

IN THE HIGH COURT OF JUDICATURE AT PATNA
ELECTION PETITION No.1 of 2023

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Mahachandra Prasad Singh son of Late Rangi Singh, Resident of Mohalla-Rasoolpur, Jilani Chakkar Road, P.O. Head Post Office, Muzaffarpur, P.S. Kazi Mohammadpur, District-Muzaffarpur.

... .. Petitioner/s

Versus

Prof. Dr. Birendra Narayan Yadav son of Lakshmi Narayan, Resident of Mohalla-Mahmood Chowk Dahiyawan Chapra, P.O. Head Post Office, Chapra, P.S. Chapra Town, District-Saran at Chapra.

... .. Respondent/s

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Appearance :

For the Petitioner/s	:	Mr. S.B.K. Manglam, Advocate Mr. Awnish Kumar, Advocate Mr. Kumar Gaurav, Advocate Mr. Vikash Kumar Singh, Advocate
For the Respondent/s	:	Mr. P.K. Verma, Sr. Advocate Mr. Yashraj Bardhan, Advocate

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CORAM: HONOURABLE MR. JUSTICE SUNIL DUTTA MISHRA
C.A.V. JUDGMENT

Date : 09-05-2025

I.A. No.02 of 2024

The present interlocutory application has been preferred with a prayer for summary dismissal of the election petition filed by the petitioner as per the mandate stipulated under Section 86(1) of The Representation of the People Act, 1951 (hereinafter referred as ‘R.P. Act’) read with Order VII Rule 11 of the Code of Civil Procedure, 1908 (hereinafter referred as ‘the Code’), on the ground of non-compliance of the mandatory provisions contained under Sections 81, 82 and 83 of the R.P. Act and on the ground of not disclosing any cause of action.



2. It appears from the record that the sole respondent was an official candidate of Janta Dal (U) Party who had filed his nomination paper before the Returning Officer to contest the election of Bihar Legislative Council from 03, Saran Graduate Constituency on 10.03.2023 and also filed an affidavit in Form-26 duly sworn by him before the Notary Public, Chapra on 06.03.2023 alongwith his nomination paper. The scrutiny of the nomination papers of the candidate contesting the said election was held on 14.03.2023. No objection was raised by any of the candidate with regard to any defect in the nomination papers of the sole respondent until declaration of result on 05.04.2023. The respondent was declared elected as a Member of Bihar Legislative Council (Graduate Seat) from 03, Saran Graduate Constituency for which election was held on 31.03.2023 by a margin of altogether 5,951 votes. It is stated that he had secured total 32,239 votes. However, election petitioner being a candidate of Bhartiya Janta Party got only 26,288 votes. The respondent was declared an elected and returned candidate.

3. The election petitioner has filed the present election petition with a prayer to set aside the election of the sole respondent by declaring his election as void for non-



compliance of the provisions contained under Section 100(1)(d) (iv) of the R.P. Act and under Article 19(1)(a) of the Constitution of India. It is alleged by the election petitioner that the affidavit contained in Form-26 (appended to the Conduct of Election Rules, 1961) filed along with nomination paper by the sole respondent is not in accordance with the mandatory provisions pointing out that redundant sub-para not scored off, the details of holding number and circle number of urban property was given instead of survey number and instead of “NO” at relevant column “ZERO” was written.

4. The sole respondent filed the written statement denying the allegation made by the election petitioner in the petition. It is stated that the election petition has been filed with a purpose and motive of vexing and harassing the sole respondent by absolutely false, untenable, flimsy and vexatious allegations disclosing no cause of action and the same is not maintainable and fit to be dismissed at the preliminary stage under Section 86 of the R.P. Act because of non-compliance of provision contained under Sections 81, 82 and 83 of the R.P. Act. It is stated that there is no allegation of non-disclosure of any criminal case or any property, rather the allegation is only about manner in filling para 5, 6 and 7 of the affidavit in Form-



26 which apparently is a misnomer, highly technical and completely flimsy so as to disclose any cause of action or make out a ground as specified under Section 100(1)(d)(iv) of the R.P. Act to declare election void. It is further stated that from the perusal of Form-26, it is clear that in para 5 details of pending criminal cases has been clearly filled and shown giving details of the case. In para 6 it has been clearly filled showing that in no case the respondent had been convicted. Para 7B has been duly filled so much that those agricultural land with survey number, area has been filled in and with regard to urban area property, its location, holding number and circle number and area has been fully disclosed and filled by the respondent. As it was a self acquired property, years of purchase and amount has also been disclosed and hence, 'NIL' has been written in the column of ancestral property relating to the spouse of the respondent. Similarly, the details of location, holding number and circle number and area of another urban property has been duly disclosed and filled in para 7B(iv) of the affidavit in Form-26. The year of self acquisition and its valuation has also been disclosed. As the same was not an inherited property, therefore, 'NIL' has been filled. Thus, it cannot be said or in any manner construed that para 5, 6, or 7 has been left blank or not filled or



that does not furnish any information. The allegation made in the election petition does not come under any of the grounds enumerated under the said Sections and is not maintainable.

