IN THE HIGH COURT OF MANIPUR
AT IMPHAL

ELECTION PETITION No. 1 of 2017

Shri Mayanglambam Rameshwar Singh, aged about 48 years, S/O M. Aber Singh, resident of Makha Lou, Kakching Khullen, P.O. & P.S. Kakching, District Kakching, Manipur – 795103.

... ***PETITIONER***

-VERSUS-

1. Shri Yengkhom Surchandra Singh, aged about 65 years, S/O Late Y. Yaima Singh, resident of Kakching Turel Wangma, P.O. & P.S. Kakching, District Kakching, Manipur – 795103.

2. Shri Naorem Achouba, aged about 63 years, S/O Late N. Naran, resident of Kakching Ningthou Leikai, P.O. & P.S.Kakching, District Kakching, Manipur - 795103.

.... RESPONDENTS

BEFORE
HON'BLE MR. JUSTICE M.V. MURALIDARAN

For the Petitioner :: Mr. A. Mohendro, Advocate
Mr. Ajoy Pebam, Advocate
Mr. Devendra Sharma,Advocate.

For the Respondents	::	Mr. Th. Ibohal, Sr. Advocate, Mr. Th. Modhu, Advocate, Mr. Th. Henba, Advocate.
Datesof Hearing	::	***07.09.2020, 08.09.2020, 10.09.2020 ,11.09.2020, 16.09.2020, 28.09.2020, 29.09.2020, 01.10.2020, 05.10.2020, 06.10.2020, 07.10.2020, 08.10.2020, 09.10.2020, 12.10.2020, 13.10.2020, 19.10.2020, 20.10.2020 and 21.10.2020.***
Date of reserving Judgment & Order	::	**21.10.2020**
Date of Judgment & Order	::	***05.11.2020***

JUDGMENT AND ORDER
(CAV)

[1] This election petition has been filed by the petitioner under Section 100 (1) (d) (i) and (iv) of the Representation of People Act, 1951 to declare that the election of the first respondent from 37-Kakching Assembly Constituency in the 11th Manipur Legislative Assembly Election, 2017 is null and void and to declare that the petitioner is the duly elected Member In the 11th Manipur Legislative Assembly Election, 2017 from 37-Kakching Assembly Constituency.

[2] The case of the petitioner is that in the last 11th Manipur Legislative Assembly Election, 2017 held on 8.3.2017, he was a contesting candidate in 37-Kakching Assembly Constituency set up by Bharatiya Janata Party. The Election Commission of India notified the election schedule for the 11th Manipur Legislative Assembly Election, 2017 on 4.1.2017 for holding election in two phases. Accordingly, the Election Commission of India, vide notification dated 9.2.2017, notified the second phase election schedule for 22 Assembly Constituencies in Manipur, including 37-Kakching Assembly Constituency in the following manner:

(*a*) *16.2.2017 as the last date for making nominations.*
(b) 17.2.2017 as the date for scrutiny of nominations.
(c) 20.2.2017 as the last date for withdrawal of candidatures.
(d) 8.3.2017 as the date of poll.
(e) 11.3.2017 as the date for counting and announcement of the result of the election.
(f) 15.3.2017 as the date before which the election shall be completed.

[3] The petitioner has filed his nomination along with relevant documents, affidavits sworn before the Returning Officer. Similarly, the first respondent, who is a retired IAS Officer

sponsored by the Indian National Congress and the second respondent, who is the candidate sponsored by Communist Party of India, have also filed their nomination papers.

[4] According to the petitioner, the first respondent filed hisaffidavit dated 9.2.2017 along with his nomination paper and on17.2.2017, during the scrutiny, the petitioner and his election agentraised objections to the nomination of the first respondent as under:

> (*i) The first respondent has failed to disclose full particulars of his assets and liabilities including the assets and liabilities of his dependants.*
>
> *(ii) The first respondent has failed to disclose vital material information in his affidavit pertaining to his Non-Agricultural lands.*
>
> *(iii) The first respondent has failed to disclose the details of loan or dues to Bank/Financial Institutions.*
>
> *(iv) The first respondent has failed to disclose the details of deposits in Bank Accounts of his spouse.*

[5] By an order dated 17.2.2017, the Returning Officer has rejected the objections raised by the agent of the petitioner

and has accepted the nomination of the first respondent thereby allowing him to contest the election.

[6] The case of the petitioner is that the Returning Officer ought to have rejected the nomination paper of the first respondent under section 36(2) of the Representation of People Act, 1951, as the first respondent intentionally omitted to give important information in the affidavit. Thus, the affidavit in Form 26 filed by the first respondent suffers from defects of substantial character. Because of non rejection of the nomination paper, the first respondent was allowed to contest the election and as per the result sheet, the first respondent secured 11133 votes and was declared as returned candidate.

[7] According to the petitioner, due to improper acceptance ofthe nomination paper of the first respondent, the result of the election insofar as it concerns the first respondent has been materially affected. Since the first respondent intentionally concealed and failed to disclose the fact that his spouse is a retired Government Servant having served as the Director, Arts and Culture, Government of Manipur and concealed information of drawal of pension by his wife along with her bank balance and also concealed the loan amount borrowed

from the State Bank of India for purchase of car, the election of the first respondent to be the returned candidate is liable to be set aside. In view of the fact that the petitioner is the second successful candidate, who secured 10503 votes is the next highest votes after the first respondent, is entitled to be declared as elected and becomes the returned candidate from 37-Kakching Assembly Constituency in the 11th Manipur Legislative Assembly Election, 2017.

[8] The first respondent filed written statement inter alia stating that the Returning Officer has rightly accepted the nomination of the first respondent. Form 26 obtained from the Returning Officer is found quite different from Form 26 prescribed under Rule 4A of the Conduct of Election Rules. However, the first respondent had used the form obtained from the Returning Officer and he has not stated anything violating or against the prescribed Form 26.

[9] It is stated that the wife of the first respondent viz., Kh. Sorojini Devi retired from Government service as Director of Arts and Culture on attaining the age of superannuation, but she has always been against the desire of the first respondent to contest the election and therefore, she did not co-operate with

him. She also disagreed to disclose her bank account and she has been suffering from Alzheimer's disease for the last about 7 or 8 years, but her ailment became serious since the year 2013. The first respondent did not do anything against her will as advised by the Doctor not to do so because it would more deteriorate her health.

[10] It is also stated in the written statement that the first respondent in his affidavit in para 7A(vi) has shown the particulars of his Maruti Gypsy bearing registration No.MNO1K/7065 worth Rs.1 lakh. On the other hand at para 8(i) of the same affidavit, the first respondent stated that he took a loan amount of Rs.10 lakhs. The information required to disclose about the loan or dues to the bank/financial institutions as indicated in Form 26 para 8(i) to be enclosed along with the nomination. In fact, nowhere in Form 26, it has been provided for furnishing other information mentioned by the petitioner viz., information about purchasing of other vehicles. The first respondent has filed documents in a list along with affidavit while submitting his nomination paper to the Returning Officer and the Returning Officer has uploaded the said affidavit as well as all the documents submitted before him.

[11] The first respondent admits that he is the owner of the non-agricultural land in Dag No.614 having an area of 0.32 acres in 57-Kakching Khullen, Kakching Sub Division, Manipur and non-agricultural land in Dag No.4796/4811 having an area of 0.0629 acre situated at No. 38(A)-Palace Compound, Imphal East District and he also owns two residential buildings which are standing in the said two homesteads. According to the first respondent, assuming but not admitting that his nomination has been improperly accepted by the Returning Officer, it does not affect the result of the election materially.

[12] The first respondent has also made a claim stating that the affidavit in Form 26 filed by the petitioner suffers from defects of Substantial character and the petitioner has also failed to state the names of his spouse and dependants. Thus, the petitioner has concealed the factum of his liability. Since the concealment of the financial liability of the petitioner is a defect of substantial character, the nomination of the candidatures of the petitioner ought to have not been accepted by the Returning Officer and must have been rejected at the time of scrutiny. It is stated that the election petition is not maintainable for lack of bona fide, failing to come with clean handsand committing

concealment of vital and material facts in Form 26 and prayed for dismissal of the election petition.

[13] The petitioner filed a rejoinder stating that the affidavit in Form 26 must be complete and there should be no withholding or concealing of any material information. In the instant case, there are material defects in the affidavit in Form 26 submitted by the first respondent. It is stated that it is the mandate under the statutory provisions of the Representation of People Act, 1951 as well as the Conduct of Election Rules, 1961 that a duty is cast upon the person swearing the affidavit in Form 26 i.e., the candidate to fill all the relevant particulars and not to conceal any material information.The non-disclosure of assets and liabilities of the spouse and dependants is a material defect in the affidavit. The first respondent cannot get rid of such duty cast upon him by the statute on the ground that his wife disagreed to disclose her bank account details.

[14] Upon consideration of the above pleadings, this Court framed the following issues:

> *(1) Whether the first respondent has failed to disclose the material information as required under Section 33 and 33A of the Representation of People Act, 1951 and if so, whether such nomination of the first respondent*

was improperly accepted by the Returning Officer and whether it would affect the result of the election of 37-Kakching Assembly Constituency Election, 2017?

(2) Whether the information furnished by way of Affidavit in Form 26 prescribed under Rule 4A of the Conduct of the Election Rules, 1961 by the first respondent suffers from defects of substantial Characters or not?

(3) Whether the information furnished by the first respondent in the prescribed affidavit under Para Nos.7 and 8 in Form 26 under Rule 4A are correct or incomplete and if not correct what would be the effect?

(4) Whether the document annexed as Affidavit A/2 in the Election Petition which is an Affidavit sworn by the Agent of the petitioner is incomplete? If so, what would be the effect?

(5) Whether non-disclosure of any movable properties of the spouse as well as the first respondent will materially affect the validity of the affidavit?

(6) Whether non-disclosure of the assets of the wife of the first respondent can be on the ground of reluctance on the part of the spouse and whether such non-disclosure will be permissible on the ground that the spouse is not willing to disclose the assets and whether such non-disclosure of the properties of the spouse will materially affect the validity of the affidavit?

(7) Whether in the affidavit submitted by the petitioner along with his nomination, the petitioner has not disclosed the assets of his dependants as not applicable and whether the said affidavit was as per the prescribed form or not and if not, what would be the effect and whether this issue can be raised in the absence of any Election Recrimination Petition filed by the first respondent?

(8) Whether the election of the first respondent as the candidate of 37-Kakching Assembly Constituency to the 11th Manipur Legislative Assembly Election, 2017 is null and void and if null and void whether the petitioner can be declared to be the elected candidate of 37-Kakching Assembly Constituency to the 11th Manipur Legislative Assembly Election, 2017?

[15] On the side of the petitioner, the petitioner examined himself as P.W.1, the proposer of the petitioner was examined as P.W.2 and the counting agent was examined as P.W.3 and Exs.P1 to P18 were marked. On the side of the first respondent, eight witnesses were examined and Exs.R1 to R58 were marked.

