unless there is a specific plea based on material facts contending the result of the election has been materially affected, on improper acceptance of such a nomination.

**(i.) Pendyala Venkata Krishna V. Pothula Rama Rao - 2005
(3) ALD 47**

**(ii.) Mangani Lal Mandal v. Bishnu Deo Bhandari — (2012) 3
SCC 314**

(iii.) Ram Sukh v. Dinesh Agarwal - (2009) 10 SCC 541

(iv.) Tek Chand v. Dile Ram - (2001) 3 SCC 290

20. **Mairembam Prithviraj v. Pukhrem Sharatchandra Singh** (2017) 2 SCC 487, judgment relied upon by the Election Petitioner to substantiate his contention that when an election is challenged on the ground of improper acceptance of nomination paper, the Election Petitioner need not prove that the result of election insofar as it concerns the returned candidate has been materially affected is not necessary and need not be proved. That was a case wherein they were only two candidates in the fray to contest election and in that context the Hon'ble Supreme Court held that where there are only two candidates and improper acceptance of returned candidate is proved further proof that result of election insofar as it concerns the returned candidate has been materially affected is not necessary and therefore the said case is not applicable to the facts of the present case inasmuch as the fact that they were about 8 candidates who contested the election in the present case.

21. The Election Petitioner is not entitled for the relief sought to declare him as elected even in if the election of the 1st Respondent is held or declared to be void and that the declaration the election of the returned candidate on the ground of his initial disqualification to contest the election by itself would not entitle the election petitioner or any other candidate to be declared elected as there is no specific provision under the RP Act, 1951 under which the person who has secured the next highest number of votes could be declared as elected.

(i.) Mrs. G. Vanaja G. Shivajothi v. Mrs. V. Bhanumati and others - 2012 (6) ALT 309

(ii.) Prakash Khandre and Ors. v. Vijaya Kumar Khandre and Ors. - (2002) 5 SCC 568

22. It is submitted that various High Courts as well as the Hon'ble Supreme Court have invariably held that an election of a Returned Candidate cannot be interfered lightly and that the verdict given by the majority of voters in a constituency in favour of an elected candidate to represent a constituency cannot be lightly annulled or negated in the absence of specific, acceptable grounds raised in the Election Petition.

(i) Ashok v. Rajendra BhausahabMulak - (2012) 12 SCC 27

(ii) R.P. Moidutty v. P.T.Kunju Mohammad and Anr. - 2000 (1) SCC 481

(iii) Jeet Mohinder Singh v. Harminder Singh Jassi- AIR 2000 SC 256

(iv) Kalyan Kumar Gogoi vs. Ashutosh Agnihotri and Anr. -- AIR 2011 SC 760

For the aforesaid reasons, it is prayed that this Hon'ble High Court may be pleased to dismiss the EP as the same is being devoid of any merit and substance".

20. Heard both sides with reference to the pleadings and evidence and the written submissions referred supra and perused the entire material on record.

21. As the 5 issues for decision framed supra are interrelated, to avoid repetition of facts issues 1 to 3 can be taken up together, while issue no.4 separately.

22. Now coming to the 4th issue as to whether the election petition is in compliance with Section 83 of the Representation of the Peoples Act concerned; Section 83 of the Act reads as follows:

"83. Contents of petition:-(1) An election petition –

(a) shall contain a concise statement of the material facts on which the petitioner relies;

(b) shall set forth full particulars of any corrupt practice that the petitioner alleges, including as full a statement as possible of the names of the parties alleged to have committed such corrupt practice and the date and place of the commission of each such practice; and

(c) shall be signed by the petitioner and verified in the manner laid down in the Code of Civil Procedure, 1908 (5 of 1908) for the verification of pleadings:

Provided that where the petitioner alleges any corrupt practice, the petition shall also be accompanied by an affidavit in the prescribed form in support of the allegation of such corrupt practice and the particulars thereof.

(2) **Any schedule or annexure to the petition shall also be signed by the petitioner and verified in the same manner as the petition.**”

22(a). As referred supra of all the facts with annexures duly verified, there are material particulars to the impugment of the election of the 1st respondent from his nomination which requires to be rejected for the objections raised by the petitioner was not rejected and what are the objections raised and what counter filed for it before the Returning Officer and what order passed by the Returning Officer were clearly spelt out by due verification with enclosures as annexures duly verified as part of the pleadings as per Section 83(2) supra and of the averment of large scale suppression of assets on face of record from non-disclosure having kept some at blank and some incomplete in furnishing information which once contain the information from the annexures duly verified as part of pleadings that are already exhibited among Exs.A1 to A.13 and the same disclosed cause of action with material particulars, suffice to say the election petition is in compliance with mandate of Section 83 of the Act.

22(b). In this regard, the law is very clear that placed reliance by the petitioner from the written arguments the expression of the Apex Court in **Ashraf Kokkur Vs. K.V. Abdul Khader**² which read as follows:

“The question whether a schedule or annexures to the election petition is an integral part of the election petition was first discussed by this Court in Sa Rai v. Ram Singh Aharwar[1]. It was held that a schedule or an annexure which is merely an

² 2015 (1) SCC 129

evidence in the case and included only for the sake of adding strength to the petitioner, does not form an integral part of the election petition. **It was a case where the annexures were not verified by the election petitioner as required under Section 83(2) of the RP Act.**

Recently, a three-Judge Bench of this Court in G.M. Siddeshwar v. Prasanna Kumar[4] (Judgment is authored by one of us, Lokur, J.), had an occasion to refer to this issue. Referring to Sahodrabai Rai case (supra), it was held at Paragraphs-54 to 56 as follows:

“54. In Sahodrabai Rai v. Ram Singh Aharwar[5] the question raised was as follows: (AIR p. 1080, para 3) “3. ... ‘Whether the election petition is liable to be dismissed for contravention of Section 81(3) of the Representation of the People Act, 1951 as copy of Annexure A to the petition was not given along with the petition for being served on the respondents.’”