5. Heard Mr. P.K. Verma, learned senior counsel for the respondent assisted by Mr. Yashraj Bardhan and Mr. S.B.K. Manglam learned counsel for the election petitioner assisted by Mr. Awnish Kumar, Advocate at length.

6. Learned senior counsel Mr. P.K. Verma for the sole respondent submitted that mere perusal of the election petition there is no allegation of non-disclosure of any criminal case or of any property rather the allegation is only about manner in filling para 5, 6 and 7 of the affidavit in Form- 26 which is completely flimsy which disclosed no cause of action or make out any ground to declare the election void under Section 100 of the R.P. Act. He further submitted that the election petition is liable to be dismissed under Section 86 of the R.P. Act read with Order VII Rule 11 of the Code. The election petition is gross abuse of process of the Court as the election petition has been filed with frivolous allegations which are completely devoid of merit. It is further submitted that there is no pleading on the facts as to how by the alleged clerical error in the manner of filling of a column of affidavit in Form-26, the



result of election insofar as it concerns, the returned candidate has been materially affected. A mere vague and frivolous allegation of any improper acceptance of nomination paper without disclosing any defect or deficiency as envisaged under Section 36 of the R.P. Act does not disclose any cause of action. Moreso, Section 83 (1) of the R.P. Act requires that the election petition must contain a concise statement of material facts. He next submitted that the election petitioner has taken ground for challenging the election by stating that the nomination paper was improperly accepted by the Returning Officer. However, he has not made any averment to the fact that he raised this issue of improper acceptance before the Returning Officer and this entitles him to make any such claim later on by election petition without material facts being narrated and without disclosing as to how any clerical error or omission impacted the result of election. Since no objection was raised by the election petitioner or any other person at the time of filing and acceptance of nomination paper, the Returning Officer accepted the nomination paper finding the averments and information as substantial compliance of the legal requirements and there was no illegality or irregularity as alleged.

7. Mr. P.K. Verma, taking this Court to the



particulars disclosed by the respondent in Form- 26 submitted that there was neither suppression of any material facts nor the petitioner raised any objection in writing at the time of scrutiny of the nomination paper by the Returning Officer, and therefore, it could not be said that there was improper acceptance of nomination of the respondent. He pressed into service various provisions contained in the R.P. Act, particularly Section 100 and Section 123 to submit that allegations and averments made in the Election Petition could never constitute “undue influence” much less “corrupt practices” as contemplated in Section 123, for declaring the election to be void under Section 100 of the R.P. Act. Much reliance has been placed by him on the decision of Hon’ble Supreme Court in case of **Kanimozhi Karunanidhi v. A. Santhana Kumar and Others** reported in (2023) 4 SCR 798 to submit that the election petition filed by the election petitioner be dismissed at the threshold under Order VII Rule 11 of the Code read with Section 83 of the R.P. Act.

8. On the other hand, learned counsel Mr. S.B.K. Manglam for the election petitioner submitted that the election petition has been filed by the petitioner for setting aside the election of the sole respondent for non-compliance of provisions contained in Section 100(1)(d)(iv) of the R.P. Act and Article



19(1)(a) of the Constitution of India. The voter has right to know about full particulars of a candidate who is to represent them in Parliament/ Assemblies and such right is a fundamental right guaranteed under Article 19(1)(a) of the Constitution of India and filing of affidavit with blank particulars will render the affidavit nugatory. He further submitted that in view of the law laid down by the Hon'ble Supreme Court in **Resurgence India v. Election Commission of India & Anr.** reported in **(2014) 14 SCC 189** and as per the direction of Election Commission of India, the nomination paper would be rejected if any column of the affidavit in Form- 26 is blank and from a bare perusal of the affidavit filed by the sole respondent in Form- 26 along with his nomination paper, it is evidently clear that paragraph 5 and 6 are blank. The Returning Officer improperly accepted the nomination paper of the sole respondent. The defect in affidavit filed by the sole respondent in Form-26 along with nomination paper was the defect of substantial character. The Returning Officer ought to have rejected the nomination paper at the time of scrutiny. However, the Returning Officer had improperly accepted his nomination paper against the law. He further submitted that the Hon'ble Supreme Court in case of **Mairembam Prithviraj v. Pukhrem Sharatchand Singh**