[16] Election of the first respondent is assailed in this petition under Section 100 (1) (d) (i) & (iv) of Representation of People Act, 1951 mainly on two grounds viz., i) improper acceptance of nomination and ii) non-compliance of the order

issued by the Election Commission that the first respondent should truly and fully disclose his assets as well as his spouse and dependants assets.

[17] Before we proceed to deal with the issues, it may be necessary to refer to relevant provisions of the Representation of People Act, 1951 (hereinafter referred to as "RP Act") and the Rules framed there under. Sections 81(3) and 86 of the RP Act reads thus:

> *"81. Presentation of petitions.*
>
> *(1)…….*
>
> *(2)……*
>
> *(3) Every election petition shall be accompanied by as many copies thereof as there are respondents mentioned in the petition and every such copy shall be attested by the petitioner under his own signature to be a true copy of the petition.*
>
> *86. Trial of election petitions. - (1) The High Court shall dismiss an election petition which does not comply with the provisions of section 81 or section 82 or section 117.*
>
> *Explanation:- An order of the High Court dismissing an election petition under this sub-section shall be*

deemed to be an order made under clause (a) of section 98.

(2)……

(7)……

[18] In the instant case, it is not the case of the first respondent that the petitioner has not attested the copy of the election petition to be the true copy of the original petition as required under Section 81(3) of the RP Act. On the other hand, the petitioner has complied with the provisions of Section 81(3) of the RP Act,

[19] In the instant case, totally eight issues were framed. Out of eight issues framed, issue No.4 above is, whether the document annexed as Affidavit A/2 in the Election Petition which is an Affidavit sworn by the Agent of the petitioner is incomplete? If so, what would be the effect?

[20] It is contended on behalf of the first respondent that Annexure-A/2 (Ex.P2) was filed before the Returning Officer along with 11 documents and as the said 11 documents have not enclosed in the election petition, the election petition is

incomplete and therefore, the same is liable to be dismissed.

[21] Learned counsel for the first respondent submitted that Ex.P2 is allegedly the affidavit of one Sh. Shyamjai Singh, who is the proposer of the petitioner and in the said affidavit, it has been stated that he had gone through the nomination paper as displayed in the official premises of the Returning Officer and on a perusal of the same, he came across certain false and misleading statements therein and he would like to place objection in accepting the nomination paper of the first respondent Yengkhom Surchandra Singh. He would submit that contrary to the same, there are no documents filed, which are said to have been attached with Ex.P2. Since no such document in the election petition annexed with Ex.P2, the said affidavit is not only incomplete, but also deemed to be an incomplete petition. Learned counsel further submitted that the election petition should not be treated casually, inasmuch as the petitioner is charging corrupt practice against the first respondent.

[22] On the other hand, the learned counsel for the petitioner submitted that the challenge in this election petition is non-disclosure of full particulars of the assets and liabilities of the

first respondent and his dependent spouse in the affidavit in Form 26.

[23] In the present case, the present petitioner has challenged theelection of the first respondent on the ground of non-disclosureoffullparticulars of his assets and liabilities, including assets and liabilitiesofhis spouse in the affidavit in Form 26 along with his nominationpapersbefore the Returning officers. Annexure-A/2,which has been markedas Ex.P2 is the objection of the proposer of the petitionersubmittedbefore the Returning Officer.

[24] On a perusal of Ex.P2, this Court find that the same wasfiled by the proposer for himself and on behalf of the petitioner totheeffect that the first respondent has given certain false and misleading statement. The further perusal of Ex.P2 would show that the said affidavit has been enclosed along with the election petition in order to establish the fact that objection qua non-disclosure of information in the affidavit in Form 26 filed by the first respondent was raised before the Returning Officer, however, the objection was rejected by the Returning Officer vide order dated 17.2.2017. Since the first respondent admitted that there is an objection filed by the proposer of the petitioner and

the same was rejected by the Returning Officer, the plea of the first respondent that the document annexed as Annexure A/2 (Ex.P2) in the election petition is incomplete cannot be countenanced. At the cost of repetition, it is reiterated that the factum of filing of the objection is not disputed and/or controverted by the first respondent, which amounts to admission of the same.

[25] The learned counsel for the petitioner has placed reliance upon the following decisions in support of his submission.

(i) ***Smt. Naseem Bano v. State of UP and another, AIR 1993 SC 2592;***

(ii) ***Thimmappa Rai v. Rammanna Rai and others, (2007) 14 SCC 63;***

(iii) ***National Bank Limited v. Ghanshyam Das Agarwal and others, (2015) 4 SCC 228***

(iv) ***Desi Kedari v. Huzurabad Co-operative Marketing Society Limited and others, AIR 1994 AP 301.***

Since law in this regard is well settled, the decisions cited by the learned counsel for the petitioner are not elaborated upon. In view of the above, the plea of the first respondent that Annexure-A/2 (Ex.P2) is incomplete has no substance and this Court finds that the present election petition is complete one. Issue No.4 is answered accordingly.

[26] The other issues, viz., issue Nos.1, 2, 3, 5 and 6 are interlinked with each other. Issue No.1 is - whether the first respondent has failed to disclose the material information as required under Section 33 and 33A of the RP Act and if so, whether such nomination of the first respondent was improperly accepted by the Returning Officer and whether it would affect the result of the election of the first respondent? Issue No.2 is - whether the information furnished by way of affidavit in Form 26 prescribed under Rule 4A of the Conduct of Election Rules, 1961 by the first respondent suffers from defects of substantial characters or not? Issue No.3 is - whether the information furnished by the first respondent in the prescribed affidavit under para 7 and 8 in Form 26 under Rule 4A are correct or incomplete and if not correct what would be the effect? Issue No.5 is - whether non-disclosure of any movable or non-movable properties of the spouse as well as the first respondent

will materially affect the validity of the affidavit? Issue No.6 is - Whether non-disclosure of the assets of the wife of the first respondent can be on the ground of reluctance on the part of the spouse and whether such non-disclosure will be permissible on the ground that the spouse is not willing to disclose the assets and whether such non-disclosure of the properties of the spouse will materially affect the validity of the affidavit?

[27] According to the petitioner, the first respondent failed to disclose the material information as required under Section 33 and 33A of the RP Act. According to the petitioner, the first respondent failed to rebut the submission and evidence of the petitioner. It has been contended on behalf of the petitioner that the first respondent had filed a false affidavit as regards details of his motor vehicles, non-agricultural land and account details of his wife. The other three issues viz., issue Nos.2, 3, 5 and 6 are also with regard to non-disclosure of correct assets and liabilities of the first respondent, his spouse.

[28] It is apposite to mention that the grounds under election could be declared void by the High Court are provided under Section 100 of the RP Act.

"Clauses (a), (b), (c) and (d) of Sub-section (1) of Section 100 specify the grounds under which the election of the returned candidate can be declared void. Section 100(2) clarified the conditions in which the election of the returned candidate may not be declared void. The present case does not fall under this category.

Clause (a) of Section 100(1) provides the situation where a returned candidate was not qualified on the date of his election or was disqualified to be chosen to fill the seat under the Constitution or this Act. It is not the case of the election petitioner that the respondent was not qualified or was disqualified, to be chosen to fill the seat under the Constitution or this Act. Hence,Clause (a) of Section 100(1) is not attracted in the present case.

Clause (b) of Section 100(1) provides that an election can be declared void if the Court finds 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.

Clause (c) of Section 100(1) provides for declaring the election void if any nomination is improperly rejected. Since in the present case there is no such case of improper rejection of any nomination, this ground is also not applicable.

[29] The next ground for declaring the election to be void as provided under clause (d) of Section 100(1) of the Act, which provides that if the High Court is of opinion that the result of the election, in so far as it concerns a returned candidate, has been materially affected-

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

(ii) by any corrupt practice committed in the interests of the returned candidate or 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 election of the returned candidate shall be declared void."

[30] The ground left is of improper acceptance of nomination asprovided under clause (d) (i) of Section 100(1) and of non-compliancewith the provisions of the Constitution or of the RP Act or of any rules or orders made under this Act as provided under clause (d) (iv) of Section 100(1) of the RP Act.

[31] It is the case of the petitioner that the nomination paper of the first respondent had been improperly accepted, which was otherwise liable to be rejected, as the first respondent has failed to disclose vital information. Hence, the election of the first respondent is liable to be dismissed under Section 100 (1) (d) (i) of the RP Act.

[32] It would be pertinent to refer to the relevant provisions of the RP Act, which deal with the filing of nomination paper and thegrounds for rejection thereof.

[33] Section 33 of the RP Act deals with presentation of nomination paper and stipulates the requirements for a valid nomination. It also provides that the nomination paper must be

completed in the prescribed form and signed by the candidate and by an elector of the constituency as proposer. Though Section 33 of the RP Act does not specifically mention filing of any affidavit along with nomination paper, it is so provided under Rule 4A of the Conduct of Election Rules, 1961. Rule 4A provides that the candidate or hisproposer, as the case may be, shall, at the time of delivering to the returning officer the nomination paper under sub-section (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 as contained in the Rules furnishing detailed particulars relating to the antecedents criminal or otherwise of the candidate, assets and liabilities of the candidate, and also the educational qualification. There is another provision under the RP Act, which requires a candidate to furnish information at the time of submission of nomination paper under Section 33A of the Act.

[34] Section 36 of the RP Act, which deals with the scrutiny of nomination papers and provides the grounds under which nomination can be rejected reads as follows:

> *"36. Scrutiny of nominations-(1) On the date fixed for the scrutiny of nominations under section 30, the candidates, their election agents, one proposer of each*

candidate, and one other person duly authorized in writing by each candidate, but no other person, may attend at such time and place as the returning officer may appoint; and the returning officer shall give them all reasonable facilities for examining the nomination papers of all candidates which have been delivered within the time and in the manner laid down in section 33. (2) The returning Officer shall then examine the nomination papers and shall decide all objections which may be made to any nomination and may, either on such objection or on his own motion, after such summary inquiry, if any, as he thinks necessary, reject any nomination on any of the following grounds:

> *[(a) that on the date fixed for the scrutiny of nominations the candidate] either is not qualified or is disqualified for being chosen to fill the seat under any of the following provisions that may be applicable, namely:-*
>
> *Articles 84, 102, 173 and 191,*
>
> *[Part II of this Act, and sections 4 and 14 of the Government of Union Territories Act, 1963 (20 of 1963)] or*
>
> *(b) that there has been a failure to comply with any of the provisions of section 33 or section 34; or*

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

(3) Nothing contained in clause (b) or clause (c)] of sub section (2) shall be deemed to authorize 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 any defect which is not of a substantial character.

(5) The returning officer shall hold the scrutiny on the date appointed in this behalf under clause (b) of section 30 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 an objection is raised by the returning officer or is made by any other person the candidate concerned 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.

(6) The returning officer shall endorse on each nomination paper his decision 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.

(7) For the purposes of this section, a certified copy of an entry in the electoral roll for the time being in force of a constituency shall be conclusive evidence of the fact that the person referred to in that entry is an elector for that constituency, unless it is proved that he is subject to a disqualification mentioned in section 16 of the Representation of the People Act, 1950 (43 of 1950).