55. It was noted that the contents of the pamphlet, in translation, were incorporated in the election petition. It was also noted that the trial of an election petition has to follow, as far as may be, the provisions of CPC. Therefore, this Court approached the problem by looking at CPC to ascertain what would have been the case if what under consideration was a suit and not the trial of an election petition.

56. It was held that where the averments are too compendious for being included in an election petition, they may be set out in the schedules or annexures to the election petition. In such an event, these schedules or annexures would be an integral part of the election petition and must, therefore, be served on the respondents. This is quite distinct from documents which may be annexed to the election petition by way of evidence and so do not form an integral part of the averments of the election petition and may not, therefore, be served on the respondents.” Further, at Paragraph-57, there is also reference to M. Kamalam’s case (supra) and it is held as follows:

“57. In M. Kamalam v. V.A. Syed Mohammed this Court followed Sahodrabai Rai and held that a schedule or an

annexure which is an integral part of an election petition must comply with the provisions of Section 83(2) of the Act.

Similarly, the affidavit referred to in the proviso to Section 83(1) of the Act where the election petition alleges corrupt practices by the returned candidate also forms a part of the election petition. If the affidavit, at the end of the election petition is attested as a true copy, then there is sufficient compliance with the requirement of Section 81(3) of the Act and would tantamount to attesting the election petition itself.” The pleadings, if taken as a whole, would clearly show that they constitute the material facts so as to pose a triable issue as to whether the first respondent is disqualified to contest election to the Kerala State Legislative Assembly while holding an office of profit under the State government as Chairperson of the Kerala State Wakf Board.

The question is not whether the Chairperson of the Kerala State Wakf Board is an office of profit or not. That is the issue to be tried. Question is whether the petitioner has raised such a question in the election petition. The disqualification under the Constitution of India being, holding an office of profit under the State Government. Petitioner has furnished all the material particulars in that regard. Therefore, the petition discloses a cause of action.

After all, the inquiry under Order VII Rule 11(a) of CPC is only as to whether the facts as pleaded disclose a cause of action and not complete cause of action. The limited inquiry is only to see whether the petition should be thrown out at the threshold. In an election petition, the requirement under Section 83 of the RP Act is to provide a precise and concise statement of material facts. The expression ‘material facts’ plainly means facts pertaining to the subject matter and which are relied on by the election petitioner. If the party does not prove those facts, he fails at the trial (see Philipps v. Philipps and others[6]; Mohan Rawale v. Damodar Tatyaba alias Dadasaheb and others[7]).

This Court in Azhar Hussain v. Rajiv Gandhi[8], at Paragraph-11, has held that:

“11. ... Whether in an election petition a particular fact is material or not and as such required to be pleaded is dependent

on the nature of the charge levelled and the circumstances of the case. ...” The charge levelled is that the respondent holds an office of profit as the Chairperson of the Kerala State Wakf Board and in that capacity he enjoys the profits attached to that office from the Government of Kerala.

In V.S. Achuthanandan v. P.J. Francis and another[9], a three-Judge Bench of this Court has taken the view that only because full particulars are not given, an election petitioner is not to be thrown out at the threshold. To quote Paragraph-15:

“15. ... An election petition was not liable to be dismissed in limine merely because full particulars of corrupt practice alleged were not set out. It is, therefore, evident that material facts are such primary facts which must be proved at the trial by a party to establish existence of a cause of action. Whether in an election petition a particular fact is a material fact or not, and as such, required to be pleaded is a question which depends on the nature of the charge levelled, the ground relied upon, and in the light of the special circumstances of the case. ..” Again at Paragraph-16 of V.S. Achuthanandan case (supra), it was held that:

“16. ... So long as the claim discloses some cause of action or raises some questions fit to be decided by a Judge, the mere fact that the case is weak and not likely to succeed is no ground for striking it out. The implications of the liability of the pleadings to be struck out on the ground that it discloses no reasonable cause of action are generally more known than clearly understood. ...” xxx xxx xxx “... the failure of the pleadings to disclose a reasonable cause of action is distinct from the absence of full particulars. ...” (Emphasis supplied) In Hari Shanker Jain v. Sonia Gandhi[10] , a three-Judge Bench of this Court held that the expression ‘cause of action’ would mean facts to be proved, if traversed, in order to support his right to the judgment of the court and that the function of the party is to present a full picture of the cause of action with such further information so as to make opposite party understand the case he will have to meet. To quote Paragraph-23:

“23. ... The expression “cause of action” has been compendiously defined to mean every fact which it would be necessary for the plaintiff to prove, if traversed, in order to support his right to the judgment of court. Omission of a single material fact leads to an incomplete cause of action and the statement of claim becomes bad. The function of the party 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. (See Samant N. Balkrishna v. George Fernandez, Jitendra Bahadur Singh v. Krishna Behari.) Merely quoting the words of the section like chanting of a mantra does not amount to stating material facts. Material facts would include positive statement of facts as also positive averment of a negative fact, if necessary. In V.S. Achuthanandan v. P.J. Francis this Court has held, on a conspectus of a series of decisions of this Court, that material facts are such preliminary facts which must be proved at the trial by a party to establish existence of a cause of action. Failure to plead “material facts” is fatal to the election petition and no amendment of the pleadings is permissible to introduce such material facts after the time- limit prescribed for filing the election petition.” In Syed Dastagir v. T.R. Gopalakrishna Setty[11], while referring to the pleadings, it has been held at Paragraph-9 that:

“9. ... In construing a plea in any pleading, courts must keep in mind that a plea is not an expression of art and science but an expression through words to place fact and law of one’s case for a relief. Such an expression may be pointed, precise, sometimes vague but still it could be gathered what he wants to convey through only by reading the whole pleading, depending on the person drafting a plea. ...” “ ... So to insist for a mechanical production of the exact words of a statute is to insist for the form rather than the essence. So the absence of form cannot dissolve an essence if already pleaded.” In Mayar (H.K.) Ltd. v. Owners & Parties, Vessel M.V. Fortune Express[12], this Court at Paragraph-12 held that:

“12. ... The court has to read the entire plaint as a whole to find out whether it discloses a cause of action and if it does, then the plaint cannot be rejected by the court exercising the powers

under Order 7 Rule 11 of the Code. Essentially, whether the plaint discloses a cause of action, is a question of fact which has to be gathered on the basis of the averments made in the plaint in its entirety taking those averments to be correct. A cause of action is a bundle of facts which are required to be proved for obtaining relief and for the said purpose, the material facts are required to be stated but not the evidence except in certain cases where the pleadings relied on are in regard to misrepresentation, fraud, wilful default, undue influence or of the same nature. So long as the plaint discloses some cause of action which requires determination by the court, the mere fact that in the opinion of the Judge the plaintiff may not succeed cannot be a ground for rejection of the plaint.” In a recent decision in Ponnala Lakshmaiah v. Kommuri Pratap Reddy and others[13], this Court had held at Paragraphs-17 and 29 that:

“17. ... 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.” (Emphasis supplied) xxx xxx xxx “29. ... An election which is vitiated by reason of corrupt practices, illegalities and irregularities enumerated in Sections 100 and 123 of the Act cannot obviously be recognised and respected as the decision of the majority of the electorate. The courts are, therefore, duty-bound to examine the allegations whenever the same are raised within the framework of the statute without being unduly hyper technical in their approach and without being oblivious of the ground realities.” Finally, as cautioned by this Court in Raj Narain v. Indira Nehru Gandhi and another [14], it was held that:

“19. Rules of pleadings are intended as aids for a fair trial and for reaching a just decision. An action at law should not be equated to a game of chess. Provisions of law are not mere formulae to be observed as rituals. Beneath the words of a provision of law, generally speaking, there lies a juristic principle. It is the duty of the court to ascertain that principle and implement it. ...” (Emphasis supplied) Guided by the settled principles of law referred to above, we are of the view that the election petition having disclosed a cause of action, it should not

have been thrown out at the threshold. The impugned order and judgment are hence set aside. The appeals are allowed. The election petition is remitted to the High Court for trial in accordance with law.

There is no order as to costs.”

22(c). The three judge expression of the Apex Court in the case on hand from the appeals maintained by the election petitioner in Civil Appeal Nos.9466, 9467 & 9468 of 2016 dated 21.03.2018 while setting aside the order allowing EA.Nos.329 & 330 of 2015 supra by restoring the election petition also held in Para 40 that in the case on hand we are of the considered opinion that the subject election petition plainly discloses cause of action for filing of the election petition to declare the election of the 1st respondent to be void on the ground of improper acceptance of his nomination, for what Para 41 speaks is that it may not be understood as to **have** expressed any opinion on the merits of the other issues to be decided by the High Court and its analysis was limited to the threshold matter considered in the judgment about the striking of the pleadings and rejection of the election petition in limini. In Para 42 it is stated election petition stands restored for being proceeded further in accordance with law. The expression supra thus very clear of a positive finding as to existence of material facts and existence of cause of action from the pleadings as per Section 83 of the Act and the striking of pleadings and rejection of the election petition by the High Court is unsustainable and for that final opinion expressed though on other aspects no final opinion

expressed from the reading of the observations supra. Above material thereby substantiates the conclusion. Thus, the issue is answered in favour of the petitioner holding that the election petition is in compliance with Section 83 of the Act.

23. Now coming to the issues 1 to 3 as to whether the nomination of the 1st respondent along with affidavit in Form-26 and from the format under Rule 4-A with Rule 35 of the Civil Rules of Practice is improper so also the acceptance and with what effect on the result of the election of the 1st respondent including from the expression of the Apex court in Civil Appeal Nos.9466 to 9468 of 2016 dated 21.03.2018; whether the election petitioner is entitled to the declaration that the election of 1st respondent as returned candidate from No.284, Punganur Assembly Constituency, at the general election held on 16.05.2014 accepting the nomination paper of 1st respondent as null and void and whether the election petitioner is entitled to get himself declared as elected in the event of his succeeding in unseating the 1st respondent on sole basis that he had secured the next higher votes than the 1st respondent concerned:

23(a). While deciding the above issues, so far as the objection to the receiving of counter in main case with rejoinder to it in answer to what is contended in Para 19(d) 11 &12 of the written arguments of the Election Petitioner concerned, in addition to what is referred in 5(a) supra, counter of the 1st respondent to the main election petition filed was only on 18.02.2016, even the election petition filed was on