reported in **2017 (2) SCC 487** held that the petitioner has neither required to plea nor to prove that the result of election has been materially affected as the returned candidate would not have been able to contest the election if his nomination paper could not have been improperly accepted by the Returning Officer. Since the nomination of the sole respondent was improperly accepted by the Returning Officer, his election is fit to be declared void. He further submitted that the Hon'ble Supreme Court in case of **Union of India v. Association for Democratic Reforms & Anr.** reported in **(2002) 5 SCC 294** and the instruction issued by the Election Commission in exercise of its power under Article 324 of the Constitution of India providing incomplete information and suppression of material information on any of five aspects was to be treated as fact of substantial character by the Returning Officer. The Returning Officer was left with no option but to reject the nomination paper of sole respondent under Section 36 of the R.P. Act since the sole respondent had furnished incomplete information or had suppressed material information with respect to his immovable property as declared by him.

9. Learned counsel for the petitioner further submitted that the law is well settled that whenever the statute



prescribes a particular act to be done in a particular manner and also laid down that failure to comply with the said requirement leads to a specific consequence. In this regard, he has referred the judgment of Hon'ble Supreme Court in **Baru Ram (Shri) v. Shrimati Prasanni & Ors.** reported in **AIR 1959 SC 93**. It is also well settled that the statutory requirements of election law have to be strictly observed. It is submitted that the case is required to be adjudicated only after affording the opportunity to election petitioner to adduce evidence in trial. Learned counsel for the petitioner further submitted that since the petitioner has valid cause of action, the election petition is maintainable and I.A. No.02 of 2024 filed on behalf of sole respondent is liable to be rejected.

10. This Court has given anxious consideration to the submissions advanced on behalf of the respective parties and also perused the election petition and the copy of nomination paper accompanying affidavit in Form-26 by the respondent (Annexure P-1) attached with the election petition.

11. It is now well-settled that the right to contest an election or to challenge it by way of an Election Petition is neither a common law right nor a fundamental right. It is a statutory right conferred and regulated exclusively by the



provisions of the R.P. Act. No election dispute can be entertained outside the ambit of the said statute. The R.P. Act constitutes a complete and self-contained code in respect of all matters pertaining to elections and election disputes. Further, the applicability of the Code is limited to the extent permitted under Section 87 of the R.P. Act. It is also well-settled that the success of a winning candidate at an election should not be lightly interfered with [*see, Santosh Yadav v. Narender Singh* reported in (2002) 1 SCC 160 and *Harsh Kumar v. Bhagwan Sahai Rawat and Ors.* reported in (2003) 7 SCC 709].

12. Part XV of the Constitution of India deals with the provision related to 'election'. Article 327 enables parliament to make laws with respect to all matters relating to elections to either Houses of Parliament or to the Houses of the Legislature of a State. The R.P. Act enacted by the Parliament and its object as reflected in its title is to provide for the conduct of elections of the Houses of Parliament and to the Houses of each State Legislature, the qualifications and disqualifications for the membership of these Houses, the corrupt practices and other offences at or in connection with such elections and doubts and disputes arising out of or in connection with such elections. Article 329 bars interference by Court in electoral



matters except by an election petition presented to such authorities and in such manner as may be provided for by or under any law made by the appropriate legislature.

13. In order to appreciate the rival contentions raised by the learned counsel for the parties, it would be pertinent to advert some relevant provisions contained in the R.P. Act. Section 81 of the R.P. Act pertains to the presentation of the Election Petition which is reproduced as under:-

“81. Presentation of petitions.—

(1) An election petition calling in question any election may be presented on one or more of the grounds specified in sub-section (1) of section 100 and section 101 to the High Court by any candidate at such election or any elector within forty-five days from, but not earlier than the date of election of the returned candidate or if there are more than one returned candidate at the election and dates of their election are different, the later of those two dates.

Explanation.—

In this sub-section, “elector” means a person who was entitled to vote at the election to which the election petition relates, whether he has voted at such election or not.

(2)

(3)

14. Section 82 pertains to the parties to the Election Petition which is reproduced as under:-

“82. Parties to the petition.—

A petitioner shall join as respondents to



his petition—

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

(b) any other candidate against whom allegations of any corrupt practice are made in the petition.”

15. Section 83 pertains to the contents of the Election Petition which is reproduced as under:-

“83. Contents of petition.—*(1) An election petition—*

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

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

(c) shall be signed by the petitioner and verified in the manner laid down in the Code of Civil Procedure, 1908 (5 of 1908) for the verification of pleadings: Provided that where the petitioner alleges any corrupt practice, the petition shall also be accompanied by an affidavit in the prescribed form in support of the allegation of such corrupt practice and the particulars thereof.

