

HIGH COURT OF CHHATTISGARH, BILASPUR

Civil Revision No.11 of 2017

Order reserved on: 29-3-2019

Order delivered on: 24-4-2019

Abdul Rahman (Advocate), (wrongly mentioned as Haman in certified copy) S/o Shri Mohd. Suleman, Aged about 40 years, R/o House No.MIG-156, Pt. Ravishankar Shukla Nagar, Ward No.23, Korba, Tahsil and Distt. Korba (C.G.)

(Respondent No. 1 in Election Petition)

(Petitioner)

--- Applicant

Versus

1. Nutan Rajwade, S/o Late Shri H.S. Rajwade, Aged about 41 years, R/o Plot No.RC-6, Pt. Ravishankar Shukla Nagar, Ward No.23, Korba, Tahsil and Distt. Korba (C.G.)

(Petitioner in Election Petition)

(Applicant)

2. Ashok Bhale, S/o Late Dharamdas Bhale, R/o House No.57, Balmiki Ambedkar Aawas, Pt. Ravishankar Shukla Nagar, Ward No.23, Korba, Tahsil and Distt. Korba (C.G.)

(Respondent No.2 In Election Petition)

3. Smt. Geeta Giri Goswami, W/o Shri Ramgiri Goswami, R/o House No.48, Pushpa Vihar, Pt. Ravishankar Shukla Nagar, Ward No.23, Korba, Tahsil and Distt. Korba (C.G.)

(Respondent No.3 in Election Petition)

4. Vijay Yadav, S/o Late Madhav Prasad Yadav, R/o House No.1-B, 48, Shaheed Bhagat Singh Colony, SECL, Korba, Tahsil and Distt. Korba (C.G.)

(Respondent No.4 in Election Petition)

5. District Election Officer, Korba (Municipal Corporation Ward No.23, Korba), Distt. Korba (C.G.)

(Respondent No.5 in Election Petition)

--- Respondents

For Petitioner: Dr. N.K. Shukla, Senior Advocate with Mr. Ajay Lakra and Mr. Ashwin Panicker, Advocates.
For Respondent No.1: Mr. Sanjay Patel, Advocate.
For Respondent No.5 / State: -
Mr. Aditya Bharadwaj, Panel Lawyer.

Hon'ble Shri Justice Sanjay K. Agrawal

C.A.V. Order

1. Taking exception to the judgment and order of the learned District Judge, Korba acting as Election Tribunal constituted under Section 441 of the Chhattisgarh Municipal Corporation Act, 1956 (for short, 'the Act of 1956'), this civil revision under Section 441-F(2) of the Act of 1956 has been preferred branding the said order as unsustainable and contrary to law, whereby the learned Tribunal has set aside the election of the petitioner on the post of Councillor, Ward No.23 of Municipal Corporation, Korba.
2. The election of Mayor, Municipal Corporation, Korba and Councillors of all the wards of Municipal Corporation, Korba including Ward No.23 was held on 29-12-2014 and result was declared on 4-1-2015. The petitioner and respondents No.1 to 4 contested election for the post of Councillor of the said ward No.23 which was reserved for Other Backward Classes (OBC). The petitioner was declared elected as Councillor on 4-1-2015 against the seat reserved for OBC. The election petitioner / respondent No.1 herein (hereinafter referred to as 'the election petitioner') filed election petition under Section 441-F of the Act of 1956 questioning the election of the petitioner mainly on the ground that on the date of filing nomination paper, Sessions Trial No.46/2009 for offence punishable under Sections 147, 307 read with Section 34, 294 and 506 Part-II of the IPC were registered and charges were framed against the petitioner and the case was fixed for evidence and that charge-sheet was filed pursuant to the offence registered under Crime No.1077/2008 at Police Station Kotwali, Korba in which most

of the offences are punishable with imprisonment for two years or more, and the petitioner / returned candidate did not disclose the pendency of said criminal case in his nomination paper and thereby his election is liable to be declared void. It was also pleaded that the petitioner filed his provisional caste certificate issued in Revenue Case No.7052/B-121/2013-14, but when he obtained certified copy from the Office of the Tahsildar, it was revealed that no such caste certificate was issued in favour of the petitioner against the said revenue case number, but domicile certificate and income certificate had been issued at the instance of one Abdul Rafique Khan of his daughter, as such, the caste certificate issued in favour of the petitioner is forged and he was not qualified and entitled to contest the election of the said Ward No.23 of Municipal Corporation, Korba, as such, his election may be declared void.

3. The petitioner herein filed his reply before the Election Tribunal and opposed the prayer made in the election petition and stated that the caste certificate issued by the competent authority / Tahsildar which has not been questioned has attained finality and that offence was registered prior to six months from the date of filing of nomination, therefore, the petitioner was not required to disclose the pendency of said criminal case while filing the nomination paper. The Election Tribunal made enquiry on the election petition and thereafter, by the impugned judgment declared the election of the petitioner void on the ground that the petitioner failed to disclose the pendency of criminal case in which charges had already been framed at the time of his nomination paper and secondly, that his caste certificate was not issued by the competent officer and therefore the petitioner

does not belong to OBC, as such, his election on the reserved post of Councillor of Municipal Corporation, Korba is void and declared the post to be vacant against which this civil revision has been preferred under the above-stated provisions of the Act of 1956.

