

HIGH COURT OF CHHATTISGARH, BILASPURCivil Revision No.26 of 2016

Laxman Shriwas S/o Late Guharam Shriwas, aged-about 40 years,
R/o House No.225, Dhodipara, Ward No.15, Korba, Tehsil & Distt.-
Korba (CG)

(Election Petitioner)
--- Applicant

Versus

1. Manakram Sahu S/o Bajrang Sahu, aged about 36 years, R/o House no. 63, Dhodipara, Ward no. 15, Korba, Tehsil & Distt. Korba (C.G.)
2. Girdhari Rajak S/o Gammat Ram Rajak, aged about 37 years, R/o House no. 221, A.B. Type Colony, Dhodipara, Ward no. 15, Tehsil & Distt- Korba (C.G.)
3. Deepak Kumar Rathore S/o Late Ramnarayan Rathore, aged about 40 years, R/o House no. 77, A.B. Type Colony, Dhodipara, Ward no. 15, Tehsil & Distt- Korba (C.G.)
4. Pardeshiya Ram Vishwakarma, S/o Laxman Prasad Vishwakarma, aged about 42 years, R/o House no. 62 क, A.B. Type Colony, Dhodipara, Ward no. 15, Tehsil & Distt- Korba (C.G.)
5. Siya Ram Sahu, S/o Late Dhansai, aged about 32 years, R/o House no. 2 , New Neharu Nagar, Bhais Khataal, Ward no. 15, Korba, Tehsil & Distt- Korba (C.G.)
6. Siyaram Sahu, S/o Late Dhanaram Sahu, aged about 45 years, R/o House no. 44, CSEB-B type, Dhodipara, Ward no. 15, Korba, Tehsil & Distt- Korba (C.G.)
7. District Election Officer, Korba (Municipal Corporation Ward No. 15 Korba) Distt.-Korba (C.G.)

--- Respondents

For Applicant:	Mr.Sanjay Patel, Advocate
For Respondents No.1 to 6:	None present
For Respondent No.7:	Mr.H.B.Agrawal, Senior Advocate with Mr. Pankaj Agrawal, Advocate

Hon'ble Shri Justice Sanjay K. Agrawal

Order on Board

03/04/2019

1. This civil revision is directed against the judgment and order dated 21.1.2016 passed by learned District Judge, Korba acting as Election Tribunal under Section 441-F of the Chhattisgarh Municipal Corporation Act, 1956 (for short, 'the Act of 1956') dismissing his election petition preferred under the said provisions finding no merit.
2. Mr.Sanjay Patel, learned counsel for the applicant/election petitioner, would submit that learned District Judge is absolutely unjustified in answering issue Nos.1 and 2 in negative and against the applicant and in favour of respondent No.1/returned candidate as admittedly criminal cases were pending against him on the date of filing nomination paper, which he did not disclose while submitting his nomination paper, therefore, he was disqualified to hold the post of Corporator of Ward No.15, Korba, as such, the order of learned District Judge deserves to be set-aside.
3. None present for respondents No.1 to 6 though served.
4. Mr.H.B.Agrawal, learned Senior Advocate with Mr.Pankaj Agrawal, learned counsel for respondent No.6, would support the impugned judgment and order.
5. I have heard learned counsel appearing for the parties and considered their rival submissions made hereinabove and also went through the records with utmost circumspection.
6. Election for the post of Corporator of Ward No.15 was held on 29.12.2015 and result was declared on 4.1.2015 in which respondent No.1 was declared as returned candidate. The applicant

herein had filed election petition stating inter-alia that on the date of submission of nomination paper by respondent No.1/returned candidate, Criminal Case No.586/2013 for offence under Sections 147, 148, 294, 427, 323, 451, 452 and 506B of the IPC was pending consideration before the Chief Judicial Magistrate, Korba and Criminal Case No.1460/2014 for offence under Sections 147, 294, 427, 186 and 353/34 of the IPC was also pending consideration before the Judicial Magistrate First Class, Korba against returned candidate/respondent No.1 and in both the cases, offences are punishable for more than two years. Since it was not disclosed by respondent No.1/returned candidate while filing nomination paper, which was imperative in nature, therefore, he be declared to be disqualified from the post of Corporator of Ward No.15, Korba, which was opposed by returned candidate by filing written statement denying the averments.