25.06.2014 and immediately after admission and from the notice ordered election petition 1st respondent put forth his appearance through advocates referred supra on 24.10.2014. The counter to be filed is within maximum 90 days from date of service and even counter from date of appearance to file was also expired sometime before **24.01.2015**. There was no any application to receive the counter with petition by condoning the delay caused in its filing. The petitions in E.A.Nos.329 of 2015 under Order-6, Rule-16 and E.A.330 of 2015 under Order-VII, Rule-II CPC were not filed even within said 90 days time expired before 24.01.2015, for those were filed subsequent to 12.06.2015 and only by 01.07.2015. Thus the judgment of the Hon'ble Supreme Court **R.K.Roja Vs. U.S. Rayudu**³ placed reliance by 1st respondent is of no help to him for the reason there the petitions filed were within 30 days, whereas the petitions here long after 90 days. The contention that right to file counter is saved till disposal of the petition in E.A.329 of 2015 under Order-6, Rule-16 and E.A.330 of 2015 under Order-VII, Rule-II CPC on 16-03-2015 is not sustainable. As already stated the Election Petition was filed on 25-06-2014. Notice was served on the respondent on 25-10-2014. The 30 days expired on 24-11-2014 and 90 days expired on 22-01-2015 even therefrom. **However the fact remains, as can be seen from the docket orders referred supra, that after filing of the counter on 18.02.2016, from the extending of time by the Court time to time for filing counter from oral requests**

³ AIR 2016 SC 3282

meantime, on 19.02.2016 the learned counsel for the election petitioner sought time for filing rejoinder to 25.02.2016 as can be seen from the docket order of the Court dated 19.02.2016 and it was not even objected to the belated filing of the counter for its receiving, but for acquiesced and waived any objection to it there from and as such now the election petitioner cannot impugn the counter received by this Court long ago in asking to treat as if no counter for not filed in 90 days and thereby to construe the election petition averments as if unchallenged consequent thereby for the counter received long back having acquiesced and waived any right to object later. It is further to say the Court is not powerless to grant time beyond 90 days while keeping in mind the outer limit as procedural law is hand maid and not mistress of justice for there is no any restriction in the Order VIII Rule 10 CPC that after expiry of ninety days, further time cannot be granted. It was so held by the Constitution Bench of the Apex Court in **Salem Advocates Bar Association vs. Union of India**⁴. Similar is the view expressed later even by the Supreme Court in **Kailash v. Nanhku**, while considering the very same provision in regard to extension of time, as provided by Order VIII Rule 1 of CPC, holding that the same is only directory and does not impose an embargo on the power of the Court to extend the time for exceptional circumstances and on its being satisfied.

⁴ AIR 2005 SC 3353

24. Now coming to the tenability of the contentions in the election petition with duly verified enclosures as part of pleadings of the election petition as discussed supra vis-à-vis at Para 19(d) 9 &10 of the written arguments of the petitioner as to the affidavit in Form-26 requires signatures on end of each page of deponent concerned, it is necessary to refer herein that the Form-26 no way prescribes anywhere supra, which is covered by Annexure-IX, by providing to sign the document at each page, but for it prescribes verification at the end page with date and time and place of verification and signature of the deponent at the end page. What the Apex Court in Kailash reported in 2005 supra at Para's 8 to 12 held was that the Rules framed by the High Court under Article-225 or 129 CPC for the Trial of Election Petition would apply. Therefore Rule-12 stated supra of the Civil Rules of Practice will apply for affidavits in Election Matters before the Election Tribunal only and not for affidavits to file nominations at the pre-election dispute stage. The application of Rule 35 of the A.P. Civil Rules of Practice, which mandates the form of every affidavit that shall be drawn up in first person by divided into paragraphs numbered consecutively to a distinct portion of subject duly written or typed or printed and stitched book wise and the deponent shall sign at the foot of each page of the affidavit and with form of oath and affirmation under the

Indian Oaths Act, from what Rule 12 of the High Court Rules to regulate is only in the trial of election petitions under the Representation of Peoples Act, of except as otherwise provided in the Act, the code(CPC) and the forgoing rules, the rules of the High Court on the original side shall apply, as far as may be to the proceedings under the Act, (which cannot even be understood the rules as to mean civil rules of practice-CRP, as rules not defined as CRP), but for the High Court Rules. The High Court Rules 1-12 provided for election dispute before the High Court as adjudicatory authority are different from the pre-election petition nomination affidavit provided to be filed before the Returning Officer, that too only in the format (in Form-26) prescribed by the Election Commission and same not even provided to sign on each page nor mentioned about the affidavit format prescribed in CPC or Rules of Practice or High Court Rules concerned that shall apply even to affidavits to be filed in Form-26. That what rightly, though not in so many words and by any detailed discussion undertaken, concluded by the Returning Officer in rejection of the objection Nos.1 & 3 to the above extent, having observed that a perusal of the hand book for Returning Officer-2014 under Chapter 5.20.1 second Para reveals that "The affidavit should be sworn before a Magistrate of the First Class or before a Notary public or a Commissioner of Oaths appointed by the High-court of the

State concerned, on the last page of the affidavit. Here in this case, the above two affidavits filed have been signed on the last page duly sworn before the Notary Public as contemplated under Hand Book for Returning Officer-2014 under chapter 5.20.1 second Para.