4. Dr. N.K. Shukla, learned Senior Counsel appearing for the petitioner / returned candidate, would submit as under:-

1. Neither in the Act of 1956 nor in the Chhattisgarh Nagarpalika Nirvachan Niyam, 1994 there is any provision mandating the candidate contesting the election of Councillor requiring to file affidavit disclosing the criminal antecedents, therefore, the omission, if any, is of no consequence and as such, the learned Election Tribunal is absolutely unjustified in declaring the election, to be void on that ground. He would bring to the notice of the Court that notification dated 26th March, 2018, has been issued by the State Government in exercise of the powers conferred by sub-section (2) of Section 14 of the Act of 1956 in the shape of Rule 25-A of the Chhattisgarh Nagarpalika Nirvachan Niyam, 1994, in which now, with effect from 26-3-2018, the candidate is required to disclose his criminal antecedents as such, the election having already been held on 29-12-2014, in absence of requirement of disclosing the criminal antecedents, his election on the ground of alleged non-disclosure of criminal antecedents / pendency of criminal case cannot be set-aside and the order passed by the Election Tribunal is liable to be set-aside.
2. The election petition is conspicuously silent with regard to the requirement of Section 441-B (d) of the Act of 1956 that the

result of the election insofar as it concerns the returned candidate i.e. the petitioner herein has been materially affected by improper acceptance of his nomination paper, as it is the case of the election petitioner that the nomination paper of the petitioner herein has been accepted improperly, therefore, the order of the learned District Judge deserves to be set-aside.

3. Lastly, he would submit that the election law has to be construed strictly and unless there is clear pleading, no evidence can be let-in and election petition cannot be tried in absence of necessary pleading, as in this case, except throwing challenge to the provisional caste certificate of the returned candidate / petitioner, the election petitioner did not question the caste of the petitioner that he does not belong to OBC and therefore he was not entitled and qualified to contest the election on the seat reserved for OBC in Ward No.23 of Municipal Corporation, Korba. Therefore, declaration of his election to be void is the jurisdictional error crept-in in the order of the learned Election Tribunal. As such, judgment and order of the learned Election Tribunal deserve to be set-aside.

5. Opposing the submissions made by learned counsel for the petitioner; Mr. Sanjay Patel, learned counsel appearing for the election petitioner / respondent No.1, would submit as under: -

1. Admittedly and undisputedly, Sessions Trial No.46/2009 for offence punishable under Sections 147, 307 read with Section 34, 294 and 506 Part-II of the IPC was registered and

pending in the Court of Sessions Judge, Korba against the petitioner in which charges have already been framed and one case was fixed for evidence after charge, and that fact was deliberately and willfully suppressed by the petitioner while filing nomination paper by the petitioner / returned candidate and that amounts to corrupt practice and therefore his election has rightly been held to be void by the learned Election Tribunal.

2. The petitioner contested the election on the strength of provisional caste certificate Ex.P-3 which was not issued against Revenue Case No.7052/B-121/2013-14, whereas domicile certificate and income certificate were issued to the ward of one Abdul Rafique Khan, therefore, on the strength of forged provisional caste certificate, he contested the election and got elected himself which has rightly been set-aside by the Election Tribunal. Therefore, no interference is warranted in exercise of the jurisdiction of this Court under Section 441-B of the Act of 1956 and the civil revision deserves to be dismissed.

6. I have heard learned counsel for the parties and considered their rival submissions made herein-above and also went through the record with utmost circumspection.

7. In order to adjudicate the plea raised at the Bar, it would be appropriate to notice the provisions contained in Section 441 of the Act of 1956, particularly Sections 441(4) and 441(5), which provide as under: -

“441. Election petitions.—(1) to (3) xxx xxx xxx

(4) A petitioner shall join as respondents to his petition—

(a) where the petitioner, in addition to claiming a declaration that the election or nomination, as the case may be, of all or any of the returned candidates is void, claims a further declaration that he himself or any other candidate has been duly elected or nominated, all the contesting candidates other than the petitioner, and where no such further declaration is claimed, all the returned candidates;

(b) any other candidates against whom allegations of any corrupt practices are made in the petition.

(5) An election petition shall—

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

(b) with sufficient particulars, set forth the ground or grounds on which the election or nomination is called in question;

(c) be signed by the petitioner and verified in the manner prescribed in the Code of Civil Procedure, 1908 (V of 1908), for the verification of pleadings.”