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



16. Section 100 deals with the grounds for declaring the election to be void. In the instant petition, the petitioner has invoked Section 100 (1)(d)(iv) of the R.P. Act for declaring the election of the respondent as void, which is read as under:-

“100. Grounds for declaring election to be void. —

(1) Subject to the provisions of sub-section (2) if the

High court is of opinion—

(a) or

(b); or

(c); or

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

(i); or

(ii); or

(iii); or

(iv) by any non-compliance with the provisions of the Constitution or of this Act or of any rules or orders made under this Act, the High Court shall declare the election of the returned candidate to be void.

17. Rule 4 and 4A of the Conduct of Election Rules, 1961 pertain to the submission of nomination paper and form of affidavit to be filed at the time of delivering nomination paper. It is apropos to mention that Rule 4A inserted in the Conduct of Election Rules, 1961 with effect from 03.09.2002, mandates that the candidate or his proposer, as the case may be, shall file an affidavit in Form-26 at the time of delivering the



nomination paper to the Returning Officer. The text of Rule 4A is reproduced herein below:

“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.”

18. Section 33 of the R.P. Act deals with ‘presentation of nomination papers and requirements for valid nomination’. Scrutiny of such nomination is undertaken by the Returning Officer under Section 36 of the R.P. Act. In terms of Section 36(4), a Returning Officer is under a mandate not to reject a nomination paper for a defect unless it is of substantial character. Section 123 of R.P. Act defines ‘corrupt practices’ which includes ‘undue influence’. Insofar as the present case is concerned, Section 123(2) of the R.P. Act is of relevance.

19. In **Mangani Lal Mandal v. Bishnu Deo Bhandari** reported in **(2012) 3 SCC 314** the Hon’ble Supreme Court held that where a returned candidate is alleged to be guilty of non-compliance with provisions of the Constitution or the R.P. Act or any rules or orders made thereunder and his election is sought to be declared void on the ground, it is



essential for the election petitioner to aver, by pleading material facts, that the result of election insofar as it concerned the returned candidate has been materially affected by such breach or non-observation. It was further held that it is only on the basis of such pleading and proof that the Court would be in a position to form an opinion and record a finding that such breach or non-compliance has materially affected the result of the election before election of the returned candidate could be declared void. For the election petitioner to succeed on such ground, viz., Section 100(1)(d)(iv), he has not only to plead and prove the breach but also show that the result of the election, insofar as it concerned the returned candidate, has been materially affected thereby.

20. In L. R. Shivaramagowda and Others v. T. M. Chandrashekar (Dead) by LRs and Others reported in **(1999) 1 SCC 666**, a three-Judge bench of the Hon'ble Supreme Court held that in order to declare an election void under Section 100(1)(d)(iv) of the R.P. Act, it is absolutely necessary for the election petitioner to plead that result of the election, insofar as it concerns the returned candidate, has been materially affected by the alleged non-compliance with the provisions of the Constitution or the R.P. Act or the rules or orders made



thereunder and failure to plead such material facts would be fatal to the election petition.

21. In Ram Sukh v. Dinesh Aggarwal reported in **(2009) 10 SCC 541**, the Hon'ble Supreme Court while examining the maintainability of Election Petition filed under Section 100(1)(d)(iv) of the R.P. Act, elaborately considered the earlier decisions and observed that it was necessary for the election petitioner to aver specifically in what manner the result of the election in so far as it concerned the returned candidate was materially affected due to omission on the part of the Returning Officer. The Hon'ble Supreme Court in this case having found that such averments being missing in the Election Petition, upheld the Judgment of the High Court/Election Tribunal rejecting the Election petition at the threshold.

22. the Hon'ble Supreme Court in Karikho Kri v. Nuney Tayang and Anr. reported in **(2024) SCC OnLine SC 519**, with respect to defect of nomination paper and its acceptance by the Returning Officer observed in para 40 and 41 as under:

“40. Having considered the issue, we are of the firm view that every defect in the nomination cannot straightaway be termed to be of such character as to render its acceptance improper and each case would have to turn on its own individual facts,



insofar as that aspect is concerned. The case law on the subject also manifests that this Court has always drawn a distinction between non-disclosure of substantial issues as opposed to insubstantial issues, which may not impact one's candidature or the result of an election. The very fact that Section 36(4) of the Act of 1951 speaks of the Returning Officer not rejecting a nomination unless he is of the opinion that the defect is of a substantial nature demonstrates that this distinction must always be kept in mind and there is no absolute mandate that every non-disclosure, irrespective of its gravity and impact, would automatically amount to a defect of substantial nature, thereby materially affecting the result of the election or amounting to 'undue influence' so as to qualify as a corrupt practice.