24(a). Coming to the stray observation of the Apex Court in Civil Appeal Nos.9466 to 9468 of 2016 common order dated 21.03.2018, at Para 31 that placed reliance by the learned counsel for the election petitioner concerned, the observation reads that “Indubitably, the requirement of putting one’s signature on each and every page on the affidavit has been restated in the case of Resurgence India.” On how far a decision is an authority on fact and law concerned, the Apex Court way back in 1968 in State of Orissa Vs. Sudhansu Shekar Misra⁵ observed is that a decision is only an authority for what it actually decides. What is of the essence in a decision is its ratio and not every observation found therein nor what logically follows from the various observations made in it. It was quoted with approval by the Division Bench of the Bombay High Court in Panjumaal Vs. Harpal Singh⁶ at Para 14 middle that in view of the above it would be impermissible to utilize the observations in the latter Division Bench Judgment for the purpose of applying them therein. A close perusal of the expression in Resurgence India supra that thoroughly

⁵ AIR 1968 SC 647

⁶ AIR 1975 Bombay 120

drawn attention by learned counsel for the 1st respondent and also submitted in their written arguments at Paras 3 & 4 there is no any such observation or statement therein in this regard, leave apart the fact that at Para 41 the Apex Court as stated supra observed that it may not be understood as to have expressed any opinion on the merits of the other issues to be decided by the High Court. So far as Form-26 concerned, the traits of Rules of Practice or High Court Rules applicable is no where the conclusion either in Resurgence India supra or in the appeal in this matter supra. What Rule 94A speaks on form of affidavit to be filed with election petition is that the affidavit referred to in the proviso to sub-section(1) of Section 83 shall be sworn before a magistrate of the first class or a notary or a commissioner of oaths and shall be in Form 25, at best requires the compliance of the High Court Rules which provide as per the Civil Rules of Practice to sign on every page and not for other affidavits to be filed before the Returning Officer with nomination. In Ponnala Lakshmaiah v. Kommuri Pratap Reddy supra, the Apex Court in the year 2012 on the issue of a failure to file an affidavit in accordance with the prescribed format observed that: “28. ... The format of the affidavit is at any rate not a matter of substance. What is important and at the heart of the requirement is whether the election petitioner has made averments which are testified by him

on oath, no matter in a form other than the one that is stipulated in the Rules. The absence of an affidavit or an affidavit in a form other than the one stipulated by the Rules does not by itself cause any prejudice to the successful candidate so long as the deficiency is cured by the election petitioner by filing a proper affidavit when directed to do so.” Thus, the contention of the election petitioner that the affidavit in Form-26 requires signatures on end of each page of deponent and for 1st respondent signed only on the last pages of the two affidavits with the nomination form prescribed same is liable to be rejected and it was not properly considered by the Returning Officer in non-rejection is untenable and contention is negated for the above detailed reasons.

25. Now coming to the other contentions of the election petitioner; based on the expression of the Apex Court in the year 2002 in Association for Democratic Reforms, the voters got fundamental right under Article 19(1)(a) of the Constitution of India to know antecedents including criminal past of a candidate, Section 33A was introduced by Act No.72/2002 with effect from 24.08.2002 by which a candidate shall, apart from any information which he is required to furnish, under the Act or the Rules made there under, in his nomination paper delivered under Section 33(1), also furnish the information as to (i) he is accused of any offence punishable with imprisonment for 2 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 Section 8(1) or (2) or (3) and sentenced to imprisonment for one year or more. In this regard, the Apex Court in **CP John Vs. Babu M. Palissery**⁷ held at Para 83 that what Section 33A(1)(ii) of the Act, requires the candidate to furnish information in the nomination as regards his/her conviction for any offence referred to is if sentenced to imprisonment for a period of one year or more. Only then it should be disclosed in the nomination. As it has been found in the present case that the conviction in CC No.167 of 1995 and the sentence imposed was less than a year, there was no compulsion for the First Respondent to disclose said conviction in his nomination. Rule 4A introduced in the Conduct of Election Rules 1961 to disclose in the affidavit in the prescribed Form-26 is only to the above extent. The scrutiny by the returning officer is to that extent thereby.

25(a). Coming to the petitioner's contention of besides the Returning Officer scrutiny of nominations was perfunctory, though mandatory, the 1st respondent as a candidate failed to fill up the affidavit at the Column No.4 and Column No.2 under the head of total income shown in Income tax returns; at column No.6 not properly strike off which ever not applicable and kept blank at column No.8(B)(III), where the words stand of **"Approximate Current market price of"** at Part-B of (11) abstract of the details given in (1) to (10) of Part-A and the

⁷ AIR 2015 SC 16

Returning Officer also failed to consider in obedience to the Conduct of Election Rules and recent Apex Court judgment circulated in this regard and wrongly rejected the objections raised by the petitioner in this regard concerned, the Returning Officer observed that a perusal of the affidavit filed Sri.P.Ramachandra Reddy on 12/04/2014, the column No.4 and Column No.2 has been filled in as "Not applicable". But in the subsequent affidavit filed on 17-04-2014 the column No.4 and Column No.2 is kept blank. As the affidavit filed on 12-04-2014 is in order and hence the objection raised in this regard could not stand to legal scrutiny. With regard to other objection, though the relevant word under column No.6 have not been struck off, but the points mentioned below the Para as (a)(b)(c) and (d) have been duly filled in as "Not Applicable". **It clearly reveals that, the candidate has clearly mentioned that he has not been convicted in any offence. Hence the objection raised in this regard could not stand to legal scrutiny.** With regard to other objection, Part-B (11) abstract of the details given in (1) to (10) of Part A Col.8 III, is a heading to the below mentioned (a) and (b) and all column of (a), (b) are filled in. Hence the objection raised in this regard could not stand. Same is the impugment herein. The written submissions of the learned counsel for the 1st respondent in this regard from Paras 4 to 10 reproduced supra no way requires repetition contends that those are trivial and not of substantial character as rightly concluded in overruling the

objections of the election petitioner by the Returning Officer and thereby there is no substance in the contentions of the election petitioner even in the present petition by its repetition. The expression in **Krishna Murthy Vs. Sivakumar supra** of 2015 placed reliance by the election petitioner is in relation to non-disclosure of criminal antecedents as undue influence in particular facts referring to Section 100(1)(b) of the Act. Here there is no pleading by petitioner to say there was any wilful non-disclosure of material facts regarding the criminal antecedents of the 1st respondent and the same tantamount to malfeasance or misfeasance or fraud or undue influence and as to how. Coming to the expression placed reliance by the petitioner of **Kishan Shankar Kathore Vs. Arun Dattatray Sawant supra** of 2014 of non-disclosure of assets and liabilities in the particular facts referring to Section 100(1)(d)(i) & (iv) of the Act concerned it is to be seen whether the defect is of a substantial character?