8. Section 441-B of the Act of 1956 provides for grounds for declaring elections or nominations to be void. Clauses (a), (b) and (d)(i) of sub-section (1) of Section 441-B of the Act of 1956 provide as under: -

“441-B. Grounds for declaring elections or nominations to be void.—(1) Subject to the provisions of sub-section (2), if the Court is of the opinion—

(a) that on the date of his election or nomination a returned candidate was not qualified or was disqualified, to be chosen as a Mayor or a Councillor; or

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

(c) xxx xxx xxx

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

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

(ii) to (iv) xxx xxx xxx

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

9. The election of the Councillor, Municipal Corporation, is governed by the Chhattisgarh Nagarpalika Nirvachan Niyam, 1994 (for short, 'the Rules of 1994'). The Rules of 1994 were amended with effect from 17-8-2004 and Rule 25-A was inserted which 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' ”

10. Rule 24 of the Rules of 1994 provides for nomination of candidates. Sub-rule (1) of Rule 24 provides that any person may be nominated as a candidate to fill a seat if he is qualified to be elected to fill that seat under the provisions of the Act. Sub-rule (2) provides that every nomination paper presented under Rule 25 shall be in Form-3.

11. Rule 25 of the Rules of 1994 relates to presentation of nomination paper and requirement for valid nomination which states as under:-

“25. Presentation of nomination papers.- (1) On or before the date appointed under clause (a) of Rule 21 each candidate shall either in person or by his proposer deliver to the Returning Officer of Asstt. Returning Officer so authorised by the Returning

Officer for that purpose, during the time and at the place specified in the notice issued under Rule 21, a duly completed nomination paper in the prescribed form and signed by the candidate and [in the case of election of Mayor or President, by a voter of any ward, by a voter of that ward] as proposer:

Provided that any person who is subject to any disqualifications as voter under the Act shall not be eligible to sign any nomination paper as proposer.”

(2) *** **

12. Rule 28 of the Rules of 1994 provides for scrutiny of nomination paper, which states as under:-

“28. Scrutiny of nomination papers. - (1) On the date fixed for the scrutiny of nomination papers received under Rule 25 the candidates, their election agents, one proposer of each candidate, and one other person duly authorised in writing by the candidate but no other person, may attend at the time and place appointed in this behalf under Rule 21 and the Returning Officer shall give them all reasonable facilities for examining the nomination papers of all candidates which have been delivered as required by Rule 25.

(2) The Returning Officer shall then examine the nomination papers and shall decide all objections which may be made with regard to any nomination and may either on such objections or on his own motion, alter such summary inquiry if any, as he deems necessary, reject any nomination paper on any of the following grounds, that is to say-

(a) that the candidate is disqualified for being elected to fill the seat by or under the Act;

(b) that the proposer is disqualified from subscribing a nomination paper;

(c) that there has been a failure to comply with any of the provisions of Rules 24, [24-A], 25, 26; and

(d) that the signature of the candidate or the proposer on the nomination paper is not genuine.

(3) Nothing contained in clause (c) or (d) of sub-rule (2) shall be deemed to authorise the rejection of the nomination of any candidate on the ground of any

irregularity in respect of a nomination paper, if the candidate has been duly nominated by means of another nomination paper in respect of which no irregularity has been committed.

(4) The Returning Officer shall not reject any nomination paper on the ground of mere clerical or printing error or any defect which is not of a substantial nature.

(5) The Returning Officer shall hold the scrutiny on the date appointed in this behalf under clause (b) of Rule 21 and shall not allow any adjournment of the proceedings except when such proceedings are interrupted or obstructed by riot or open violence or by causes beyond his control :

Provided that in case any objection is raised by the Returning Officer or is made by any other person, the candidate may be allowed time to rebut it not later than the next day but one following the date fixed for scrutiny and the Returning Officer shall record his decision on the date to which the proceedings have been adjourned.

(5-A) If nomination of a candidate has been accepted by the Returning Officer for more than one ward through oversight or for want of objection or for any other reason whatsoever, the Returning Officer shall after giving an opportunity to such candidate or his election agent, ignore the nomination paper tendered later in point of time and record this fact on such nomination paper and shall delete or cause to be deleted from the list of validly nominated candidate in Form 5, the name of such candidate from the ward in question. The Returning Officer shall also affix a copy of the revised list in Form 5 on the notice board in his office, duly recording the date and time of such affixture below his signature.

(6) The Returning Officer shall endorse on each nomination paper his decision regarding accepting or rejecting the same and, if the nomination paper is rejected shall record in writing a brief statement of his reasons for such rejection. The order passed by the Returning Officer shall be final.

(7) For the purposes of this rule the production of a certified copy of an entry made in the voters' list of the relevant Municipality shall be conclusive evidence of the right of any voter named in that entry' to stand for election, unless it is proved that the candidate is disqualified.

(8) Immediately after all the nomination papers have been scrutinised and decision accepting or rejecting the same have been recorded, the Returning Officer shall prepare a list of validly nominated candidates in Form 5 and affix it on the notice board in his office, duly recording the date and time of such affixure, below his signatures.”

13. A nomination filed by candidate can be rejected on the grounds enumerated in Rule 28(2) (a) to (d) of the Rules of 1994. Sub-rule (4) of Rule 28 provides that the Returning Officer shall not reject any nomination paper on the ground of mere clerical or printing error or any defect which is not of a substantial nature.