(8) Immediately after all the nomination papers have been scrutinized and decisions accepting or rejecting the same have been recorded, the returning officer shall prepare a list of validly nominated candidates, that is to say, candidates whose nominations have been found valid, and affix it to his notice board."

[35] The issue whether a nomination paper of a candidate has been improperly accepted or not has to be examined with reference to the above provisions of Section 36 of the RP Act and related law governing the field. Therefore, it

would be appropriate to examine the relevant laws relating to the requirements of a valid nomination paper, filing, scrutiny, etc.

[36] As this Court proceeds to examine the requirements of a valid nomination paper, more particularly, in the context of the present controversy, which revolves around the issue of nondisclosure of valid information in his nomination paper which the petitioner charges to be false though the first respondent claims that he has disclosed everything, we may revisit the relevant judicial pronouncements.

[37] The right of the voters to know of the relevant particulars of the candidates is very important as ultimately it is the voters who decide the fate of the candidates who will periodically exercise the political power. A citizen of this country has a fundamental right to receive information regarding the criminal activities of a candidate of the Parliament or the Lok Sabha or the Legislative Assemblies so as to make his choice effective and meaningful.

[38] Right of the citizen to know about the candidates contesting election has been discussed by the Hon'ble Supreme Court in the case of ***Union of India v. Association for***

Democratic Reforms, (2002)5 SCC 294 and in paragraph 46 observed as follows:

> *"46. To sum up the legal and constitutional position which emerges from the aforesaid discussion, it can be stated that:*
>
> *1…..*
>
> *2…..*
>
> *3…..*
>
> *4. To maintain the purity of elections and in particular to bring transparency in the process of election, the Commission can ask the candidates about the expenditure incurred by the political parties and this transparency in the process of election would include transparency of a candidate who seeks election or re-election. In a democracy, the electoral process has a strategic role. The little man of this country would have basic elementary right to know full particulars of a candidate who is to represent him in Parliament where laws to bind his liberty and property may be enacted.*
>
> *5. The right to get information in democracy is recognized all throughout and it is a natural right flowing from the concept of democracy. At this stage, we would refer to Article 19(1) and (2) of*

the International Covenant on Civil and Political Rights, which is as under:

> *"(1) Everyone shall have the right to hold opinions without interference.*
>
> *(2) Everyone shall have the right to freedom of expression; this right shall include freedom to seek, receive and impart information and ideas of all kinds, regardless of frontiers, either orally, in writing or in print, in the form of art, or through any other media of his choice."*

6. On cumulative reading of a plethora of decisions of this Court as referred to, it is clear that if the field meant for legislature and executive is left unoccupied detrimental to the public interest, this Court would have ample jurisdiction under Article 32 read with Articles 141 and 142 of the Constitution to issue necessary directions to the executive to sub serve public interest.

7. Under our Constitution, Article 19(1)(a) provides for freedom of speech and expression. Voter's speech or expression in case of election would include casting of votes, that is to say, voter speaks out or expresses by casting vote. For this purpose, information about the candidate to be selected is a must. Voter's (little man citizen's) right to know antecedents including

criminal past of his candidate contesting election for MP or MLA is much more fundamental and basic for survival of democracy. The little man may think over before making his choice of electing law-breakers as law makers."

The Hon'ble Supreme Court thereafter issued the following directions in the said decision as under:

"47. In this view of the matter, it cannot be said that the directions issued by the High Court are unjustified or beyond its Jurisdiction. However, considering the submissions made by the learned counsel for the parties at the time of hearing of this matter, the said directions are modified as stated below.

48. The Election Commission is directed to call for information on affidavit by issuing necessary order in exercise of its power under Article 324 of the Constitution of India from each candidate seeking election to Parliament or a State Legislature as a necessary part of his nomination paper, furnishing therein, information on the following aspects in relation to his/her candidature:

(1)Whether the candidate is convicted/acquitted/discharged of any criminal offence in the past if any, whether

he is candidate is punished with imprisonment or fine.

(2) Prior to six months of filing of nomination, whether the candidate is accused in any pending case, of any offence punishable with imprisonment for two years or more, and in which charge is framed or cognizance is taken by the court of law. If so, the details thereof.

(3) The assets (immovable, movable, bank balance, etc.) of a candidate and of his/her spouse and that of dependants.

(4) Liabilities, if any, particularly whether there are any overdues of any public financial institution or government dues,

(5) The educational qualifications of the candidate.

49. It is to be stated that the Election Commission has from time to time issued instructions/orders to meet with the situation where the field is unoccupied by the legislation. Hence, the norms and modalities to carry out and give effect to the aforesaid directions should be drawn up properly by the Election Commission as early as possible and in any case within two months.

[39] After the aforesaid judgment of the Hon'ble Supreme Court, an Ordinance was promulgated by the President of India on 24.08.2002 by which Sections 33A and 33B were inserted in the RP Act. Later, the said Ordinance was repealed and the Representation of People (3rd Amendment) Act of 2002 was noticed inserting Sections 33A and 33B in the RP Act. Section 33A requires the candidate to furnish additional information as to-

> *"(i) whether he Is accused of any offence punishable with imprisonment for 2 (two) years or more in a pending case in which a charge has been framed by the Court of competent jurisdiction.*
>
> *(ii) whether he has been convicted of an offence other than any offence referred to in sub-section (1) or sub-section (2), or covered in sub-section (3), of section 8 and sentenced to imprisonment for one year or more."*

[40] Section 33B of the RP Act provided that notwithstanding anything contained in any judgment, decree or order of any Court or any direction, order or any other instruction issued by the Election Commission, no candidate shall be liable

to disclose or furnish any such information, in respect of his election, which is not required to be disclosed or furnished under this Act or the rules made there under. The aforesaid Section 33A did not provide for furnishing of the information as directed by the Hon'ble Supreme Court in ***Association for Democratic Reforms*** (Supra) and sought to cut away the scope of the directions by incorporating Section 33B.

[41] The aforesaid Section 33B inserted by the 3rd Amendment Act of 2002 was challenged before the Hon'ble Supreme Court in **People's Union for Civil Liberties (PUCL) and Another v. Union of India and Another, (2003) 4 SCC 399**. The Hon'ble SupremeCourt, while dealing with this issue, touched upon various aspects of the directions issued in the earlier case of ***Association for Democratic Reforms*** (supra) and reaffirmed the said decision which required furnishing of information by the candidates as regards the antecedents relating to criminal cases/offences, assets, liabilities and debts of the candidates and their spouses and children and lastly the educational qualification of the candidates. The aforesaid direction by the Hon'ble Supreme Court for funishing information was based on the broader interpretation of Article 19 (1) (a) of the Constitution of India, which guarantees freedom of

speech and expression to the citizen of this country. The aforesaid information were held to be an important ingredients of Article 19 (1) (a) and accordingly, the Hon'ble Supreme Court made the following observations :

> *"18. So, the foundation of a healthy democracy is to have well-informed citizens-voters. The reason to have right of information with regard to the antecedents of the candidate is that voter can judge and decide in whose favour he should cast his vote. It is the voter's discretion whether to vote in favour of an illiterate or literate candidate. It is his choice whether to elect a candidate against whom criminal cases for serious or non-serious charges were filed but is acquitted or discharged. He is to consider whether his candidate may or may not have sufficient assets so that he may not be tempted to indulge in unjustified means for accumulating wealth. For assets or liability, the voter may exercise his discretion in favour of a candidate whose liability is minimum and/or there are no overdues of public financial institution or government dues. From this information, it would*

be, to some extent, easy to verify whether unaccounted money is utilized for contesting election and whether a candidate is contesting election for getting rich or after being elected to what extent he became richer. Exposure to public scrutiny is one of the known means for getting clean and less polluted persons to govern the country. A little man – a citizen – a voter is the master of his vote. He must have necessary information so that he can intelligently decide in favour of a candidate who satisfies his criterion of being elected as an MP or MLA. On occasions, it is stated that we are not having such intelligent voters. This is no excuse. This would be belittling a little citizen/voter. He himself may be illiterate but still he would have the guts to decide in whose favour he should cast his vote. In any case, for having free and fair election and not to convert democracy into a mobocracy and mockery or a farce, information to voters is a necessity."

[42]. In the said decision, His Lordship Hon'ble M.B. Shah, J., summarized the issues as under:

"78. What emerges from the above discussion can be summarized thus:

(A)……

(B) Section 33-B which provides that notwithstanding anything contained in the judgment of any court or directions issued by the Election Commission, no candidate shall be liable to disclose or furnish any such information in respect of his election which is not required to be disclosed or furnished under the Act or the rules made thereunder, is on the face of it beyond the legislative competence, as this Court has held that the voter has a fundamental right under Article 19(1)(a) to know the antecedents of a candidate of various reasons recorded in the earlier judgment as well as in this judgment.

(C) The judgment rendered by this Court in Assn. for Democratic Reforms has attained finality, therefore, there is no question of interpreting constitutional provision which calls for reference under Article 145(3).

(D) The contention that as there is no specific fundamental right conferred on a voter by any statutory provision to know the antecedents of a candidate, the directions given by this Court are against the statutory provisions is, on the face of it, without any substance. In an election petition challenging the validity of an election of a particular candidate, the statutory provisions would govern respective rights of the parties. However, voters' fundamental right to know the antecedents of a candidate is independent of statutory rights under the election law. A voter is first citizen of this country and apart from statutory rights, he is having fundamental rights conferred by the Constitution. Members of a democratic society should be sufficiently informed so that they may cast their votes intelligently in favour of persons who are to govern them. Right to vote would be meaningless unless the citizens are well informed about the antecedents of a candidate. There can be little doubt that exposure to public gaze and scrutiny is one of the surest means to

cleanse our democratic governing system and to have competent legislatures.

(E)…."

[43]. In the aforesaid decision, *His Lordship Hon'ble V. Venkatarama Reddi, J.,* though endorsed the view as regards unconstitutionality of Section 33B, expressed disagreement in certain areas and observed as under:

"123. Finally, the summary of my conclusions:

(1) Securing information on the basic details concerning the candidates contesting for elections to Parliament or the State Legislature promotes freedom of expression and therefore the right to information forms an integral part of Article 19(1)(a). This right to information is, however, qualitatively different from the right to get information about public affairs or the right to receive information through the press and electronic media, though, to a certain extent, there may be overlapping.

(2) The right to vote at the elections to the House of the People or Legislative Assembly is a constitutional right but not merely a statutory right; freedom of voting as distinct from right to vote is a facet of the fundamental right enshrined in Article 19(1)(a). The casting of vote in favour of one or the other candidate marks the accomplishment of freedom of expression of the voter.

(3) The directives given by this Court in Union of India v. Assn. for Democratic Reforms, (2002) 5 SCC 294 were intended to operate only till the law was made by the legislature and in that sense "pro tempore" in nature. Once legislation is made, the Court has to make an independent assessment in order to evaluate whether the items of information statutorily ordained are reasonably adequate to secure the right of information available to the voter/citizen. In embarking on this exercise,

the points of disclosure indicated by this Court, even if they be tentative or ad hoc in nature, should be given due weight and substantial departure thererfrom cannot be countenanced.