25(b). In this regard, it is relevant to refer Sections 33(4), 36(4), 100 & 101 of the Act and Rules 6.7, 6.9 & 6.9-5 of the Handbook for Returning Officer-2014 issued by the Election Commission.

“Section 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 or the Government of Union Territories Act, 1963 (20 of 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, in so far as it concerns a returned candidate, has been materially affected—**

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

(ii) by any corrupt practice committed in the interests of the returned candidate 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.

(2) 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;

[* * * * *]

(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.

Section 101 Grounds for which a candidate other than the returned candidate may be declared to have been elected: If any person who has lodged a petition has, in addition to calling in question the election of the returned candidate,

claimed a declaration that he himself or any other candidate has been duly elected and the High Court is of opinion—

(a) that in fact the petitioner or such other candidate received a majority of the valid votes; or (b) that but for the votes obtained by the returned candidate by corrupt [* * *] practices the petitioner or such other candidate would have obtained a majority of the valid votes, the High Court shall after declaring the election of the returned candidate to be void declare the petitioner or such other candidate, as the case may be, to have been duly elected.”

25(c). The Rules 6.7, 6.9 & 6.9-5 of the Handbook in fact instructs the Returning Officers in scrutiny of nominations to adopt a liberal approach in dealing with minor, technical or clerical errors as improper orders of rejection on technical grounds lead to a large number of election petitions and eventual setting aside of several elections with consequent waste of time, money and labour for all concerned. **Section 33(4) of the Act speaks that on the presentation of a nomination paper, the returning officer shall satisfy himself that the names and electoral roll numbers of the candidate and his proposer as entered in the nomination paper are the same as those entered in the electoral rolls.** The proviso to it only speaks of no misnomer or inaccurate description or clerical, technical or printing error in regard to the name of the candidate or his proposer or any other person, or in regard to any place, mentioned in the electoral roll or the nomination paper and no clerical, technical or printing error in regard to the electoral roll numbers of any such person in the electoral roll or the nomination paper, shall affect the full operation of the

electoral roll or the nomination paper with respect to such person or place in any case where the description in regard to the name of the person or place is such as to be commonly understood; and the returning officer shall permit any such misnomer or inaccurate description or clerical, technical or printing error to be corrected and where necessary, direct that any such misnomer, inaccurate description, clerical, technical or printing error in the electoral roll or in the nomination paper shall be overlooked. **Thus the section supra has no application to other omissions other than names and addresses etc., to ignore.**

25(d). Now coming to Section 36 of the Act which deals with scrutiny of nominations filed under Section 30 of the Act within the time and the manner provided to comply with Sections 33 & 34 of the Act, coming to Section 36(4) concerned what it clearly reads is that **“the returning officer shall not reject any nomination paper on the ground of any [***] defect which is not of a substantial character.”**

25(e). Thus, every non-disclosure or every defect in the nomination is not a ground to reject but for on satisfaction and from showing the same is of a substantial character and in the absence of which even any check list prepared which is covered by annexure-XI and instruction No.32 dated 30.09.2013 of the Election Commission, in pointing out defects not a ground to reject the nomination that too when condition No.2 of the instruction No.32

speaks if a candidate fails to fill the blanks even after remainder, the nomination paper will be liable to be rejected by the Returning Officer. Here it is not even the case of the petitioner of the Returning Officer pointed out by remainder any defects in the nomination to fill and the 1st respondent failed to do so.

26. From this coming back to the facts, so far as criminal antecedents concerned in Part-A of Form-26 affidavit Para 5 it is mentioned for Clause A FIR No.37 of 2009 of Chowdepalli Police Station and for Clause B as under Section 3(1) of the SC & ST (POA) Act is pending by noting as nil for no cognizance taken, no charges framed and no stay pending and at Clause 2 of Para 5 specifically mentioned of no cases with post cognizance stage onwards pending in any Court and for Para 6 as not convicted and punished for any offence. The contention of 1st Respondent did not strike off “I am/am not accused”. Below the same, the candidate has filled up “No” instead of “Not Applicable” at Para 5 of the Affidavit and that the 1st Respondent did not strike off “I have been/have not been convicted” at Para 6 concerned, the Explanation of 1st Respondent is that even did not strike off the inappropriate portion out of the printed letters of “I am/am not accused” and “I have been/have not been convicted has not been struck off”, the tabular forms mentioned under the respective paras, for providing details of the information, have been duly filled up. Thus the 1st respondent has duly furnished the required information as regards criminal antecedents so as

to enable the Voter to exercise informed choice and the complaint of non-striking is totally insignificant and cannot be read in isolation. It is not even the pleading of the petitioner much less any demonstration to that effect of a reading of Paras 4 to 6 will not enable the voter to understand that the 1st respondent is either or not involved in any criminal cases or either or not convicted in any case. **Thus there is no any non-disclosure amount to misrepresentation or fraud or non-disclosure of information of substantial character but for trivial and technical if at all could be pointed out by the returning officer to rectify for not a case for rejection of any of the 2 nomination papers.**