14. The election petition was filed by respondent No.1 herein questioning the election of the petitioner herein mainly on the ground that under Section 441-B(1)(a) of the Act of 1956, on the date of election, the petitioner / returned candidate was not qualified to be chosen as Councillor, as the seat on which he was elected was reserved for OBC and the petitioner has submitted forged caste certificate, therefore, he could not have been elected on the said post and on the said seat and secondly, on the ground that the nomination paper of the petitioner was improperly accepted, as he did not disclose the two pending criminal cases in his nomination paper which he was obliged to disclose while filing the nomination paper and by which the nomination paper was improperly accepted.

15. The question for consideration would be,

1. Whether the petitioner was qualified to be chosen as Councillor of Municipal Corporation, Korba on the date of election?

2. Whether his nomination paper was improperly accepted, as he was required to disclose pendency of criminal cases / criminal antecedents which he did not disclose and therefore the result of election has been materially affected by the said improper acceptance of nomination paper?

Re: Question No.1: -

16. As noticed herein-above, Section 441(5)(a) of the Act of 1956 clearly provides that an election petition shall contain a concise statement of the material facts on which the petitioner relies and clause (b) further provides that an election petition shall with sufficient particulars, set forth the ground or grounds on which the election or nomination is called in question. The aforesaid provisions of the Act of 1956 are *pari materia* provisions as contained in Section 83(1)(a) the Representation of the People Act, 1951.
17. Their Lordships of the Supreme Court in the matter of **Santosh Yadav v. Narender Singh**¹ dealing with need of specific pleading in the election petition have clearly laid down that concise and specific pleadings setting out all relevant material facts are imperative and pertinently observed as under: -

“15. A word about the pleadings. [Section 83](#) of the Act mandates an election petition to contain a concise statement of the material facts on which the petitioner relies. The rules of pleadings enable a civil dispute being adjudicated upon by a fair trial and reaching a just decision. A civil trial, more so when it relates to an election dispute, where the fate not only of the parties arrayed before the court but also of the entire constituency is at a stake, the game has to be played with open cards and not like a game of chess or hide and seek. An election petition must set out all material facts

¹ (2002) 1 SCC 160

wherefrom inferences vital to the success of the election petitioner and enabling the court to grant the relief prayed for by the petitioner can be drawn subject to the averments being substantiated by cogent evidence. Concise and specific pleadings setting out all relevant material facts, and then cogent affirmative evidence being adduced in support of such averments, are indispensable to the success of an election petition. An election petition, if allowed, results in avoiding an election and nullifying the success of a returned candidate. It is a serious remedy. Therefore, an election petition seeking relief on a ground under [Section 100\(1\)\(d\)](#) of the Act, must precisely allege all material facts on which the petitioner relies in support of the plea that the result of the election has been materially affected. Unfortunately in the present case all such material facts and circumstances are conspicuous by their absence.”

18. Similar principle of law has been laid down by the Supreme Court in the matters of Jaipal Singh v. Sumitra Mahajan (Smt.) and another², Anil Vasudev Salgaonkar v. Naresh Kushali Shigaonkar³ and Rajendra Kumar Meshram v. Vanshmani Prasad Verma⁴.
19. The Supreme Court in the matter of Sadashiv H. Patil v. Vithal D. Teke⁵ had clearly held that election law has to be construed strictly and further held that a finding as to disqualification has the effect of unseating a person from an elected office held by him pursuant to his victory at the polls in accordance with the democratic procedure of constituting a local authority. The Supreme Court also held that the consequences befall not only him as an individual but also the constituency represented by him which would cease to be represented on account of his having been disqualified. The Supreme Court further observed that looking at the penal consequences flowing from an elected councillor being subjected to

2 (2004) 4 SCC 522

3 (2009) 9 SCC 310

4 (2016) 10 SCC 715

5 (2000) 8 SCC 82

disqualification and its repercussion on the functioning of the local body as also the city or township governed by the local body the provisions have to be construed strictly.

20. Very recently, in the matter of Madiraju Venkata Ramana Raju v. Peddireddigari Ramachandra Reddy and others⁶, the Supreme Court has held that “material facts” would mean all the basic facts constituting the ingredients of the grounds stated in the election petition in the context of relief to declare the election to be void.
21. Reverting to the facts of the case in light of the above-stated statutory provisions and the principles of law laid down by Their Lordships in the afore-cited cases, it is quite vivid that the election petitioner in order to plead that the petitioner herein is not qualified to contest the election from Ward No.23 of Municipal Corporation, Korba, raised following pleadings in paragraph 6 of his election petition and thereafter raised grounds in paragraphs 13 and 14 which are as under: -