(4) The Court has to take a holistic view and adopt a balanced approach in examining the legislation providing for right to information and laying down the parameters of that right.

(5) Section 33-B inserted by the Representation of the People (Third Amendment) Act, 2002 does not pass the test of constitutionality, firstly, for the reason that it imposes a blanket ban on dissemination of information other than that spelt out in the enactment irrespective of the need of the hour and the future exigencies and expedients and secondly, for the reason that the ban operates despite the fact that the disclosure of

information now provided for is deficient and inadequate.

(6) The right to information provided for by Parliament under Section 33-A in regard to the pending criminal cases and past involvement in such cases is reasonably adequate to safeguard the right to information vested in the voter/citizen. However, there is no good reason for excluding the pending cases in which cognizance has been taken by the Court from the ambit of disclosure.

(7) The provision made in Section 75-A regarding declaration of assets and liabilities of the elected candidates to the Speaker or the Chairman of the House has failed to effectuate the right to information and the freedom of expression of the voters/citizens. Having accepted the need to insist on disclosure of assets and liabilities of the elected candidate together with those of the spouse or dependent

children, Parliament ought to have made a provision for furnishing this information at the time of filing the nomination. Failure to do so has resulted in the violation of guarantee under Article 19(1)(a).

(8) The failure to provide for disclosure of educational qualification does not, in practical terms, infringe the freedom of expression.

(9) The Election Commission has to issue revised instructions to ensure implementation of Section 33-A subject to what is laid down in this judgment regarding the cases in which cognizance has been taken. The Election Commission's orders related to disclosure of assets and liabilities will still hold good and continue to be operative. However, Direction 4 of para 14 insofar as verification of assets and liabilities by means of summary enquiry and rejection of nomination paper on the ground of

furnishing wrong information or suppressing material information should not be enforced."

[44]. From the above decision, what transpires is that there is need to insist disclosure of assets and liabilities of the elected candidate together with those of the spouse or dependent children and the Parliament ought to have made a provision for furnishing this information at the time of filing the nomination. Failure to do so has resulted in the violation of guarantee under Article 19 (1) (a) of the Constitution of India. Further, the inference which can be drawn is that failure to furnish information as regards the non-disclosure of correct assets and liabilities by a candidate would be a serious lapse on the part of the candidate, as it would violate the right of the voters.

[45]. Pursuant to the decision of the Hon'ble Supreme Court in ***Association for Democratic Reforms*** (supra), Rule 4A was inserted on 3.9.2002, which reads thus:

"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 sub-section (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."

[46]. In terms of the aforesaid Rule 4A, a candidate has to submit an affidavit with detailed particulars as provided in Form 26. Paras 7 and 8 of Form 26 require giving information about the details of movable and immovable assets of the candidate, spouse and children. It is in the Form 26 submitted by the first respondent that he had failed to disclose his wife's account details, failed to disclose the details of his vehicle and also failed to disclose his non-agricultural land, which are at the serious dispute between the parties in this election petition.

[47]. Before proceeding further, this Court would like to refer to the subsequent decision of the Hon'ble Supreme Court in the case 'of ***Resurgence India v. Election Commission of India, (2014) 14 SCC 189***, wherein the Hon'ble Supreme Court re-examined the issue of the decisions rendered in ***Association***

for Democratic Reforms (supra) and ***PUCL*** (supra). In Resurgence India (supra), the Hon'ble Supreme Court re-visited the relevant laws and issued the following directions:

> *"29. What emerges from the above discussion can be summarised in the form of the following directions:*
>
> *29.1. The voter has the elementary right to know full particulars of a candidate who is to represent him in Parliament/Assemblies and such right to get information is universally recognised. 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.*
>
> *29.2. 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.

29.3. Filing of affidavit with blank particulars will render the affidavit nugatory.

29.4. 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 the 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.

29.5. We Clarify to the extent that para 73 of People's Union for Civil Liberties case1 will not come in the way of the Returning Officer to

reject the nomination paper when the affidavit is ?led with blank particulars.

29.6. 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.

29.7. Filing of affidavit with blanks will be directly hit by Section 125-A(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 penalised for the same act by prosecuting him/her."

[48]. From the above directions of the Hon'ble Supreme Court, the right to know full particulars of a candidate which includes information about the assets and liabilities of the candidate, his spouse and dependent as a vital part of Article 19 (1) (a) of the Constitution of India was reiterated. In ***Resurgence India*** (supra), the Hon'ble Supreme Court also held that filing of an affidavit with blanks on the particulars on the affidavit would make it liable to be rejected by the Returning Officer.

[49]. In the background of the aforesaid legal position, this Court shall now examine the present case at hand.

[50]. As stated supra, since Issue Nos.1, 2, 3, 5 and 6 are co-related to each other, the same can be decided jointly by this Court.

[51]. *Issue Nos. 1, 2, 3, 5 and 6:*

The petitioner in his petition as well as oral testimony categorically stated that the first respondent has failed to disclose the material information as required under Section 33 and 33A of the RP Act and highlighted the material information which are not disclosed in his affidavit in Form 26 dated 9.2.2017 that he has failed to disclose movable assets of his dependent wife and children. Taking through Exs.P4, P5 and P15, the petitioner contends that the spouse of the first respondent is drawing pension for a sum of Rs.32,091/- per month and she is operating UBI Account No.0254010237760 at Imphal. According to the petitioner, there is a balance of Rs.10,04,330.05 as on 7.2.2017 and Rs.10,04,327.55 as on 18.2.2017 and Rs.10,36,418.55 as on 1.3.2017 in the said account. However, the first respondent has failed to furnish

details in para 7A of the affidavit and in fact, the first respondent in para 7 A (ii) has shown the bank details of his spouse as “NIL”.

[52]. Likewise, in his petition as well as oral evidence, the petitioner stated that the first respondent in his affidavit in para 7 A (vi) has shown the particulars of his Maruti Gypsy worth Rs.1 lakh. On the other hand, in para 8 (i) of the same affidavit, he disclosed that he took a loan amount of Rs.10 lakhs for motor car advance from the State Bank of India. In fact, the first respondent obtained the said loan amount of Rs.10 lakhs vide Manipur Legislative Assembly Secretariat Order No.2/1(2)/2007-LA(Accounts) dated 28.3.2017, but the details of other vehicle was not shown in the affidavit. Thus, there is a gap of Rs.9 lakhs for the purchase of the vehicle. Further, the first respondent has also failed to disclose as to whether any vehicle was purchased by the loan amount, It is stated by the petitioner that the first respondent also took another loan of Rs.5 lakhs from the State Bank of India on 13.1.2016 for purchase of motor car and the “same has also not been disclosed. Without disclosing all these transactions, the first respondent has filed his nomination paper, which was improperly accepted by the Returning Officer.

[53]. On the other hand, the oral evidence of the first respondent is to the effect that he had obtained loan amount of Rs.10 lakhs on 28.3.2017 and he had already paid Rs.6,43,800/- in 116 equal monthly installment at the rate of Rs.5,550/- without interest upto January, 2017 and the approximate outstanding dues is Rs.3,56,200/- as on 7.2.2017. The first respondent has further deposed that on 13.1.2017, he had obtained another loan amount of Rs.5 lakhs and he repaid a sum of Rs.61,105/- in 11 equal monthly installment at the rate of Rs.5,555/- without interest upto January, 2017 and the approximate outstanding dues is Rs.4,38,895/- as on 7.2.2017. The first respondent denied that the second loan transaction was not at all disclosed in the affidavit filed along with the nomination paper.

[54]. Learned counsel for the petitioner submitted that the first respondent failed to disclose the details of his vehicles. In fact, the first respondent has mentioned only Maruti Gypsy bearing registration No.MNO1K/7065, but he had failed to disclose the year of purchase of this particular vehicle. He would submit that during cross-examination of the first respondent, when the counsel for the petitioner put a question that “Can you give details of your vehicle as vehicle type, date and year of purchase, registration number, colour of vehicle”, the first

respondent replied by saying that he remember the colour of the Maruti Gypsy as white and he cannot remember other particulars". Further, when he was asked question "Are you sure that you could not remember the year of purchase of your Gypsy", the first respondent replied that *"Certificate of Registration (Ex.R17) of his Gypsy car was issued in the year 2006"*.

[55]. Learned counsel for the petitioner further submitted that the first respondent had taken motor car loan from SBI through Manipur Legislative Assembly, but despite taking motor car advance for purchasing car, he did not purchase any car. Arguing so, the learned counsel for the petitioner submitted that in such situation two arguments have been arisen that either the first respondent is misleading the bank authority or concealing facts of buying car, as he failed to disclose the details of the said vehicle. Therefore, such acts of the first respondent is illegal, as the loan was sanctioned for purchasing car and name of the loan itself indicate that the loan amount was sanctioned only for motor car and it cannot be deviated from his mere statement. Learned counsel thus submitted that the first respondent has failed to disclose the details of his vehicles at the time of swearing the affidavit in Form 26 prescribed under Rule 4A of the Conduct of

Election Rules for filling his nomination paper and filing such false affidavit falls within the meaning of defect of substantial character.

[56]. Per contra, the learned counsel for the first respondent submitted that the first respondent had disclosed everything, including the details of Maruti Gypsy as per the format of the affidavit. The amount mentioned in the relevant column is a jump sum liability of the first respondent and the first respondent also enclosed the Registration Certification of Maruti Gypsy along with the nomination paper. He would submit that it is an admitted fact that motor car advance loans were taken from SBI through Manipur Legislative Assembly, but there is no specific instruction to purchase the motor car. The learned counsel further submitted that the affidavit in Form 26 does not indicate or has not provided any column to disclose the details of transaction of loan.

[57]. The case of the first respondent is that the information required to disclose about the loan or dues to the bank/financial institutions as indicated in Form 26, para 8 (i) has been duly mentioned by the first respondent and nowhere in

Form 26, it has been provided for furnishing other information mentioned by the petitioner.

[58]. In his oral evidence, the first respondent stated that he had filed documents in a list along with the affidavit while submitting his nomination paper to the Returning Officer and the Returning Officer has uploaded the said affidavit as well as the documents so submitted to him for information of the general public.

[59]. According to the first respondent (D.W.1), the total amount of dues in connection with two loans is Rs.7,95,075/- without interest and he assumed that the approximate total amount of outstanding dues with interest as on 7.2.2017 would be Rs.10 lakhs. Therefore, he had stated Rs.10 lakhs as his total financial liability/dues to the financial institutions on the date of his filing nomination. He has also stated that the affidavit does not indicate or has not provided for any column to disclose the details of transaction of loan. The said affidavit has indicated the required information about the name of the bank or financial institution and the outstanding amount. Therefore, in his affidavit, he had mentioned Rs.10 lakhs as his total outstanding dues against the said loans by mentioning the name of the bank as

State Bank of India. The first respondent has produced Ex.R17 certified copy of the Certificate of Registration of Maruti Gypsy and Ex.R26 is the certified copy of the Certificate dated 7.2.2017 issued by the Deputy Secretary (Admn) in respect of the account statement of the car loan showing a sum of Rs.6,43,800/- as recovered amount and Ex.R27 which has shown a loan amount of Rs.5 lakhs and recovery of a sum of Rs.61,105/- as the repaid amount.