7. A careful perusal of the election petition would show that the election petitioner has simply pleaded in para-8 of the election petition that aforesaid two criminal cases were pending against respondent No.1 on the date of filing of nomination paper in which punishment prescribed are more than two years, which he has suppressed, therefore, he is liable to be disqualified. It is not the case of the petitioner either in the pleading or in the evidence that in those cases, cognizance had already been taken on the date of filing nomination paper or charges were already framed. The petitioner in para-6 of his statement before the Election Tribunal has simply stated that two criminal cases bearing Criminal Case No.586/2013 and Criminal Case No.1460/2014 for offence as

above-stated are pending consideration, in which punishable sentence prescribed is more than two years. In para-21 of his cross-examination, he has omitted to state that whether in those cases cognizance has been taken and whether charges have been framed, he is not aware, as such, there is admitted position on record that the applicant has failed to plead and establish that in those criminal cases whether cognizance were taken by the said Court and charges were framed against respondent No.1 on the date of filing nomination paper by respondent No.1.

8. The Supreme Court in the matter of Krishnamoorthy v. Sivakumar and others¹ while dealing with the provisions of Section 33-A read with Column (5)(i) in Form No.26 of the Representation of the People Act, 1951, considered the question as to whether non-furnishing of the information while filing an affidavit pertaining to the criminal cases, especially cases involving heinous or serious crimes or relating to corruption or moral turpitude would tantamount to corrupt practice, and held as under: -

“82. But the question is when an election petition is filed before an Election Tribunal or the High Court, as the case may be, questioning the election on the ground of practising corrupt practice by the elected candidate on the foundation that he has not fully disclosed the criminal cases pending against him, as required under the Act and the Rules and the affidavit that has been filed before the Returning Officer is false and reflects total suppression, whether such a ground would be sustainable on the foundation of undue influence. We may give an example at this stage. A candidate filing his nomination paper while giving information swears an affidavit and produces before the Returning Officer stating that he has been involved in a case under [Section 354](#) Indian Penal Code and does not say anything else though cognizance has been taken or charges have been framed for the offences under the [Prevention of Corruption Act](#), 1988 or offences pertaining to rape,

¹ (2015) 3 SCC 467

murder, dacoity, smuggling, land grabbing, local enactments like the Maharashtra Control of Organised Crime Act, 1999, U.P. Control of Goondas Act, 1970, embezzlement, attempt to murder or any other offence which may come within the compartment of serious or heinous offences or corruption or moral turpitude. It is apt to note here that when an FIR is filed a person filing a nomination paper may not be aware of lodgement of the FIR but when cognizance is taken or charge is framed, he is definitely aware of the said situation. It is within his special knowledge. If the offences are not disclosed in entirety, the electorate remain in total darkness about such information. It can be stated with certitude that this can definitely be called antecedents for the limited purpose, that is, disclosure of information to be chosen as a representative to an elected body.”

9. The Supreme Court in the aforesaid judgment Krishnamoorthy (supra) has further clearly held that when the FIR is filed, a person filing a nomination paper may not be aware of lodgment of the FIR, but when the cognizance is taken or charge is framed, he is definitely aware of the said situation of cognizance of offence having been taken or framing of charges for offences against him. It is further held that it is within the special knowledge of the accused and if the offences are not disclosed in entirety, the electorate remain in total darkness about such information. It is further held that it can be stated with certitude that this can definitely be called antecedents for the limited purpose, that is, disclosure of information to be chosen as a representative to an elected body. In para 86 of the aforesaid decision, it was held that the requirement of a disclosure especially the criminal antecedents, enables a voter to have an informed and instructed choice. If a voter is denied of the acquaintance to the information and deprived of the condition to be apprised of the entire gamut of criminal antecedents relating to heinous or serious offences or offences of corruption or moral turpitude, the exercise of electoral right would

not be an advised one. He will be exercising his franchise with the misinformed mind and his fundamental right to know also gets nullified. The Supreme Court has also held that while filing the nomination form, if the requisite information, as has been highlighted, relating to criminal antecedents, is not given, indubitably, there is an attempt to suppress, effort to misguide, and keep the people in dark and this attempt undeniably and undisputedly is undue influence and would amount to corrupt practice and the election is liable to be declared as null and void under Section 100(1)(b) of the Representation of the People Act, 1951.