6) यह कि गैरयाचिकाकर्ता क्र 01 के द्वारा वार्ड क्र 23 अन्य पिछड़ा वर्ग हेतु आरक्षित वार्ड में प्रत्याशी हेतु दिए गये नाम निर्देशन पत्र के साथ कार्यालय तहसीलदार कोरबा, जिला कोरबा के द्वारा राजस्व प्रकरण क्र 7052 बी. 121/2013-14 का अस्थायी जाति प्रमाण पत्र प्रस्तुत करते हुए स्वयं को अन्य पिछड़ा वर्ग हेतु आरक्षित सीट का प्रत्याशी होने बाबत जो प्रमाण पत्र प्रस्तुत किया गया है। उक्त राजस्व प्रकरण क्रमांक के आधार पर समस्त प्रकरण की प्रमाणित प्रतिलिपि प्राप्त किये जाने पर उक्त राजस्व प्रकरण क्रमांक में गैरयाचिकाकर्ता क्र 01 के नाम पर कोई भी जाति प्रमाण पत्र जारी नहीं किया गया है। उक्त राजस्व प्रकरण क्रमांक में किसी अब्दुल रफीक खान नामक आवेदक के द्वारा अपनी संतान मुशर्रत आफरीन के नाम पर निवास प्रमाण पत्र एवं अब्दुल रफीक खान आवेदक के नाम पर आमदनी प्रमाण पत्र प्राप्त किया गया है अर्थात् अन्य पिछड़ा वर्ग हेतु आरक्षित सीट बाबत गैरयाचिकाकर्ता क्र 01 के द्वारा फर्जी रूप से अन्य पिछड़ा वर्ग का जाति प्रमाण पत्र प्राप्त कर स्वयं

6 (2018) 14 SCC 1

को प्रत्याशी बनाये जाने हेतु गैरयाचिकाकर्ता क्र 05 के समक्ष दस्तावेज प्रस्तुत किये गये हैं।

13) यह कि गैरयाचिकाकर्ता क्र 01 के द्वारा वार्ड क्र 23 अन्य पिछड़ा वर्ग हेतु आरक्षित वार्ड में प्रत्याशी हेतु दिए गये नाम निर्देशन पत्र के साथ कार्यालय तहसीलदार कोरबा, जिला कोरबा के द्वारा राजस्व प्रकरण क्र 7052 बी. 121/2013-14 का अस्थायी जाति प्रमाण पत्र प्रस्तुत करते हुए स्वयं को अन्य पिछड़ा वर्ग हेतु आरक्षित सीट का प्रत्याशी होने बाबत जो प्रमाण पत्र प्रस्तुत किया गया है। उक्त राजस्व प्रकरण क्रमांक के आधार पर समस्त प्रकरण की प्रमाणित प्रतिलिपि दिनांक 16/01/2015 को प्राप्त किये जाने पर उक्त राजस्व प्रकरण क्रमांक में गैरयाचिकाकर्ता क्र 01 के नाम पर कोई भी जाति प्रमाण पत्र जारी नहीं किया गया है। उक्त राजस्व प्रकरण क्रमांक में किसी अब्दुल रफीक खान नामक आवेदक के द्वारा अपनी संतान मुशर्रत आफरीन के नाम पर निवास प्रमाण पत्र एवं अब्दुल रफीक खान आवेदक के नाम पर आमदनी प्रमाण पत्र प्राप्त किया गया है अर्थात् अन्य पिछड़ा वर्ग हेतु आरक्षित सीट बाबत गैरयाचिकाकर्ता क्र 01 के द्वारा फर्जी रूप से अन्य पिछड़ा वर्ग का जाति प्रमाण पत्र प्राप्त कर स्वयं को प्रत्याशी बनाये जाने हेतु गैरयाचिकाकर्ता क्र 05 के समक्ष दस्तावेज प्रस्तुत किये गये हैं।

14) यह कि सामाजिक परिस्थिति के प्रमाणीकरण के विनियमन अधिनियम 2013 के अनुसार समुचित सक्षम अधिकारी के द्वारा जारी प्रमाण पत्र प्रस्तुत नहीं किया गया है इस अधिनियम के तहत आरक्षित सीट 2 ठ के अन्तर्गत संवैधानिक निकाय में निर्वाचन प्रक्रिया के द्वारा नामांकन आरक्षित सीट पर इस अधिनियम के तहत जारी सक्षम अधिकारी के द्वारा ही उपयुक्त प्रमाण पत्र प्रस्तुत किया जाना आवश्यक है। इस प्रकार से गैरयाचिकाकर्ता क्र 01 के द्वारा निर्वाचन में गलत जानकारी एवं दस्तावेज (जाति प्रमाण पत्र) देकर अभ्यर्थी बना है जिसके कारण गैरयाचिकाकर्ता क्र 01 का निर्वाचन शून्य घोषित किये जाने योग्य है।

22. A careful perusal of the aforesaid averments made in the election petition would show that the petitioner herein has filed provisional social status certificate (Ex.P-3) issued by the Tahsildar, Korba in Revenue Case No.7052 B.121/2013-14 certifying that he belongs to OBC, which in effect and substance was not issued at all to him, but against the said revenue case, domicile & income certificates were issued at the instance of one Abdul Rafique Khan to his