[60]. Thus, the evidence of D.W.1 is to the effect that the petitioner could not establish any irregularity, lapses or illegality on the part of the first respondent in respect of non-disclosure of his financial liability arising out of the account statement of the car loan from the office of the Manipur State Assembly. The petitioner has also failed to substantiate any lapses of substantial character which would invalid the nomination of the first respondent. The duty of the candidate is to disclose the financial disability of the Government and financial institutions and the requirement of the candidate is to disclose the financial liabilities.

[61]. On a careful scrutiny of the evidence of the petitioner and the first respondent as well as the documents produced by them in respect of that the first respondent has

failed to disclose the details of his vehicles, this Court is of the prima facie view that the first respondent has failed to mention the year of purchase of the car, as he had filled in column (iv) as Maruti Gypsy Regd. No.MNO1K/7065 Rs.1 lakh. Since the first respondent admitted that that he has taken two motor car advances for purchasing cars, he had failed to disclose the vehicles which are purchased from the said loans. Loans are sanctioned for the purpose of buying motor car, but the first respondent misleading the general public without mentioning any details of the vehicle to be purchased from the loans. In fact, para 7 A (vi) of the affidavit in Form 26 of the first respondent contains the following details:

(vi)	*Motor Vehicles/ Aircrafts/ Yachats/ Ships (Details of Make, registration number etc. year of purchase and the amount*	*Maruti Gypsy Regd. No. MN01 K/7065 Rs.1 lakh*	*NA*	*NA*	*NA*	*NA*

[62]. From the perusal of the evidence of the first respondent and the documents filed, it is seen that the year of

purchase of the Maruti Gypsy may be in the year 2006, but the first respondent has failed to provide the exact amount of outstanding due in his affidavit. Further, there is a huge gap to the outstanding mentioned in the affidavit and the actual outstanding which are liable to be paid to the Bank. It is to be noted at this juncture that when the first respondent has taken two motor car loans for the purpose of buying cars, it is his duty to disclose the details of purchase of vehicles, as loans are sanctioned for the purpose of purchasing motor cars. In this case, the first respondent mislead the general public without mentioning any details of the vehicles to be purchased from the loans. It is the duty of the first respondent to give correct information to the voter by way of affidavit in Form 26, but he has purposely concealed the actual outstanding to the voters which in the opinion of this Court has substantially affected the result of the election.

[63]. Coming to the allegation that the first respondent has failed to disclose his non-agricultural land, the petitioner alleges that the first respondent has failed to disclose his non-agricultural land in para 7 (B) (ii) by stating as “NA” in the relevant column, meaning that the first respondent has no non-agricultural land or otherwise not applicable. The specific case of

the petitioner is that the first respondent is the owner of the following two non-agricultural properties:

> *(i) PattaNo.80(old)/294(new) covered by Dag NO.614 measuring an area of 0.32 acre recorded as joint pattadar along with one Y Gourachandra Singh situated at No.57-Kakching Khyllen, Kakching Sub Division, Manipur.*
>
> *(ii) Patta No.365/459 covered by Dag No.4796/4811 measuring an area of 0.0629 acre situated at No.38(A) – Palace Compound, Imphal East District, Manipur.*

Thus, it is stated by the petitioner that the first respondent has concealed his properties in his affidavit and such concealment amounts to defect of substantial character in the nomination paper and as such the nomination paper of the first respondent has been improperly accepted by the Returning Officer.

[64]. In the written statement, the first respondent stated that with regard to the statement made in para 18(1) and 18(2) of the election petition, the first respondent admits that he is the owner of the said two properties. It has been further stated in the

written statement that he owns two residential buildings which are standing in the said two homesteads and in Form 26 (7) (B) of the nomination form, the details of immovable assets, in SI.No.(i), the first respondent mentioned about two agricultural lands namely, (1) one covered by patta No.70/Nungoo Sanamahi under Dag No.545(A) having an area of 1.25 acres and (2) another paddy land under Dag No.63/587 (63-Kakching Wairi) measuring an area of 1.00 acre, both of which are inherited property. It has been stated that the first respondent also, in Form 26 (7) (B) (ii) in the tabulation regarding the non-agricultural land, he had mentioned in all 5 columns as "NA", It is Stated that the first respondent owns two residential buildings namely, (i) one at Palace Compound situates in a land under pattaNo.38(A)/365/459 and (ii) another one situates at 57-Kakching Khullen standing on the Plot/Dag No.614. It is reiterated that he had mentioned about the said two residential buildings in para 7 (B) (iv) of Form 26. Regarding patta Nos. and the other particulars mentioned in para Nos.18(1) and 18(2) in the election petition in respect of the Form 26 are in respect of the jamabandis of the said two residential plots whereon the said two residential buildings are standing. The first respondent in his written statement further stated as under:

"The answering respondent no.1 also begs to state that the categories of lands are broadly classified, as apparent from the Form No.26 (which is a common for all the States at the national level), into 3 categories Lands, (ii) Residential namely, (ij) Agricultural plot/building and (iii) Non-Agricultural Land. The third category must be the Non-residential and Non-Agricultural plots/lands which are used for industrial or manufacturing various articles/commodities or factories or lands used for any other purpose or lands lying/keeping as vacant and unused. It will be pertinent to mention that the respondent no.1 owns (i) two agricultural lands and (ii) two homestead lands cum residential buildings only, which have been mentioned in the affidavit in Form No.26 as stated hereinabove. The respondent no.1 further begs to clarify that he is not possessing or owning any land of the third category mentioned above namely Non-agricultural land. Hence, the respondent no.1 rightly mentioned in respect of the said land Non-Agricultural Land as "NA". The respondent no.1 begs to submit that the allegations made by the election petitioner in para no.18 of the election petition made a wrong statement as he misconceived and

misconstrued the meaning of the words "non-agricultural land" and thus his statements are vexatious and misleading."

[65]. Referring to the above averments in the written statement, the learned counsel for the first respondent submitted that there is no issue because when the first respondent mentioned the details of two homesteads and another about the homestead wherein the first respondent is residing, one at his constituency and another one at Palace compound, Imphal East and because of that the first respondent has no any land of non-agricultural land and he has correctly written as "NA". Thus, it is the contention of the first respondent that he owns only two lands and also owns two homesteads with residential building stated in Exs.R23 and R25 and the petitioner has failed to prove that the first respondent is possessing or owning any non-agricultural land. In fact, in his cross-examination, the petitioner admitted that Exs.P8 and P9 are in respect of two residential building mentioned by him. Hence, there is no point to contend that the first respondent has failed to disclose vital material information in his affidavit qua non-agricultural lands.

[66]. Taking through the evidence of the first respondent as D.W.1, the learned counsel for the petitioner submitted that in para 10 of the written statement the first respondent categorically admitted that he is the owner of the said two lands mentioned therein and further admitted that the first respondent owns two residential building which are standing in the said two homestead. The learned counsel further submitted that the first respondent is trying to divert the mind of this Court by inserting additional word i.e. plot after the word residential in para 7 (B) (iv) of the affidavit in Form 26. It is seen from the said para that there is no word plot and it is actually written as residential buildings (including apartments), location(s)-Survey number(s).

[67]. On a perusal of the affidavit in Form 26, para 7 (B) mentions details of immovable assets, which is categorized as (i) Agricultural Land; (ii) Non-Agricultural Land; (iii) Commercial Buildings; (iv) Residential Buildings; (v) Others and (vi) Total of current market value of (i) to (v) above. Category (i) and (ii) is regarding the lands of the candidates, but the first respondent filled up category (ii) viz., non-agricultural land as “NA” in spite of having two non-agricultural land/homestead as admitted by him. The first respondent has mentioned in details i.e., location of the building, area, cost of the property regarding his residential

buildings, which is provided at category (iv) of para 7 (B), however, he concealed two nonagricultural land/homestead in category (ii) of para 7 (B). As rightly argued by the learned counsel for the petitioner that category (iv) of para 7 (B) of the affidavit is very clear that these are the details of the location of the building, area, cost of property etc. and not regarding the land i.e., non-agricultural land, which is specifically mentioned in category (ii) of para 7 (B) of the affidavit in Form 26.

[68]. Upon consideration of the oral and documentary evidence produced by both sides, this Court is of the view that the first respondent is trying to mislead the Court by inserting the word “plot” after the word “residential” in para 7 (B) (iv) and actually there is no word “plot”. As rightly argued by the learned counsel for the petitioner that the first respondent is trying to do the duty of Parliament and he has no right to go beyond the intention of Parliament or statutory provisions by using such dilatory tactics. In fact, the first respondent admitted that he has not provided the requisite information.

[69]. The evidence of D.W.1 would clearly establish that the residential buildings of the first respondent were built in the ingkhol/homestead land/non-agricultural land at Palace

compound and Kakching, but the first respondent failed to disclose his homestead/non-agricultural land provided at category (ii) of para 7(B), which is particularly for the land.

[70]. Whatever written/filled up to column (iv) are regarding the information of residential buildings which includes apartments, which are not for the non-agricultural land. In regard to non-agricultural land, the relevant column is (ii) where the first respondent has to duty bound to give particulars of his non-agricultural land, but the first respondent has filled as “NA” in column (ii) of para 7.

[71]. It has been established that the information which are required about non-agricultural land provided at category (ii) of para 7(B) of the affidavit in Form 26 prescribed under Rule 4A of the Conduct of the Election Rules, 1961 was available with the first respondent, however, he had deliberately concealed the information and not disclosed during filing of his nomination paper and thus, filing of false affidavit falls within the meaning of defect of substantial character.

[72]. The next allegation against the first respondent is that the he has failed to disclose the account details/vital information of his spouse in his affidavit in Form 26.

[73]. The learned counsel for the petitioner submitted that the first respondent has failed to disclose the material information as required under Section 33 and 33A of the RP Act and in fact, the first respondent failed to disclose movable assets of his dependents i.e., his spouse and children. The learned counsel further submitted that since the wife of the first respondent is a Government pensioner and she has been getting monthly pension through the bank, it is the bounden duty of the first respondent to furnish said particulars in his affidavit in Form 26.

[74]. The learned counsel for the petitioner then submitted that the first respondent in para 7 (A) (ii) has shown the Bank details of his spouse as “NIL”, which is contrary to the documents Exs.P4, P5 and P15 produced by the petitioner. A duty is cast upon the person swearing the affidavit in Form 26 i.e. the candidate to fill all the relevant particulars/details and not to conceal any material fact/information. Here in the instant case, the first respondent concealed material information in his affidavit in Form 26, which was improperly accepted by the Returning Officer.

[75]. The learned counsel for the first respondent submitted that ‘since the wife of the first respondent did not co-

operate with him and disagreed to disclose her bank account, the first respondent did not do anything against her will and that is why he has not disclosed the bank details and balance of his wife in the affidavit in Form 26.