10. Reverting to the facts of the present case in the light of above-stated judgment (supra), it is quite vivid that the applicant has failed to plead and establish that on the date of filing nomination paper whether in those criminal cases either cognizance has been taken by learned Magistrate or charges have been framed against respondent No.1, as such, the applicant has failed to establish the fact of cognizance having been taken against respondent No.1 or charges have been framed against him.
11. The election for the post of Corporator of Ward No.15, Korba is governed by the Act of 1956 read with the Chhattisgarh Nirvachan Niyam, 1994. As noticed, Rule 25-A of the Rules of 1994 was amended with effect from 17-8-2004. Rule 25-A of the Rules of 1994 states as under: -

Rule 25-A "Under the provision of sub-rule (1) of Rule 25, every candidate who is submitting his nomination for the election of Councillor or Chairperson of Nagar Panchayat before the returning officer shall necessarily enclose a self-declaration in form 3 'A' and every candidate who is

submitting his nomination before the returning officer for the election of Mayor of Councillor of any Municipal Corporation or for President of Councillor of any Municipal Council shall necessarily enclose an affidavit sworn before a Magistrate of the first class or a Notary in form 3'B' ”

The above-stated inserted Rule obliges the candidate submitting his nomination paper for the election of Councillor or Chairperson of Nagar Panchayat to enclose a self-declaration in Form 3A and also to submit an affidavit sworn before a Magistrate of First Class or a Notary in Form III-B. Clause (iv) of Form III-B as per rules newly inserted states as under: -

IV - यह कि मुझे आज से 06 माह पूर्व निम्नलिखित प्रकरणों में अपराधी बनाया गया है जिसमें न्यायालय द्वारा चार्ज लगाया गया है, अथवा न्यायालय द्वारा संज्ञान लिया गया है। इसमें (उन्हीं प्रकरणों का विवरण दिया जाये जिसमें कारावास की सजा 2 या 2 से अधिक वर्षों की दी जा सकती है।) (इससे पूर्व कंडिका I एवं II के प्रकरणों को दिया जाये।

12. Thus, Rule 25-A of the Rules of 1994 only requires filing of an affidavit in Form III-B. The Rule itself does not require disclosure of criminal cases in which either charges have been framed or cognizance of offence has been taken, it is only prescribed in Form III-B envisaged by Rule 25-A of the Rules of 1994. As such, neither the Act of 1961 nor the Rules of 1994 governing the election specifically provides for disclosure of criminal cases in which charges have been framed / or cognizance of offences has been taken.

13. The Act of 1961 has not been amended inserting the provision akin to or similar to Section 33A(1)(i) of the Representation of the People Act, 1951 which obliges the candidate to furnish information

in his nomination paper delivered under sub-section (1) of Section 33 of the said Act of 1951, as to whether he is accused of any offence punishable with imprisonment for two years or more in a pending case in which charges have been framed by the court of competent jurisdiction. Section 33A(1) of the Representation of the People Act, 1951 provides as under: -

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

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

(ii) xxx xxx xxx”

14. The consequence of not complying with the provision contained in Section 33A(1)(i) of the Representation of the People Act, 1951 has been provided in Section 125A of the said Act of 1951 which states as under: -

“125A. Penalty for filing false affidavit, etc.—A candidate who himself or through his proposer, with intent to be elected in an election,—

(i) fails to furnish information relating to sub-section (1) of Section 33A; or

(ii) give false information which he knows or has reason to believe to be false; or

(iii) conceals any information,

in his nomination paper delivered under sub-section (1) of Section 33 or in his affidavit which is required to be delivered under sub-section (2) of Section 33A, as the case may be, shall, notwithstanding anything contained in any other law for the time being in force, be punishable with imprisonment for a term which may extend to six months, or with fine, or with both.”