daughter Afrin, therefore, the said certificate Ex.P-3 is forged certificate and the said certificate has not been issued in accordance with the Chhattisgarh Scheduled Castes, Scheduled Tribes and Other Backward Classes (Regulation of Social Status Certification) Rules, 2013, as such, he was not qualified to contest for election on the post of Councillor of Ward No.23, Municipal Corporation, Korba. The aforesaid perusal would further show that it is not the case of the election petitioner / respondent No.1 that the petitioner herein / returned candidate did not belong to OBC and therefore he was not entitled and qualified to contest the seat of Councillor reserved for OBC. In sum and substance, there is no pleading that the petitioner was not the person belonging to OBC and therefore not entitled to contest the election on the post of Councillor of Municipal Corporation, Korba and it can be further held that there is no challenge that he did not belong to the category of OBC which Ward No.23 of Municipal Corporation, Korba was reserved. The election petitioner simply thrown challenge as to the manner in which the certificate was issued to the petitioner herein vide Ex.P-3 that the revenue case mentioned in the social status certificate issued to the petitioner was not issued to him in the said revenue case number. The election petitioner was required to plead material facts stating inter alia that the respondent (therein) / returned candidate did not belong to OBC for which the seat was reserved and therefore he was not qualified to contest the election on the said post reserved for OBC category. The election tribunal constituted under the Act of 1956 has to look into the legality and validity of election on the ground enumerated in

Section 441-B of the Act of 1956. Correctness or otherwise of the certificate can certainly be gone into by the election tribunal so constituted if the challenge of the election petitioner would be that the returned candidate did not belong to OBC for which the seat was reserved and therefore the certificate issued to the returned candidate is forged and as such he was disqualified / not qualified to contest the election of Councillor. As noticed herein-above, the election petitioner simply thrown challenge to the certificate Ex.P-3 that it was not issued in accordance with law, as income & domicile certificates were issued to another person against the said revenue case, therefore, the certificate is a forged one and he was not entitled and qualified to question the election. As such, the election petitioner omitted to state material facts that the returned candidate did not belong to OBC and therefore he was not entitled to contest election on the said post and Ex.P-3 – social status certificate certifying provisionally that the returned candidate belongs to OBC is forged, as such, the pleading qua the ground enumerated under Section 441-B(1)(a) of the Act of 1956 is completely lacking in the election petition.

23. In the matter of Ajay Kumar Poeia v. Shyam and others⁷, election of respondent from a reserved (SC) constituency was challenged by appellant therein stating inter alia that respondent had fraudulently obtained a caste certificate showing himself to be belonging to SC and contested election from the reserved seat although he was not a member of SC. Their Lordships of the Supreme Court considering the election petition held that the

⁷ (2004) 1 SCC 429

appellant in effect or substance did not raise any material fact that the first respondent was not a member of the Scheduled Caste and dismissed the appeal upholding the order of the High Court, and observed as under: -

“4. A bare perusal of the documents contained in the aforementioned paragraphs would show that the appellant in effect or substance did not raise any material fact that the first respondent herein was not a member of the Scheduled Caste. Learned counsel appearing on behalf of the appellant, however, submitted that the averments contained in Ground 4(ii) contains the requisite fact. The said paragraphs contains the grounds for setting aside the improper acceptance of the nomination papers filed by the first respondent and cannot be treated to be statements containing the requisite material facts, which, if proved, would entitle the appellant in obtaining the reliefs sought for. Furthermore, the said statements had been verified and purported to be based on the legal advice. It may be true that for improper verification of the material facts pleading in the election petition, the same cannot be dismissed at the threshold, but apart from the fact that the appellant herein did not move any application for reverification of the election petition, the averments contained in paragraph 4(ii) do not satisfy the requirement of [Section 81\(1\)](#) of the Representation of the People Act, 1951 and in that view of the matter, the said plea is not available to the appellant.”

24. Falling back to the facts of the present case in light of the above-stated legal proposition, it is quite vivid from the averments as well as the grounds raised in the election petition that the election petitioner has simply stated that the provisional social status certificate Ex.P-3 issued to the petitioner against the said revenue case was not issued to him at all and that certificate is forged and his election be declared void which the election tribunal has accepted and declared the election to be void.
25. In the considered opinion of this Court, the election petitioner omitted to state and raise material facts and did not state any

material facts that the returned candidate / petitioner herein was not member of OBC therefore he was not qualified to contest election on the post of Councillor, Municipal Corporation, Korba and therefore no evidence could have been let-in by the election petitioner to prove that the returned candidate was not qualified to contest election on the post of Councillor and in absence of said material facts and on mere challenge to the provisional caste certificate issued to the petitioner, it cannot be held and declared that he did not belong to OBC category and is not qualified to contest the election. As such, the finding recorded by the learned election tribunal on this count is contrary to facts and law and being perverse is liable to be set-aside.