41. The decision of this Court in Kisan Shankar Kathore v. Arun Dattatray Sawant, (2014) 14 SCC 162, also demonstrates this principle, as this Court undertook examination of several individual defects in the nomination of the returned candidate and found that some of them were actually insubstantial in character. This Court noted that two facets required consideration – Whether there is substantial compliance in disclosing requisite information in the affidavits filed along with the nomination and whether non-disclosure of information on identified aspects materially affected the result of the election. This Court observed, on facts, that non-disclosure of the electricity dues in that case was not a serious lapse, despite the fact that there were dues outstanding, as there was a bonafide dispute about the same. Similar was the observation in relation to non-disclosure of municipal dues, where there was a genuine dispute as to re-valuation and re-assessment for the purpose of tax assessment. Earlier, in



Sambhu Prasad Sharma vs. Charandas Mahant [2012] 6 SCR 356, this Court observed that the form of the nomination paper is not considered sacrosanct and what is to be seen is whether there is substantial compliance with the requirement as to form and every departure from the prescribed format cannot, therefore, be made a ground for the rejection of the nomination paper.”

23. Having regard to the aforesaid legal position, firstly, it is necessary to examine the averments and allegations set-forth by the petitioner in the election petition basically on ground that the respondent while filing affidavit contained in Form-26 along with nomination paper is not in accordance with the mandatory provisions of law. Secondly, whether the defect made by respondent in the aforesaid affidavit is a substantial defect or not.

24. The election petition has been filed by the election petitioner challenging the nomination of the sole respondent relying on the several grounds, out of which the relevant paragraphs are reproduced as under:

“1.

2.

xxxx

24. That, however from bare perusal of paragraph no.5 (II) of the Affidavit in Form-26 filed by the sole Respondent along with his nomination paper, it would be evidently clear that nothing has been mentioned by the sole Respondent either in paragraph no.5(1) or in paragraph no.5(II) of the affidavit and, therefore, information in both the paragraphs of paragraph no.5 are blank.

25. That, similar is the position in respect of paragraph



no.6 of the Affidavit in Form-26 filed by the sole Respondent along with his nomination paper. He had again failed to mention any information either in paragraph no.6(1) or in paragraph no.6 (II) and, therefore, paragraph no.6 at affidavit was again left blank.

26. That, in paragraph no.7(A) of the affidavit, a candidate is required to declare about the movable assets of the candidates, his/her spouse and the dependant and in paragraph no.7 (B), a candidate is required to declare about immovable assets.

27. That, in paragraph no.7B(II), a candidate is required to declare about the non-agricultural land, its location and the survey number. He is further required to declare about the area of land in square feet and whether the property is inherited property or it is self acquired property.

28. That, in paragraph no.7 (B) of the Affidavit filed by the sole Respondent in Form-26 along with the nomination paper; he had declared about two non-agricultural land in the name of his spouse but he had not disclosed the survey number. In the column where a candidate is required to declare as to whether the property is inherited property or not, the information furnished is "Shunya" (Zero) which does not satisfy the requirement of the prescribed format of the affidavit since according to the format, the answer has to be "Yes" or "No".

29. That, similar is the position with respect to the information given in paragraph no.7B(IV) of the Affidavit filed by the sole Respondent in Form-26 along with the nomination paper with respect to declaration regarding residential building in the name of his spouse. In paragraph no.7B(IV) where the sole Respondent had declared about the residential building in the name of his spouse situated in Dahiawan Chapra Ward No.19 but again survey number is missing and in the column meant for declaration as to whether the said property is inherited property, the information given is "Shunya" (Zero) and in the column meant for cost of land at the time of purchase, the information again given is "Shunya" (zero) whereas in the column meant for declaration regarding the date of purchase, the year 2004-05 has been mentioned.

30. That, therefore, whereas the sole Respondent admits that the residential building in the name of his wife located at Dahiawan Chapra, Ward No.19 is a purchased property of the sole Respondent but in the column meant for declaration of purchase value of the property, the information given is "Shunya" (zero) and in the column where a candidate is required to declare as to whether the property is inherited property, the information again is "Shunya" zero and, therefore, the affidavit filed by the sole Respondent in Form-26 along with the nomination paper



does not furnish the full information regarding immovable assets of the sole Respondent and his spouse and therefore, the sole Respondent has violated the fundamental right of the citizen under Article 19(1)(a) of the Constitution of India.

31. That, in view of the law laid down by the Hon'ble Supreme Court in Resurgence India case, the Election Commission of India had also issued a direction to reject a nomination paper if any column of the affidavit in Form-26 is blank.