[76]. According to the petitioner, the wife of the first respondent is drawing pension and at the relevant point of time she was drawing pension of Rs.32,091/- per month and the said fact was not disclosed in the affidavit by the first respondent and in fact, the wife of the first respondent is operating UBI Account No.0254010237760 at Imphal and there is a balance of Rs.1,04,330.05 as on 7.2.2017 and Rs.10,36,418.55 as on 1.3.2017. However, the details of the bank account of the spouse was not shown in para 7 (A) (ii) of the affidavit in Form 26.

[77]. On the other hand, it is the say of the first respondent that his wife refused to disclose her account details/financial condition to him and she is a patient of Alzheimer for the last about 8 years. It is also the say of the first respondent that how the petitioner came to know about the bank details of the spouse of the first respondent has not been established. It is also submitted that the first respondent could disclose the

account details of his spouse only when he has special knowledge of the same and without having special knowledge, the first respondent is not in a position to disclose the same.

[78]. It has been pointed out by the learned counsel for the first respondent that since the nomination of the first respondent has been accepted by the Returning Officer, law presumes under Section 114 Illustration (e) of the Indian Evidence Act, 1872 that he had submitted the nomination along with the affidavit properly. It is also the submission of the learned counsel for the first respondent that to revert the said presumption, the petitioner has to prove that the affidavit is defective. Thus, the burden of proof lies on the petitioner that the affidavit is defective because of want of disclosure of correct information.

[79]. The learned counsel for the first respondent argued that the stand of the first respondent is that he had no knowledge about the particulars of the bank account of his wife and her cash in hand. The meaning of the word non-disclosure is the fact of not making something known. A person cannot disclose anything which is not within his knowledge, So before making decision whether the first respondent had failed to disclose the movable

assets of his wife in the affidavit, the petitioner has to prove firstly that Kh. Sorojini Devi has account in UBI as pleaded in the election petition and secondly that the first respondent has quite knowledge of the said bank account and balance amount in that bank account of his wife. Only after that the first respondent can be charged of his non-disclosure of the assets of his wife.

[80]. Placing reliance upon the decision of the Hon'ble Supreme Court in the case of ***Krishnamoorthy v. Sivakumar and others, (2015) 3 SCC 467***, the learned counsel for the petitioner submitted that the issue before the Hon'ble Supreme Court in ***Krishnamoorthy*** (supra) was whether non-disclosure of criminal "antecedents by a Candidate in his affidavit amounts to corrupt practice under Section 260 of the Tamil Nadu Panchayats Act (which is similar to Section 123 (2) of RP Act). The Hon'ble Supreme Court ruled that the voter's right to know the candidate who represents him in Parliament is an integral part of his freedom of speech and expression, guaranteed under the Constitution. Suppressing information about any criminal antecedents creates an impediment to the free exercise of the right to freedom of speech and expression. Therefore, the non-disclosure amounts to an undue influence and corrupt practice under Section 123(2) of RP Act.

[81]. Highlighting the observation in ***Krishnamoorthy*** (supra), the learned counsel for the petitioner submitted that the first respondent's non-disclosure of assets of his wife in the affidavit amounts to corrupt practice.

[82]. In reply, the learned counsel for the first respondent submitted that since the consequence of corrupt practice is serious, the petitioner has to prove his case strictly like criminal case as held by the Hon'ble Supreme Court in the following decisions:

(1) Gadakh Yaswantrao v. Balasaheb Vikhe Patil, (1994) 1 SCC 682.

(2) Jagmal Singh Yadav v. Aimaduddin Ahmed Khan, 1994 Supp (2) SCC 308.

(3) Quamarul Islam v. SK Kanta, 1994 Supp (3) SCC 5.

(4) Baldev Singh Mann v. Gurucharan Singh (MLA) and others, (1996) 2 SCC 743.

[83]. Further, the learned counsel for the first respondent contended that election not to be set aside easily without proving

the improper acceptance of nomination has materially affected the result of the election. In support, the learned counsel for the first Respondent placed reliance upon the following decisions:

1. ***Rajendra Kumar Meshram v. Vanshmani Prasad Verma, (2016) 10 SCC 715.***

2. ***Kalyan Kumar Gogoi v. Ashutosh Agnihotri, (2011) 2 SCC 532.***

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

4. ***Uma BallavRath v. Maheshwar Mohanty, (1999) 3 SCC 357.***

5. ***Shiv Charan Singh v. Chandra Bhan Singh, (1988) 2 SCC 12.***

[84]. In fact, in his election petition as well as oral evidence, the petitioner has clearly stated that the result of the election in so far asit concerns the first respondent has been materially affected on the grounds indicated in paragraph (20) of the election petition. The non-disclosure of the assets of his wife in the affidavit in Form 26 has been admitted by the first

respondent. The aforesaid one example is enough to conclude that the first respondent has failed to disclose his wife's assets in his nomination paper. In view of the above admission made by the first respondent, this Court is of the view that there is no need to elaborate upon the decisions relied on by the first respondent and the same are not helpful to the case of the first respondent Though the first respondent contended that the oral evidence of P.W.1 and P.W.2 are not reliable, nothing has been produced to prove the same and also there is no reasoning coming forth from the side of the first respondent to strengthen their version.

[85]. There is no. dispute that the wife of the first respondent namely Kh.Sarojini Devi is a retired Director of the Department of Arts & Culture, Government of Manipur and on a perusal of Exs.P4 and P15 would show that she is a Government pensioner. Further, Ex.P5 shows bank balance of Rs.10,46,121.55 as on 11.3.2017 and the first respondent is the nominee of the Account No.0254010237760.

[86]. As per the Circular-bearing No.RBI/2015-16/59 DBRNo.Leg.BC 21/09/07.006/2015-2016, dated 1.7.2015 issued by the Reserve Bank of India, the first respondent has every right to obtain the account details of his wife to complete a legal

necessity or to fulfil statutory requirement. However, the first respondent has failed to do so and in fact, in his affidavit in Form 26 para 7 (A) (ii), he has shown the bank details of his spouse as "NIL", which is contrary to the bank balance of the spouse found in Ex.P5.

[87]. At this juncture, the learned counsel for the petitioner submitted that there is a provision of law, statute, procedural law, rule order, circular in existence in any manner, in general or specific which prevented the first respondent or the bank not to disclose the details of Kh. Srorojini Devi. Rather the above circular of the Reserve Bank of India is very clear that under compulsion of law or there is duty to the public to disclose, the normal process of the Bank is not applicable and they could disclose the details of the account.

[88]. The admitted fact is that the first respondent never approached the banking authority for seeking details. Therefore, the intent and conduct of the first respondent unambiguously indicate that the objective was to conceal the information to defeat the purpose of law as enumerated in the affidavit in Form 26 prescribed under Rule 4A of the Conduct of the Election Rules, 1961.

[89]. Further, this Court is in the dark about the other bank accounts of the First respondent's wife. The non-disclosure of the account details of the spouse and/or dependants in the affidavit in Form 26 would clearly establish that the First respondent has intentionally concealed the information. The refusal to furnish the account details by the wife of the first respondent is the family issue of the first respondent and his wife and as stated supra, the first respondent has right to obtain the account details of his spouse from the bank. It is not the case of the first respondent that he and his wife are living in a separate roof.

[90]. At this juncture, it is to be pointed out that the first respondent has filed two miscellaneous petitions viz., MC (EP) Nos.7 and 8 2020 pending election petition praying to hold an enquiry under Section 340 Cr.P.C. against the petitioner on the allegation that he has committed the crime punishable under Sections 193, 199, 200, 209 and 471 IPC for using a forged document as genuine in the election petition and to stay further proceedings of the Election Petition, The said two application are stated to be pending.

[91]. Though the first respondent contends that Ex.P5 has been forged and fabricated by the petitioner for the purpose of this election petition, nothing has been produced to prove the same. Before claiming that Ex.P5 is a forged one, the First respondent has to produce either the original or certified copy of the same. Without producing the original or certified copy, how he can claim that Ex.P5 is a forged one. On the other hand, the evidence of D.W.8 strengthens Ex.P5. It is to be mentioned that at the relevant point of time, when the first respondent and his wife were residing in one roof, it is the bounden duty of the first respondent to give the details of deposit in bank accounts of his spouse including the dependants in his nomination paper. Therefore, the forgery and fabrication of. Ex.P5 attributed by the first respondent is only for the purpose of the election petition and as stated supra, the forgery has not been established by the first respondent. The Returning Officer has also failed to look into the said factum when proof was produced before him and he has improperly accepted the nomination of the first respondent. Further, the plea of the first respondent that the petitioner had forged/fabricated the bank details of his spouse is just whimsical claim that has no legal ground because the first respondent himself deposed that he does not know the bank details of his

wife, Hence, it is clear that the first respondent does not know the details of his spouse pension account in UBI, Imphal Branch also.

[92]. The non-disclosure of assets and sources of income would amount to an undue influence and corrupt practice under Section 123(2) of RP Act, in ***Lok Prahari, through its General Secretary S.N.Shukla v. Union of India and others, (2018) 4 SCC 699***, the Hon'ble Supreme Court held:

> *"79. We shall now deal with prayer 2 which seeks a declaration that non-disclosure of assets and sources of income would amount to "undue influence" - a corrupt practice under Section 123(2) of the 1951 RP Act. In this behalf, heavy reliance is placed by the petitioner on a judgment of this Court in Krishnamoorthy v. Sivakumar, (2015) 3 SCC 467. It was a case arising under the Tamil Nadu Panchayats Act, 1994. A notification was issued by the State Election Commission stipulating that every candidate at an election to any panchayat is required to disclose information, inter alia, whether the candidate was accused in any pending criminal case of any offence punishable with imprisonment for two years or more and in which charges have been framed or cognizance has been taken by*

a court of law. In an election petition, it was alleged that there were certain criminal cases pending falling in the abovementioned categories but the said information was not disclosed by the returned candidate at the time of filing his nomination. One of the questions before this Court was whether such non-disclosure amounted to "undue influence"- a corrupt practice under the Panchayats Act. It may be mentioned that the Panchayats Act simply adopted t e definition of a corrupt practice as contained in Section 123 of the 1951 RP Act.

80. On an elaborate consideration of various aspects of the matter, this Court in Krishnamoorthy (2015) 3 SCC 467 held as follows:

> *"91.....While filing the nomination form, ifthe requisite information, as has been highlighted by us, relating to criminal antecedents, is not given, indubitably, there is an attempt to suppress, effort to misguide and keep the people in dark. This attempt undeniably and undisputedly is undue influence and, therefore, amounts to corrupt practice."*

81. For the very same logic as adopted by this Court in Krishnamoorthy, (2015) 3 SCC

> *467 we are also of the opinion that the non-disclosure of assets and sources of income of the candidates and their associates would constitute a corrupt practice falling under the heading "undue influence" as defined under Section 123(2) of the 1951 RP Act. We, therefore, allow prayer 2."*

[93]. Since the decision of the Hon'ble Supreme Court in ***Lok Prahari*** (supra) is of the year 2018, wherein the Hon'ble Supreme Court held that non-disclosure of assets and sources of income of the candidates and their associates would constitute a corrupt practice failing under the heading "undue influence" as defined under Section 123(2) of the 1951 RP Act, this Court has not elaborated upon the decisions in the cases of *(i) Gadakh Yawantraro (supra); Jagmal Singh Yadav (supra) and Quamarul Islam (supra)* relied on by the learned counsel for the first respondent.