26(a). Besides that from Para 4 regarding details of income tax PAN and status of filing the Income Tax Returns pertaining to the 1st respondent's wife at Para 4 of the Affidavit at Page 96 left blank concerned, at page No.82 he furnished the PAN particulars of him and his wife Smt. Swarna Latha and he has mentioned about the IT return for the financial year 2012-13 filed by him showing total income Rs.22,83,734/- and so far as his wife concerned clearly mentioned no income tax return filed and the total income shown in the return of her thereby mentioned as not applicable. In this regard, what is pointed out from page No.96 is income of his wife in the 2nd nomination form shows as blank. Once no income tax return filed and question of showing total income in the return of her does not arise, it could have been mentioned like in the other supra at

page 82, at page 96 as not applicable and the gap is thereby insignificant for not a defect of substantial character, leave about the returning officer not pointed out to rectify by remainder and not a case of still not rectified to fill the gaps and thereby to say liable to be rejected. The Explanation of 1st Respondent under the column “the financial year for which the last income tax return has been filed” specifically stated that the same has not been filed, in that view of the matter, the next column “total shown in income tax return in rupees” could not have contained any further details. The 1st Respondent did not fill up the said column, which is only consequential and therefore not filling up the said blank with “not applicable” is not fatal. As the previous column states that no income tax returns of the 1st Respondent’s wife have been filed, the same amounts to substantial compliance. **Moreover, the 1st Respondent in the Affidavit dated 12.042014 at Page 82 under the column “total shown in income tax return in rupees” filled the column as ‘Not Applicable’ and therefore the blank left in the Second Affidavit cannot be held to concealment or failure to disclose information so as to reject the nomination of the 1st Respondent.**

26(b). Coming to the details of movable and immovable assets of him, spouse and dependants covered by Para 7 same furnished as to movables covered by clause A and as to immovable properties in Clause B; movables covered by clause A concerned for item V column No.2 regarding personal

loan for advances given mentioned to PLR projects private limited of 56,92,925/- even not mentioned merely of what type of loan or advance to say that is not an omission of substantial character. Coming to clause 3 therein as to details of investments, column 2 mentions of him in Shiva Shakti Dairy Private Limited shares of Rs.5,00,000/- and of his wife at column 3 mentioned the 2 items of PLR projects private limited shares of Rs.1,27,25,030/- and in Ananda Nilayam Hotels Private Limited of Rs.1,51,04,500/-. Coming to Clause 7 of jewellery bullion and valuable things with weight and value it is mentioned for him at column 2 as 50 grams worth Rs.70,000/- and of his wife at column 3 as 1500 gms worth Rs.21,00,000/- when item wise not asked there is no need to mention leave about said non-mention not of substantial character. **In the Clause 9 of Para 7, column 2 relates to him correctly mentioned the total but for that of his wife the jewellery of Rs.21,00,000/- under clause 7 not included. Said mistake in total not even asked to rectify by the Returning Officer and thereby not a case for rejection besides said mistake is not of substantial character.**

26(c). Now coming to details of immovable property under Para 7(b) it is mentioned the agricultural land of him and of his wife with total extents and not as inherited, but for purchased by giving dates of purchase and cost of land at the time of purchase as prescribed. There are other columns mentioning any investment on the land by way of development,

construction etc., the answer referred as Nil and for the column appropriate current market value for his property of Ac.6.59 cents at the time of purchase respectively during 1987 & 2008 total Rs.56,95,125/- and present market value as on the date of his affidavit in Form-26 as Rs.5,54,82,000/- it is the variation from 1987 to 2014 and 2008 to 2014 respectively. In this regard there is nothing to find fault for nothing left blank. So far as the wife's property of Ac.15.30 cents by respective purchases during 2013-14 the original price as on the date of purchase of Rs.1,57,49,965/- which shows there is no variation in that one year from purchases to the date of nomination filed in April 2014 thereby also there is nothing to find fault for no gaps and what is information furnished so far as agricultural lands supra. For non agricultural lands concerned, he has mentioned the location, survey numbers and the area of him and of his wife as purchased by him in 2004 for Rs.14,93,100/- and by his wife in 2007 for Rs.82,180/- respectively and the investment if any by development, construction, referred as Nil. The current market value mentioned of him as Rs.8,20,00,000/- and of his wife as Rs.2,80,000/- for that property and coming to other item of non agricultural land, he mentioned the area and as purchased by him of 2540 square yards in 2005 and 2006 thrice with purchase value of Rs.1,24,78,000/- and of his wife 1352.64 square yards in 2012/13 twice and value at that time of Rs.36,35,225/-. He mentioned no investments by development and the current

market value at the time of nomination of him as Rs.15,24,00,000/- and of his wife Rs.46,00,000/-. There is no material to say same is how false even his said property value shown increased about 10 times and not that of his wife even double for respective areas different. Coming to the clause 3 commercial buildings, he mentioned that of his wife as 'Nil' and that of him mentioned the place at Hyderabad with door number and extent of 870 square yards. So far as built up area concerned, he mentioned as 'No' and same as purchased on 19.04.1993 at a cost of Rs.8,14,000/- and the investment by development as No and the approximate current market value concerned Rs.3,96,65,000/- for the site at Dwaraka Niwas, Hyderabad with door number. Though there is no specific pleading in the main petition, once this is submitted as annexure as part of the petition pleading, with due verification to the annexure also as discussed supra it shows from the contention material facts not disclosed as to same is once built up area and not a column meant for vacant site but commercial building, supposed to give the measurement of the built up area which is not given. It is to be considered whether said non mention is a non-disclosure of the material fact of substantial character to reject the nomination of 1st respondent or to allow the election petition for that concerned, this Court feels not by itself so from non-giving of the built up area when total site area given and not that of the built up area therein and that too current market value also given with substantial increase in

many fold to the date of purchase in 1993 to the date of nomination in 2014 from Rs.8,14,000/- to Rs.3,96,65,000/-.