32. That, from bare perusal of the affidavit filed by the sole Respondent in Form-26 along with his nomination paper, it is evidently clear that paragraph nos.5 and 6 are blank, yet the Returning Officer improperly accepted the nomination of the sole Respondent, since he was contesting the election as an official candidate of Janta Dal United Political Party, a party ruling the State for last about 18 years.

33. That, in Resurgence India case, their Lordships had clearly held that filing of affidavit with blank particulars will render the affidavit nugatory and that can be a ground of rejection of the nomination paper, however, the Returning Officer overlooked the law regarding filing of affidavit with correct information as also the punishment prescribed for filing affidavit with blank particulars and had improperly accepted the nomination of returned candidates.

34. That, in view of the judgment of the Hon'ble Supreme Court in the case of Union of India Vs. Association of Democratic Reforms (2002) 5 SCC-294, the Election Commission of India had issued a letter dated 28.06.2022 to all the Returning Officers directed that full and complete information relating to five aspects which were mentioned in the judgment has to be furnished. The Commission further directed that providing incomplete information or suppression of material information on any of the five aspects was to be treated as a defect of substantial character by the Returning Officer.

35. That, if according to the instruction issued by the Election Commission of India in exercise of its power under Article 324 of the Constitution of India providing incomplete information and suppression of material information on any of the five aspects was to be treated as a defect of substantial character by the Returning Officer, the Returning Officer of 03, Saran Graduate Constituency was left with no option but to reject the nomination of sole Respondent under Section -36 of the Representation of the People Act, 1951 since the sole Respondent had furnished incomplete information or had suppressed material information with respect to his immovable property as declared by him in paragraph no.7(B) (III) and (IV) of the Affidavit in Form-26.



36. That, since the defect in Affidavit filed by the sole Respondent in Form-26 along with the nomination paper was the defect of substantial character, the Returning Officer ought to have rejected the nomination paper at the time of scrutiny however, the Returning Officer had improperly accepted his nomination paper against the law.

37. That, in view of the aforesaid since the nomination of the sole Respondent was improperly accepted by the Returning Officer, his election is fit to be declared void under Section 100(1) (c) read with Section 100(1)(d) (iv) of the Representation of the People Act, 1951.

38. That, since it is the nomination paper of the returned candidate i.e. the sole Respondent which was improperly accepted by the Returning Officer at the time of scrutiny of nomination paper, in view of the law laid down by the Hon'ble Supreme Court in the case since reported in 1973(2) SCC-45 and in the case of Mairambam Prithviraj Vs. Pukhrem Sharatchand Singh since reported in 2017(1) PLJR (SC)-15, the petitioner is neither required to plead nor to prove that the result of election has been materially affected as the returned candidate would not have been able to contest the election if his nomination paper would not have been improperly accepted by the Returning Officer.

39. That, the petitioner has not filed any other election petition challenging the election of the sole Respondent before this Hon'ble High Court earlier for which the election was held on 31.03.2023.

40. That, the petitioner has deposited a sum of Rs.2,000/- by way of security as provided under Section 117 of the Representation of People Act, 1951 vide Challan No.J-4 dated 11.04.2023.”

25. In the present election petition, the sole respondent submitted his nomination paper along with the affidavit in Form-26 wherein instead of submitting the survey number, the details of holding number and circle number of urban property was filled and at a column instead of ‘NO’, it was filled ‘ZERO’. The petitioner seeks for declaring the election of the respondent-returning candidate to be void on the ground contemplated under Section 100(1)(d)(iv) of R.P. Act as



the respondent had not complied with the requirements of the said provision and the Returning Officer ought to have rejected the nomination paper at the time of scrutiny, however, it was improperly accepted, which is against the provision of the law. The affidavit mandated under Form-26 of the Conduct of Election Rules, 1961 serves as an essential instrument to ensure transparency in the electoral process. It requires a candidate to furnish complete and truthful information regarding his/her criminal antecedents, assets and liabilities and educational qualifications. The significance of this affidavit lies in its direct connection to the fundamental right of the voter under Article 19(1)(a) of the Constitution of India as affirmed by the Hon'ble Supreme Court in **Union of India v. Association for Democratic Reforms & Anr.** (*supra*) which recognized the right of voters to know as an integral part of free speech and expression.

26. The Hon'ble Supreme Court in the case of **Resurgence India v. Election Commission of India & Anr.** (*supra*) emphasized that the filing of an affidavit in the prescribed form is not an empty formality and non-compliance would defeat the very purpose of informed electoral choice.