[94]. Admittedly, in the instance case, the first respondent has failed to disclose the assets of the candidate and his wife. As such, the non-disclosure of assets would constitute a corrupt practice falling under heading "undue influence" as defined under Section 123(2) of the RP Act.

[95]. Though the first respondent contended that he has not concealed any material information in his nomination papers, nothing has been produced to establish his case. Further, the documents produced and are referred to by the first respondent do not substantiate his case, On the other hand, the concealment of vital information in the nomination affidavit in Form 26 of the first respondent viz., failure on the part of the first respondent to disclose the details of his wife, failure to disclose the details of vehicles and failure to disclose the non-agricultural land of the first respondent have been clearly established by the petitioner.

[96]. The learned counsel for the petitioner by relying on the judgment in the case of ***V.R.Kammath v. Divisional Controller, ILR 1997 Kar 1856***, submitted that the affidavit in Form 26 of the first respondent is not an affidavit under the Oath Act, 1969 and therefore, his nomination was not with an affidavit. He would submit that the first respondent had put his signatures at his home on the drafted affidavit anti thereafter, he along with his advocate went to the houseof the Oath Commissioner and sworn his affidavit before the Oath Commissioner. Thus, according to the learned counsel for the petitioner, signature of the first respondent must be put before the Oath Commissioner.

[97]. Refuting the submission of the learned counsel for the petitioner, the learned counsel for the first respondent submitted that the petitioner does not challenge the signature of the first respondent as deponent appearing in Form 26 and also the signature of the Oath Commissioner in that affidavit.

[98]. The learned counsel for the First respondent contended that Section 4 of the Oaths Act, 1969 deals with the witness who may swear and Section 6 about the form of oath and affirmation, Schedule to Oaths Act prescribed four types of forms. Form No.4 meant for affidavit and from Form No.4, it is clear that there is no requirement of putting the signature of the deponent in presence of the Oath Commissioner. What is required under Oaths Act is the administration of Oath by the deponent before the Oath Commissioner. Contending so, the learned counsel for the First respondent submitted that the decision in ***Kammath*** (supra) relied on by the learned counsel for the petitioner is quite different from the instant case and is not applicable to the present case.

[99]. In the decision of the Karnataka High Court in ***Kammath*** (supra), a writ petition was filed by one V.R.Kamath, however, the affidavit verifying the writ petition had been signed by one Kaviraja and it was also admitted by the learned counsel

for the petitioner therein that the affidavit verifying the writ petition was signed by a different person due to oversight. The law laid down in the said case is that the Courts will not act on defective affidavits, which are not attested in the manner required by law. This Court has no difference of opinion that the affidavit should be sworn or affirmed and signed bythe deponent before a person or officer duly authorized to administer such oath or affirmation.

[100]. The sum and substance of the case of the petitioner is that the first respondent while filing his nomination paper submitted an affidavit in Form 26 as required under Section 33 of the RP Act read with Rule 4A of the Conduct of Elections Rules, 1961, in which the first respondent has failed to disclose the account details/vital information of his spouse; failed to disclose the details of his vehicle; and failed to disclose his non-agricultural land. Accordingly, the petitioner contended that the first respondenthad filed a false affidavit as regards disclosure of vital information in paras 7 (B) (ii), 7 (A) (vi) and 7 (A) (ii) of the affidavit in Form 26.

[101]. From the discussions held supra, the petitioner hasestablished that the first respondent has failed to disclose certain vital information .in the affidavit in Form 26.

[102]. Whether the nomination paper is to be accepted or rejected at the time of scrutiny is purely within the domain of the Returning Officer and the Returning Officer has to decide within the confines of Section 36 of the RP Act and relevant laws holding the field. When defect or mistake is found to be of substantial character, then the Returning Officer is under legal obligation to reject the nomination and not otherwise. The petitioner contends that it is a defect of substantial character. On the contrary, the first respondent contends that thereis no defect in his nomination, which was negatived by this Court in the discussions held supra.

[103]. Information regarding assets and liabilities of the candidate, spouse and dependents are required to be given in terms of the decision of the Hon'ble Supreme Court in the cases of ***Association of Democratic Reforms*** (supra) and ***PUCL*** (supra), wherein it has been held that suppression or non-furnishing of information would make the defect substantial in nature. Likewise, the Hon'ble Supreme Court in the decision in ***Resurgence India*** (supra) held that non-furnishing of the affidavit by the candidate or furnishing of any wrong or incomplete information or suppression of any material information will result in rejection of nomination paper. Pursuant

to the directions of the Hon'ble Supreme Court in ***Association for Democratic Reforms*** (supra), the Election Commission of India also issued directions under its order dated 28.6.2002, which also contains the stipulation that furnishing of any wrong or incomplete information or suppression of any materialinformation by any candidate in or from the said affidavit may also result in the rejection of the nomination paper where such wrong or incomplete information or suppression of material information is considered by the Returning Officer to be a defect of substantial character, apart from inviting penal consequence under the Penal Code, 1860 for furnishing wrong information.

[104]. The Hon'ble Supreme Court in ***PUCL*** (supra) clarified that the rejection of the nomination paper for furnishing wrong information or concealing material information at the time of scrutiny by a summary enquiry will not be permissible as in many cases, the candidate may not be able to furnish clinching proof or evidences at that stage, but only at a later stage. However, the basis for rejection namely wrong, incomplete information or lack of information was not interfered with and the Hon'ble Supreme Court reiterated the earlier directions issued in ***Association for Democratic Reforms*** (supra). In ***PUCL*** (supra), the Hon'ble Supreme Court held that disclosure of assets and

liabilities of the elected candidate together with those of the spouse or dependent children and the Parliament ought to have made a provision for furnishing this information at the time of filing the nomination. Failure to do so has resulted in the violation of guarantee under Article 19 (1) (a) of the Constitution of India.

[105]. In the instant case, the information furnished by the first respondent qua details of vehicles, details of information of spouse and details of non-agricultural land has been established to be incorrect. Thus, this Court is not persuaded to accept the plea of the first respondent that he had furnished all information intact. Therefore, the clear inference that can be drawn is that the first respondent by furnishing information which is wholly incorrect has not furnished any substantive information as regards assets and liabilities of the first respondent and his wife. Thus, the entries in 7 (A) (ii), 7 (B) (ii), 7 (B) (iv) of the affidavit in Form 26 are incorrect. The information furnished by the first respondent in the aforesaid column is no vital information in the eye of law, which would entail rejection of the nomination in terms of the decision in ***Resurgence India*** (supra). The direction of the Hon'ble Supreme Court for furnishing information regarding assets and liabilities of the candidate, spouse and dependants which has been held to be a vital component of

Article 19(1)(a) of the Constitution of India has not been substantiallycomplied with by the first respondent rendering such defect, a defect of substantial character. The wrong information was no information at all as far as the voter is concerned. Whether it was unintentional or due to inadvertence would not matter so long as the said incorrectentry remains. Though it has not been proved that it actually swayed the votes in his favour, the fact that it had the potential to do so cannot be ignored. Therefore, this Court would hold that the defect in furnishing information of the correct and true assets and liabilities of the first respondent and his spouse is substantial in nature. In thatevent, the nomination of the first respondent was liable to be rejected. Since it was not rejected though it was liable to be rejected, it is a case of improper acceptance.

[106]. At this juncture, the learned counsel for the firstrespondent argued that there was defect in the format and not a case of concealment of information of the assets and liabilities. Since the said plea has not been properly substantiated and proved by the first respondent, the said argument is rejected.

[107]. As stated supra, if the nomination has been improperly accepted, what is the legal consequence. Section 100 (1) (d) of the RP Act mandates that, in such an event, if it materially affects the result of the election, in so far as it concerns the returned candidate, the election of the returned candidate is to be declared void.

[108]. Time and again the Hon'ble Supreme Court held that thesuccess of a winning candidate at an election should not be lightly interfered with. This is all the more so when the election of a successful candidate is sought to be set aside for no fault of his but of someone else. That is why, the scheme of Section 100 of the RP Act, especially clause (d) of sub-section (1) thereof clearly prescribes that in spite of the availability of grounds contemplated by sub-clauses (i) to (iv) of clause (d), the election of a returned candidate shall not be voided unless and until it is proved that the result of the election insofar as it concerns a returned candidate was materially affected.

[109]. Thus, in order to get an election declared as void under the said provision, the petitioner must aver that on account of non-compliance with the provisions of the Constitution of India or of RP Act or of any rules or orders made under the Act, the

result of the election, insofar as it concerned the returned candidate, was materially affected. As perthe principle enunciated supra, in the instant case, in view of the foregoing discussions held, the petitioner has established that the result of the election, insofar as it concerned the returned candidate, was materially affected in order to set aside the same. As stated supra, if the petitioner establishes failure on the part of the returned candidate to furnish the vital information as contemplated under Section 33A of the RP Act, the question whether the result ofthe returned candidate was materially affected or not is not a relevant factor to set aside the election of the returned candidate. Hence, the submission made by the learned counsel for the first respondent has no legs to stand.

[110]. It is reiterated that the right of the voters to know of the relevant particulars of the candidates is very important, as ultimately it is the voters who decide the fate of the candidates who will periodically exercise the political power. A citizen of this country has a fundamental right to receive information regarding the assets and liabilities of a candidate of the Parliament or the Lok Sabha or the Legislative Assemblies so as to make his choice effective and meaningful.

[111]. One may look this aspect from another perspective. If the very basis of the election of the returned candidate, i.e., the nomination of the candidate which is stated to be valid, is later on found to be not valid, as in the present case, the very basis and foundation for sustaining the election of the returned candidate goes. In other words, once the foundation is taken away, the election will have no basis to stand and thus will be rendered otiose. He cannot be treated to have been elected at all. Hence, the moment there is a finding that the nomination of the returned candidate has been improperly accepted, it immediately materially affects the result of the returned candidate. Accordingly, if there be any burden on the petitioner to prove that the result of the election of the returned candidate has been materially affected by improper acceptance of the nomination of the returned candidate, such a burden also gets discharged immediately. Thus, there will not be any need to prove further on the part of the petitioner that the improper acceptance of the nomination of the returned candidate has materially affected the result of the election of the returned candidate. For the reasons discussed above, the election of the first respondent is declared void under Section 100 (1) (d) (i) of the RP Act. Issue Nos.1, 2, 3,

5 and 6 are answered in favour of the petitioner and against the first respondent.

[112]. *Issue No. 7:*

Issue No.7 is, whether in the affidavit submitted by theelectionpetitioner along with his nomination, the election petitioner has not disclosed the assets of his dependants as not applicable and whether the said affidavit was as per the prescribed form or not and if not, what would be the effect and whether this issue can be raised in the absence of any Election Recrimination Petition filed by the first respondent?

[113]. The claim of the petitioner is that the nomination of the first respondent has been improperly accepted and whose election is liable to be set aside.