Re: Question No.2: -

26. Now, I have to consider the next question as to whether non-disclosure of criminal antecedents by the returned candidate while filing nomination paper and thereby improper acceptance of nomination paper, has materially affected the result of election warranting the setting aside of election of the returned candidate / petitioner.
27. In order to judge the correctness of this plea, it would be appropriate to notice the pleadings in the election petition. Paragraphs 9 and 12 of the election petition are the key paragraphs so far as the pleading with regard to this ground is concerned, which read as follows: -

9) यह कि गैरयाचिकाकर्ता क्र 01 के द्वारा नाम निर्देशन पत्र में गलत जानकारी दी गयी है क्योंकि गैरयाचिकाकर्ता क्र 01 के विरुद्ध न्यायालय श्रीमान सत्र न्यायाधीश कोरबा के न्यायलय में दाण्डिक प्रकरण क्र 46/2009

अपराध धारा 147, 149, 307, 294, 506 (b) भारतीय दण्ड संहिता का प्रकरण जो छ 0 ग 0 राज्य विरुद्ध अब्दुल सुल्तान वगैरह के नाम से पंजीबध होकर आरोप पश्चात साख्य हेतु लम्बित है। उक्त अपराध क्र 1077/2008 का अभियोग पत्र थाना कोतवाली कोरबा के द्वारा न्यायालय में प्रस्तुत किया गया है और गैरयाचिकाकर्ता के द्वारा अपने शपथ पत्र में उक्त विवरण को छुपाया गया है। जबकि उक्त लम्बित प्रकरण में दो या दो वर्ष से अधिक कारावास की सजा का प्रावधान है।

12) यह कि गैरयाचिकाकर्ता क्र 01 के द्वारा नाम निर्देशन पत्र के साथ प्रारूप 3 ख (नियम 25 क) अभ्यर्थी द्वारा दिया जाने वाला शपथ पत्र जो नाम निर्देशन पत्र के साथ रिटर्निंग आफिसर को पेश किया जाना है, भरकर दिया गया। उक्त शपथ पत्र की कंडिका 02 की उपकंडिका IV में गैरयाचिकाकर्ता क्र 01 की ओर से प्रस्तुत किया गया है जिसमें "यह कि मुझे आज से छः माह पूर्व निम्नलिखित प्रकरण में अपराधी बनाया गया है जिसमें न्यायालय द्वारा चार्ज लगाया गया है अथवा न्यायालय द्वारा संज्ञान लिया गया है इसमें (उन्ही प्रकरणों का विवरण दिया जाये जिसमें कारावास की सजा दो या दो अधिक वर्षों की दी जा सकती है)" के खण्ड में गैरयाचिकाकर्ता क्र 01 के द्वारा कोई विवरण प्रस्तुत नहीं किया गया है जिसके आधार पर गैरयाचिकाकर्ता क्र 01 के द्वारा अपने शपथ पत्र में किसी भी मामले का कोई विवरण प्रस्तुत न करते हुए यह बताया गया है कि उसके विरुद्ध किसी भी न्यायालय में किसी भी मामले का कोई संज्ञान नहीं लिया जा रहा है। जबकि गैरयाचिकाकर्ता क्र 01 के विरुद्ध न्यायालय श्रीमान सत्र न्यायाधीश कोरबा के न्यायालय में दायित्व प्रकरण क्र 46/2009 अपराध धारा 147, 149, 307, 294, 506 (b) भारतीय दण्ड संहिता का प्रकरण लम्बित है। उक्त अपराध क्र 1077/2008 का अभियोग पत्र थाना कोतवाली कोरबा के द्वारा न्यायालय में प्रस्तुत किया गया है और गैरयाचिकाकर्ता क्र 01 के द्वारा अपने शपथ पत्र में उक्त विवरण को छुपाया गया है। जबकि उक्त लम्बित प्रकरण में दो या दो वर्ष से अधिक कारावास की सजा का प्रावधान है। इस प्रकार से गैरयाचिकाकर्ता क्र 01 के द्वारा निर्वाचन में गलत जानकारी देकर अभ्यर्थी बना है जिसके कारण गैरयाचिकाकर्ता क्र 01 के द्वारा निर्वाचन में गलत जानकारी देकर अभ्यर्थी बना है जिसके कारण गैरयाचिकाकर्ता क्र 01 का निर्वाचन शून्य घोषित किये जाने योग्य है।

28. The learned District Judge after considering the evidence of the parties recorded finding that the returned candidate / respondent No.1 (therein) has suppressed the pendency of S.T.No.46/2009

while filing nomination paper which amounts to corrupt practice and therefore his election is liable to be declared as void.

29. The Supreme Court in the matter of Union of India v. Assn. for Democratic Reforms⁸ has held that it was incumbent upon every candidate to give information about his assets and other affairs, as every voter has a right to know about the details of the candidate and such a requirement is also covered by Article 19(1)(a) of the Constitution of India.
30. The Supreme Court in the matter of Krishnamoorthy v. Sivakumar and others⁹ 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, murder, dacoity, smuggling, land grabbing, local

8 (2002) 5 SCC 294

9 (2015) 3 SCC 467

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.”

31. 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.

32. The election for the post of Councillor of Municipal Corporation is governed by the Act of 1956 read with the Chhattisgarh Nagarpalika Nirvachan Niyam, 1994 (for short, 'the Rules of 1994'). As noticed, Rule 25-A of the Rules of 1994 was amended with effect from 17-8-2004. It 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 or Councillor of any Municipal Corporation or for President of Council or 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।

33. 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.