15. As such, there was no such enabling provision mandated by

competent legislature either under the Act of 1961 or under the Rules of 1994 obliging the candidate submitting nomination paper for the post of Corporator to disclose the pendency of criminal cases in which charges have been framed as prescribed in Section 33-A(1)(i) of the Representation of the People Act, 1951 except in Form III-B prescribed under Rule 25-A of the Rules of 1994, as the candidate is only required to disclose or furnish information in shape of affidavit under the Act of 1961 and the rules made thereunder governing election. Therefore, at the time of filing nomination paper under the Rules of 1994, the petitioner was not obliged to disclose the said information of pendency of criminal cases in which charges have been framed against him or cognizance has been taken for the offences prescribing punishment for two years or more, in absence of legislative sanction mandating disclosure of such information in the Act of 1961 and the rules made thereunder.

16. The applicant/election petitioner has also failed to plead and establish that result of returned candidate has been materially affected due to such improper acceptance of nomination paper as prescribed in Section 22(1)(d) of the Act of 1961 in order to establish the ground either by improper acceptance of nomination paper or by non-compliance with the provisions of this Act or of any rules made thereunder. (See Vashist Narain Sharma v. Dev Chandra and others², Paokai Haokip v. Rishang and others³, Tek Chand v. Dile Ram⁴, Santosh Yadav v. Narender Singh⁵,

2 AIR 1954 SC 513

3 AIR 1969 SC 663

4 AIR 2001 SC 905

5 AIR 2002 SC 241

Mangani Lal Mandal v. Bishnu Deo Bhandari⁶, Rajendra Kumar Meshram v. Vanshmani Prasad Verma and another⁷ and Sri. Mairembam Prithviraj alias Prithviraj Singh v. Sri. Pukhrem Sharatchandra Singh⁸.)

17. As such, the applicant/election petitioner herein has failed to plead and establish non-compliance by the returned candidate with the provisions of the Act of 1961 or the rules made under the Act of 1961 as ground enumerated under Section 22(1)(d)(iii) of the Act of 1961 for declaring election to be void.
18. The above-stated fact is clear from the fact that competent legislature noticed the above-stated lacuna in the Rules of 1994 and amended the Rules with effect from 26-3-2018. Amended Rule 25-A of the Rules of 1994 provides as under: -

“25-A. Affidavit to be filed along with nomination paper.—(1) Under the provisions of sub-rule (1) of rule 25, every candidate (and concerned mayor/president in case of recall from his post), who is submitting his nomination for election of Mayor or Councilor of Municipal Corporation or President or Councilor of Municipal Council or President or Councilor of Nagar Panchayat before the returning officer shall, necessarily enclose an affidavit sworn before Magistrate of first class or notary in Form 3-A.

(2) Every candidate shall declare information relating to,

(i) Whether he is convicted/discharged/acquitted in any criminal case in the past or he is accused in any pending criminal case? If so, the details thereof;

(ii) The assets (immovable, movable, bank balance etc.) of a candidate and of his/her spouse and that of dependants, which he and his/her spouse and dependent children are jointly or separately owns or his beneficiary;

6 AIR 2012 SC 1094

7 AIR 2016 SC 4700

8 AIR 2016 SC 5087

(iii) Liabilities, if any, towards any public financial institution;

(iv) Dues, if any, towards the Central Government or State Government;

(v) The educational qualifications of the candidate;

in an affidavit, in such format and in such manner, as may be prescribed by the State Election Commission, while filing his nomination paper before Returning Officer.

(3) If affidavit is not enclosed then nomination paper shall be rejected.

(4) to (6) xxx xxx xxx”

19. From perusal of the record, it is quite vivid that the applicant has failed to plead and establish the fact that in pending criminal cases whether cognizance has been taken or charges have been framed against respondent No.1 on the date of filing nomination paper. He further failed to plead that on account of alleged improper acceptance of nomination paper, result of returned candidate/respondent No.1 was materially affected.

20. In my considered opinion, learned District Judge is absolutely justified in rejecting the election petition filed by the applicant, in which I do not find any perversity or illegality warranting interference in exercise of jurisdiction vested under the law.

21. Accordingly, the civil revision being devoid of merit is liable to be and is hereby dismissed. No cost(s).

Sd/-

(Sanjay K. Agrawal)
Judge

B/-