[114]. It is apposite to refer to Section 97 of the RP Act, which provides as:

> *"97. Recrimination when seat claimed.- (1) When in an election petition a declaration. that any candidate other than the returned candidate has been duly elected is claimed, the returned candidate or any other party may give evidence to prove that the election of*

such candidate would have been void if he had been the returned candidate and a petition had been presented calling in question his election;

Provided that the returned candidate or such other party, as aforesaid shall not be entitled to give such evidence unless he has, within fourteen days from the date of (commencement of the trial) given notice to (the High Court) of his intention to do so and has also given the security and the further security referred to in sections 117 and 118 respectively.

(2) Every notice referred to in sub-section (1) shall be accompanied by the statement and particulars required by Section 83 in the case of an election petition and shall be signed and verified in like manner."

[115]. On a perusal of the records, this Court finds that Election Recrimination Petition No.2 of 2017 was filed by the first respondent against the petitioner raising the issues of non-disclosure of information by the petitioner in his affidavit in Form

26. In the said petition, the petitioner has filed his written objection stating that the Election Recrimination Petition was time barred having been filed after the lapse of 14 days from the date of commencement of the trial.

[116]. In the instant case, trial commenced on 12.6.2017 and the Election Recrimination Petition was filed on 7.8.2017, however, the same was closed as not pressed on 12.9.2017 and the order dated 12.9.2017 reads thus:

> *"Heard Mr. Th. Modhu, learned counsel for the applicant/successful candidate who submits that he is not pressing the application.*
> *In view of the above submission made by the learned counsel for the applicant, the present application stands closed as not pressed. Heard also Mr. N Zequeson, learned counsel for the election petitioner."*

[117]. Since the order dated 12.9.2017 in Election Recrimination Petition No.2 of 2017 attained finality, the first respondent cannot claim any right against the petitioner. In other words, without having any prayer claimed against the petitioner, it will be erroneous for this Court to pass any order in regard to Issue No.7.

[118]. It is settled law that if the returned candidate does not recriminate as required by Section 97, then he cannot make any attack against the alternative claim made by the petition. In such a case, an enquiry would be held underSection 100 of the RP Act so far as the validity of the returned candidate's election is concerned, and if as a result of the said enquiry declaration is made that the election of the returned candidate is void, then the Court will proceed to deal with the alternative claim, but in doing so, the returned candidate will not be allowed tolead any evidence because he is precluded from raising any pleas against the validity of the claim of the alternative candidate.

[119]. In the present case, in view of the Election Recrimination petition No.2 of 2017 being admittedly time barred in terms of the provisions of Section 97 of the RP Act and the same having been dismissed as not pressed, no evidence against the petitioner can be introduced or raised by the first respondent qua non-disclosure of information. Thus, it can safely be concluded that the alleged materials produced by the first respondent against the petitioner in. regard to Issue Ne.7 is inadmissible and at the same time, the defence set forth in the written statement of the first respondent are not to be taken into

account and are not helpful to the first respondent. Issue No.7 is answered accordingly.

[120]. *Issue No. 8:*

Having declared the election of the First respondent as void, the natural consequence in the presentcase would have been to declare the only other remaining candidate With valid nomination in the election for the 37-Kakching Assembly Constituency to be elected, bydefault in terms of the relevant provisions of the RP Act.

[121]. The petitioner clearly pleaded in his petition to declare the election of the first respondent as null and void and declare him as elected candidate.

[122]. By placing reliance upon the following decisions, the learned counsel for the first respondent submitted that the petitioner cannot be declared as elected when there are several candidates in the election in question:

(1) *Konappa Rudrappa Nadgouda v. Vishwanath Reddy, (1969) 2 SCR 90.*

(2) *Thiru John v. Returning Officer, (1997) 3 SCC 540.*

(3) *Prakash Khadri v. Dr.Vijaya Umar Khandra, (2002) 5 SCC 568.*

[123]. In ***Konappa Rudrappa Nadgouda*** (supra), the Hon'ble Supreme Court held:

> *"12. ..... When there are only two contesting candidates, and one of them is under a statutory disqualification, votes cast in favour of the disqualified candidate may be regarded as thrown away, irrespective of whether the voters who voted for him were aware of the disqualification. This is not to say that where there are more than two candidates in the field for a single seat, and one alone is disqualified, on proof of the disqualification all the votes cast in favour his will be discarded and the candidate securing the next highest number of votes will be declared elected. In such a case, question of notice to the voters may assume significance, for the voters may not, if aware of the disqualification have voted for the disqualified candidate."*

[124]. In ***Thiru John*** (supra), the Hon'ble Supreme Court held:

"54. This takes us to the next question. Should all the votes that had been polled in favour of the candidate (Shri John) who has been found by the Court to be statutorily disqualify for election, be regarded as thrown away and in consequence, the appellant Shri Subrahmanyam who secure 300 votes as against non obtained by Shr Mohana Rangam be declared elected?

55. Again the answer to this question in our opinion must be in the negative. It is nobody's case that electors who voted for Shri John had at the time of election, knowledge or notice of the statutory disqualification of this candidate. On the contrary they must have been under the impression that Shri John was candidate whose nomination has been validly accepted by the Returning Officer. Had the electors noticed of Shri John's disqualification, how many of them would have voted for him and how many for the other continuing candidates, including SarvashriSubrahmanyam and MohanaRangam and in that preferential order, remains a question in the realm of speculation and unpredictability."

[125]. In ***Prakash Khandre*** (supra), the Hon'ble Supreme Court held:

> *"24. ..... As held by the Constitution Bench in Konappa case that some general rule of election law prevailing in the United Kingdom that the votes cast in favour of a person who is found disqualified for election may be regarded as "thrown away" only if the voters had noticed before the poll the disqualification of the candidate, has no application in our country and has only merit of antiquity. We would observe that the question of sending such notice to all voters appears to us alien to the Act and the Rules. But that question is not required to be dealt with in this matter. As stated earlier, in the present case, for one seat, there were five candidates and it would be impossible to predict or guess in whose favour the voters would have voted if they were aware that the elected candidate was disqualified to contest election or if he was not permitted to contest the election by rejecting his nomination paper on the ground of disqualified to contest the election and what would have been the voting pattern. Therefore, order passed by the High Court declaring the election petitioner Dr. Vijay Kumar Khandre as elected required to be set aside."*

[126]. In order to appreciate the contention of the petitioner, it is not out of place to extract hereunder Section 84 of the RP Act.

> *"84. Relief that may be claimed by the petitioner- A petitioner may, in addition to claiming a declaration that the election of all or any of the returned candidates is void, claim a further declaration that he himself or any other candidate has been duly elected."*

[127]. Section 84 of the RP Act enables the petitioner to seek a declaration to declare him as elected candidate in case the election of the returning candidate was declared as void. Thus, the relief sought by the petitioner falls within the ambit of Section 84 of the RP Act. The decisions relied on by the learned counsel for the first respondent is distinguishable from the facts of the instant case and therefore, the aforesaid decisions would have no help to the case of the first respondent. In the instant case, it is also admitted by the first respondent that the petitioner is the next highest candidate who secured 10503 votes. The next highest vote is 2215 got by the Communist party. Since the difference between the first respondent and the petitioner is 630

votes, the question of notice to the voters may not arise in the given circumstances of the present case.

[128]. In ***Konappa Rudrappa Ngouda*** (supra), the Hon'ble Supreme Court held:

> *"We are satisfied that this appeal must succeed and the appeal is therefore allowed, the election of the first respondent is declared void. In this view of the matter, the votes cast in favour of the first respondent must be treated as thrown away. As there was no other contesting candidate we declare the appellant (election petitioner) elected to the seat from the Yadagiri constituency. The first respondent shall bear the costs of the appellant throughout."*

[129]. In ***Chandeshwar Saw v. Brij Bhushan Prasad and others, 2020 SCC OnLine SC 89***, the Hon'ble Supreme Court observed as under:

> *"20. Accordingly, this appeal succeeds. The impugned judgment and order is set aside. Instead, the election case being E.C.No. 08/2016 filed by the appellant before the Election Tribunal is allowed. A declaration is issued under Section 140 of the Act that the election of respondent No.1 as returned candidate is set aside being invalid, and instead we declare the*

appellant/election petitioner as having been duly elected having secured highest votes amongst the contesting candidates and 95 more valid votes than that of respondent No.1 in the subject election."

[130]. In ***Mopuragundu Thippeswamy v. K.Eranna and others, 2018 SCC OnLine Hyd 413***, the High Court of Andhra Pradesh held as under:

"102. The petitioner clearly pleaded in the Election Petition to declare the election of the first respondent as null and void, and declare him as elected candidate. In order to appreciate the contention of the petitioner, it is not out of place to extract hereunder Section 84 of the R.P. Act.

> *84. Relief that may be claimed by the petitioner- A petitioner may, in addition to claiming a declaration that the election of all or any of the returned candidates is void, claim a further declaration that he himself or any other candidate has been duly elected.*

103. Section 84 of the RP Act enables the petitioner to seek a declaration to declare him as elected candidate in case the election of the returning candidate was declared as void. The relief sought by the petitioner falls within the ambit of Section 84 of the R.P. Act.

> *104. As observed earlier, the first respondent got 76,601 votes and the petitioner got 61,905 votes. The first respondent was declared as elected Member of 275-Madakasira Legislative Assembly Constituency with a majority of 14,636 votes. Among all the candidates contested, the petitioner secured highest votes after the first respondent. Consequent upon the findings on Additional Issue, the petitioner is entitled to be declared as elected Member of 275-Madakasira Legislative Assembly Constituency. Accordingly, Issue No.4 is answered in favour of the petitioner and against the first respondent."*

[131]. It has been pointed out by the learned counsel for the petitioner that as against the judgment of the Andhra Pradesh High Court in ***2018 SCC OnLine Hyd 413***, the respondent K.Eranna, preferred Civil Appeal No.11908 of 2018 before the Hon'ble Supreme Court and by the order dated 12.12.2018, the Civil Appeal No.11908 of 2018 stands dismissed and he has also produced the judgment of the Hon'ble Supreme Court. Thus, judgment of the Andhra Pradesh in ***K.Erranna*** (supra) is squarely applies to the case on hand.

[132]. As stated supra, the first respondent got 11133 votes and the petitioner got 10503 votes. The First respondent

was declared as elected member of 37-Kakching Assembly Constituency. Among all the candidates contested the petitioner secured 10503 votes after the first respondent. Consequent upon the findings that the election of the first respondent is declared as null and void, the petitioner is entitled to be declared as elected member of 37-Kakching Assembly Constituency. Issue No.8 is answered in favour of the petitioner.

[133]. In the result, the election petition is allowed, setting aside the election of the first respondent as member of 37-Kakching Assembly Constituency in the 11th Manipur Legislative Assembly and declaring the petitioner as duly elected member of 37-Kakching Assembly Constituency. Both parties are directed to bear their own costs.

[134]. Issue copy to both parties through their Whatsapp/e-mail.

JUDGE

FR/NFR

Sushil

Yumkham Rother

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Date: 2020.11.05 14:55:35 +05'30'