Coming to the other commercial building at Tirupati of him, for his wife has no commercial building as referred supra, as given the survey number, location and the area of the site 4292.96 square yards by mentioning similarly built up area No and purchased in 2006 for Rs.98,28,175/- and with no development by construction and current market value Rs.12,22,00,000/- with 12 times increase from 2006 to 2014 and thus, mere non-giving of built up area by itself no way fatal for not of material omission of substantial character. Coming to the residential buildings, for his wife stated Nil and of him concerned at Tirupati and Bangalore respectively furnished the information of the door numbers and the extent of site but not mentioned built up area though mentioned date of purchase and for what cost and as to current market value and investment by development for construction instead of Nil mentioned what current market value and at current market value column as Nil which is outcome of mistake glaringly and for Bangalore residential building mentioned the flat number of the apartment with survey number and the built up area and instead of giving the undivided interest in the site built up area mentioned in other column and in built up area as if Nil though mentioned date of purchase and for what cost and the current market value, which is outcome of a mistake and not a material omission of substantial character. Coming to Part B item No.11 for details

of assets and liabilities, he mentioned his PAN number and of his wife and IT return filed by him and not filed by his wife, that are referred supra and as to details of assets and liabilities mentioned, the movable assets of him and of his wife concerned having mentioned, coming to the self acquired immovable property purchase price mentioned of him and of his wife and development construction cost after purchase mentioned as Nil as referred supra and approximate current market price also mentioned as referred supra. His verification in the declaration is the contents as true and correct to the best of his knowledge and belief, no part of it is false and nothing material has been concealed therefrom. What are the assets and liabilities he has mentioned of him and of his wife. He declared there is no case of conviction or pending case against him other than those mentioned supra. Even from the verification cannot prima facie found untrue or false as what is verified of nothing material has been concealed. As referred supra for the immovable property either site area or built up area given but for the other however value of purchase and present market value specifically given to say nothing as dis-information or mal-information to any voter to say any material concealment and a defect of a substantial character.

26(d). Further and from what is discussed supra, it is not even a case of the returning officer pointed out any such defects or gaps to fill and still not complied with which is a pre-requisite even to reject as discussed supra including from what the

expression of the 3 Judge Bench of the Apex Court in **Resurgence India** supra in 2014 observed, referring to **Peoples Union for Civil Liberties** of 2003 and **Association for Democratic Reforms** of 2002, that what also referred in **Krishna Murthy** supra that mainly deals with non-disclosure of criminal antecedents which is of substantial character of voter must know. In **Kishan Shankar Kathore Vs. Arun Dattatray Sawant supra of 2014**, there the non-disclosure was held as substantial character regarding the dues to the Government being a material lapse for not even a case of any pending bonafide dispute in relation to the dues admittedly there by the time of filing nomination form and it is categorically observed what is a material lapse of a substantial character from any non-disclosure depends of facts of each case. No doubt in **Kisan Shankar** supra it was observed non-disclosure of material information as to assets of him and of his spouse the election of the appellant set aside was not interfered with. It discloses if the non-disclosure of material information which is of substantial character is definitely a ground to declare the election of the returned candidate as void and what is material information not disclosed depends upon facts of each case. From that coming to the case on hand from what is discussed supra on the facts for not a case of non-disclosure of assets and liabilities but for in their disclosure certain omissions which are not of material character. Thus it can be said in the case on hand that there is no any defect or omission to consider as

material concealment of substantial character which is a pre-requisite to make out from the statutory provision referred supra. In this regard, it is also necessary to refer the basic principle that the election of a returned candidate cannot be lightly interfered by the Tribunal or superior Court in appeal from the verdict given by majority of voters, in the absence of specific and substantial and acceptable grounds pleaded and proved in the election petition as held in **Ashok Vs. Rajendra**⁸ and at Para 11 of **Mangani Lal Vs. Bishnu Deo Bhandari**⁹ covered by part of the written arguments of the 1st respondent Para 22 and from **Para 27 of Tek Chand Vs. Dileram**¹⁰ by **three Judge Bench of the Apex Court** besides another three Judge Bench expression earlier tweet of the Apex Court in **Rafiq Khan Vs. Laxmi Narayan Sarma**¹¹ that inaccuracy in the nomination paper technical in nature should have been rectified by the returning officer at the time of scrutiny and not a ground for rejection. A defect is a substantial character or not depends upon facts of each case and defect is a substantial character is only a ground to reject the nomination or to declare the election void.

26(e). For the above reasons, there is no necessity to go into the issue No.3 as to whether the election petitioner is entitled to or can be declared as duly elected by so called succeeding from unseating of the 1st respondent as next higher

⁸ 2012 (12) SCC 27

⁹ 2012 (3) SCC 314

¹⁰ 2001 (3) SCC 290

¹¹ 1997 (2) SCC 228

votes secured candidate, for the reason the election petitioner is not entitled to the declaration of the election of the 1st respondent as null and void. Accordingly, the issue Nos.1 to 3 are answered in negative against the election petitioner.

27. Accordingly and in the result in answering the issue No.5, the Election Petition is dismissed with no costs. Miscellaneous petitions, if any, shall stand closed.

Dr. B. SIVA SANKARA RAO, J

Date: 15.12.2018

Note: L.R. Copy to be marked

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