34. The Act of 1956 has not been amended inserting the provision akin to or similar to Section 33A(1)(i) of the Representation of the People Act, 1951 (for short, 'the Act of 1951') which obliges the candidate to furnish information in his nomination paper delivered under sub-section (1) of Section 33 of the 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 Act of 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”

35. The consequence of not complying with the provision contained in Section 33A(1)(i) of the Act of 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.”

36. As such, there was no such enabling provision mandated by competent legislature either under the Act of 1956 or under the Rules of 1994 obliging the candidate submitting nomination paper for the post of Councillor, Municipal Corporation to disclose the pendency of criminal cases in which charges have been framed as mandated in Section 33-A(1)(i) of the Act of 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 1956 and the rules made thereunder governing election or nor the consequences have been provided for not furnishing the required information / criminal

antecedents while filing nomination paper at par with the provisions contained in Section 125A of the Act of 1951. Therefore, at the time of filing nomination paper under the Rules of 1994, the petitioner herein 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 1956 and the rules made thereunder, and for the alleged non-disclosure, his election on the post of Councillor could not have been set-aside by the election tribunal.

37. The effect of non-disclosure of criminal antecedents / pendency of criminal case was considered by this Court in Civil Revision No.10/2017 (Isup Khan v. Narsingh Dewangan and others) decided on 14-12-2018 against which special leave petition was filed before the Supreme Court bearing Special Leave to Appeal (C) No.2917/2019 (Narsingh Dewangan v. Isup Khan and others) and which was dismissed on 8-2-2019.

38. The election petitioner / respondent No.1 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 441-B(1)(d)(i) of the Act of 1956 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 others¹⁰, Paokai Haokip v. Rishang and others¹¹,

10 AIR 1954 SC 513

11 AIR 1969 SC 663

Tek Chand v. Dile Ram¹², Santosh Yadav v. Narender Singh¹³,
Mangani Lal Mandal v. Bishnu Deo Bhandari¹⁴, Rajendra
Kumar Meshram v. Vanshmani Prasad Verma and another¹⁵
and Sri. Mairembam Prithviraj alias Prithviraj Singh v. Sri.
Pukhrem Sharatchandra Singh¹⁶.)

39. As such, the election petitioner / respondent No.1 herein has failed to plead and establish non-compliance by the returned candidate with the provisions of the Act of 1956 or the rules made under the Act of 1956 as the grounds enumerated under Section 441-B(1) of the Act of 1956 for declaring election to be void.
40. The above-stated fact is clear from the fact that competent legislature noticed the above-stated lacuna in the Rules of 1994 at par with Section 33A of the Act of 1951 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;

12 AIR 2001 SC 905

13 AIR 2002 SC 241

14 AIR 2012 SC 1094

15 AIR 2016 SC 4700

16 AIR 2016 SC 5087

(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;

(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”

41. The above-stated statutory amendment incorporated in the Rules with effect from 26-3-2018 mandating disclosure of criminal antecedents / pendency of criminal case, would show that there was no such legal requirement in the Act / Rules on the date of election in question.

42. Finally, I am of the considered opinion that the election petitioner / respondent No.1 herein has failed to plead the material facts with regard to that the returned candidate did not belong to OBC by raising appropriate pleading and therefore no evidence has been let in by the election petitioner to prove that the returned candidate was not the person belonging to OBC and he was not entitled and qualified to contest election being not a qualified candidate for contesting election on the reserved seat – Ward No.23 of Municipal Corporation, Korba, except throwing challenge to the manner in which the social status certificate (Ex.P-3) was issued to him. The learned election tribunal exceeded its jurisdiction by setting aside

the election by merely holding that the social status certificate Ex.P-3 was not issued to the petitioner herein in accordance with law. In order to declare the election to be void, the learned election tribunal ought to have reached to a finding that the petitioner did not belong to OBC and therefore he was not qualified to contest election on the post of Councillor reserved for OBC. Therefore, the finding on this issue recorded by the election tribunal deserves to be set-aside.

43. Similarly, for non-disclosure of criminal case, the election of the petitioner / returned candidate has been declared void. This finding is also not made out as the Rules of 1994 do not mandate the returned candidate to disclose the criminal antecedents at the time when the nomination paper was filed by the returned candidate as per the Rules of 1994 as on that day applicable as the Rules oblige the candidate to submit nomination paper in the election of Councillor to enclose a declaration in Form 3 'A' and also submit affidavit sworn before a Magistrate in Form 3 'B', which are only directory in nature. The specific rule requiring disclosure of criminal antecedents / pendency of criminal case came into force with effect from 26-3-2018. There is neither pleading nor evidence on record, as required statutorily, to hold that on account of improper acceptance of nomination paper, election of the returned candidate has been materially affected, which is absolutely necessary for declaring the election void on the ground of improper acceptance of nomination paper.

44. As a fallout and consequence of the aforesaid discussion, the judgment and order of the election tribunal declaring the election of

the petitioner to be void, deserves to be and is accordingly set aside. Consequently, the petitioner is eligible to assume the office and function as Councillor of Ward No.23 of Municipal Corporation, Korba, forthwith.

45. The revision petition is allowed to the extent sketched herein-above. No order as to cost(s).

Sd/-
(Sanjay K. Agrawal)
Judge

Soma