27. A defect in the affidavit under Form-26 cannot



be viewed merely through the lens of technicality. When the defect pertains to material omissions or misstatements that hinder the voter's ability to make an informed choice, it assumes the character of a "substantial defect". Therefore, a 'substantial defect' in Form-26 is to be understood as one which materially affects the completeness, accuracy or veracity of the affidavit and thereby impairs the right of the electorate to be informed. Such a defect cannot be condoned as a curable irregularity, but must be viewed as going to the root of the nomination process, warranting appropriate legal consequence including potential rejection of the nomination or challenge to the election.

28. On perusal of this Election Petition, it is found that the Election Petitioner has alleged that the Returning Officer ignored the defects in filing of the affidavit with nomination paper by the respondent but he has not stated material facts which are required to prove the cause of action or defence. In context thereto, the election petitioner has not made any averment as to the basic facts which constitute the ingredients with respect to prove non-compliance with the provision of the Constitution or of the R.P. Act or any rules or orders made under the Act which would have materially affected the outcome of the concerned election. Section 83(1)(a) of R.P.



Act incorporates that an election petition shall contain concise statement of material facts on which the election petitioner relies to support the allegation made. “Material facts” are facts which if established would give the petitioner the relief asked for. The test required to be answered is whether the same could have given a direct verdict in favour of the election petitioner in case the returned candidate had not appeared to oppose the election petition on the basis of facts pleaded in the petition. The instant election petition is completely silent on any specific averment indicating how such acceptance materially affected the outcome of the election insofar as it relates to the respondent.

29. There is a distinction between ‘material facts’ and ‘particulars’. ‘Material facts’ are primary or basic facts which must be pleaded by the plaintiff or defendant in support of the case set up by him either to prove his cause of action or defence. ‘Particulars’, on the other hand, are details in support of material facts pleaded by the parties. The facts by means of which material facts are proved in the nature of particular or evidence and they are not facts in issue, but only relevant facts required to be proved at the trial in order to establish the facts in issue. Unlike ‘material facts’ which provides the basic foundation on which the entire edifice of the election petition is



build, ‘particulars’ are to be stated to ensure that opposite party is not taken by surprise.

30. It is a well-established principle that the Court is bound to examine the plaint independently, regardless of any written statement or denial by the respondent, and reject it if it fails to disclose a cause of action. The expression ‘cause of action’ means every facts which it would be necessary for the plaintiff/petitioner to prove, if traversed, in order to support his right to the judgment of Court. For the purpose of determining whether a cause of action exists, the Court must confine its scrutiny strictly to the averments made in the plaint/petition. Vague and imprecise pleadings, which potentially open the door to unrestricted evidence, have consistently been disapproved by the judiciary. It is trite law that no amount of evidence can rectify a fundamental defect in the pleadings.

31. The Hon’ble Supreme Court with regard to the scope of Order VII Rule 11 of the Code in the judgment in **Dahiben v. Arvindbhai Kalyanji Bhanusali (Gajra) and Ors.** reported in **(2020) 7 SCC 366** made the following observations:

“23.2. The remedy under Order 7 Rule 11 is an independent and special remedy, wherein the Court is empowered to summarily dismiss a suit at the threshold, without proceeding to record evidence, and conducting a trial, on the basis of the evidence adduced, if it is satisfied that the action should be



terminated on any of the grounds contained in this provision.

23.3. *The underlying object of Order 7 Rule 11 (a) is that if in a suit, no cause of action is disclosed, or the suit is barred by limitation under Rule 11 (d), the Court would not permit the plaintiff to unnecessarily protract the proceedings in the suit. In such a case, it would be necessary to put an end to the sham litigation, so that further judicial time is not wasted.*

23.4. *In **Azhar Hussain v. Rajiv Gandhi, 1986 Supp. SCC 315** this Court held that the whole purpose of conferment of powers under this provision is to ensure that a litigation which is meaningless, and bound to prove abortive, should not be permitted to waste judicial time of the court, in the following words : (SCC p.324, para 12)*

“12. ...The whole purpose of conferment of such power is to ensure that a litigation which is meaningless, and bound to prove abortive should not be permitted to occupy the time of the Court, and exercise the mind of the respondent. The sword of Damocles need not be kept hanging over his head unnecessarily without point or purpose. Even if an ordinary civil litigation, the Court readily exercises the power to reject a plaint, if it does not disclose any cause of action.”

23.5. *The power conferred on the court to terminate a civil action is, however, a drastic one, and the conditions enumerated in Order 7 Rule 11 are required to be strictly adhered to.*

23.6. *Under Order 7 Rule 11, a duty is cast on the Court to determine whether the plaint discloses a cause of action by scrutinizing the averments in the plaint [**Liverpool & London S.P. & I Assn. Ltd. v. M.V. Sea Success I, (2004) 9 SCC 512**], read in conjunction with the documents relied upon, or whether the suit is barred by any law.*

23.9. *In exercise of power under this provision, the*



Court would determine if the assertions made in the plaint are contrary to statutory law, or judicial dicta, for deciding whether a case for rejecting the plaint at the threshold is made out.

23.10. *At this stage, the pleas taken by the defendant in the written statement and application for rejection of the plaint [Sopan Sukhdeo Sable v. Charity Commr. (2004) 3 SCC 137] on the merits, would be irrelevant, and cannot be adverted to, or taken into consideration.*

23.11. *The test for exercising the power under Order VII Rule 11 is that if the averments made in the plaint are taken in entirety, in conjunction with the documents relied upon, would the same result in a decree being passed. This test was laid down in Liverpool & London S.P. & I Assn. Ltd. v. M.V.Sea Success I & Anr., (2004) 9 SCC 512) which reads as: (SCC p.562, para 139)*

"139. *Whether a plaint discloses a cause of action or not is essentially a question of fact. But whether it does or does not must be found out from reading the plaint itself. For the said purpose, the averments made in the plaint in their entirety must be held to be correct. The test is as to whether if the averments made in the plaint are taken to be correct in their entirety, a decree would be passed."*

23.12. *In Hardesh Ores (P.) Ltd. v. Hede & Co. (2007) 5 SCC 614 the Court further held that it is not permissible to cull out a sentence or a passage, and to read it in isolation. It is the substance, and not merely the form, which has to be looked into. The plaint has to be construed as it stands, without addition or subtraction of words. If the allegations in the plaint prima facie show a cause of action, the court cannot embark upon an enquiry whether the allegations are true in fact. D. Ramachandran v. R.V. Janakiraman [D. Ramachandran v. R.V. Janakiraman, (1999) 3 SCC 267; See also Vijay Pratap Singh Vs. Dukh Haran Nath Singh, AIR 1962 SC 941].*



23.13. If on a meaningful reading of the plaint, it is found that the suit is manifestly vexatious and without any merit, and does not disclose a right to sue, the court would be justified in exercising the power under Order VII Rule 11 CPC.

23.14. The power under Order VII Rule 11 CPC may be exercised by the Court at any stage of the suit, either before registering the plaint, or after issuing summons to the defendant, or before conclusion of the trial, as held by this Court in the judgment of Saleem Bhai v. State of Maharashtra [Saleem Bhai v. State of Maharashtra, (2003) 1 SCC 557]. The plea that once issues are framed, the matter must necessarily go to trial was repelled by this Court in Azhar Hussain case [Azhar Hussain v. Rajiv Gandhi, 1986 Supp SCC 315].

23.15. The provision of Order VII Rule 11 is mandatory in nature. It states that the plaint "shall" be rejected if any of the grounds specified in clause (a) to (e) are made out. If the Court finds that the plaint does not disclose a cause of action, or that the suit is barred by any law, the Court has no option, but to reject the plaint."

32. The Hon'ble Supreme Court, while considering the legal position with regards to the non-compliance of the requirement of Section 83(1)(a) of the R.P. Act and the rejection of Election Petition under Order VII Rule 11, of the Code, in the case of **Karim Uddin Barbhuiya v. Aminul Haque Laskar & Ors.** reported in (2024) 4 SCR 523 has relied upon the case of **Kanimozhi Karunanidhi** (*supra*), wherein it has been observed as under:

"28. The legal position enunciated in afore-stated cases may be summed up as under:-
i. Section 83(1)(a) of RP Act, 1951



mandates that an Election petition shall contain a concise statement of material facts on which the petitioner relies. If material facts are not stated in an Election petition, the same is liable to be dismissed on that ground alone, as the case would be covered by Clause (a) of Rule 11 of Order 7 of the Code.

ii. The material facts must be such facts as would afford a basis for the allegations made in the petition and would constitute the cause of action, that is every fact which it would be necessary for the plaintiff/petitioner to prove, if traversed in order to support his right to the judgement of court. Omission of a single material fact would lead to an incomplete cause of action and the statement of plaint would become bad.

iii. Material facts mean the entire bundle of facts which would constitute a complete cause of action. Material facts would include positive statement of facts as also positive averment of a negative fact, if necessary.

iv. In order to get an election declared as void under Section 100(1)(d)(iv) of the RP Act, the Election petitioner must aver that on account of non-compliance with the provisions of the Constitution or of the Act or any rules or orders made under the Act, the result of the election, in so far as it concerned the returned candidate, was materially affected.

v. The Election petition is a serious matter and it cannot be treated lightly or in a fanciful manner nor is it given to a person who uses it as a handle for vexatious purpose.

vi. An Election petition can be summarily dismissed on the omission of a single material fact leading to an incomplete cause of action, or omission to contain a concise statement of material facts on which the petitioner relies for establishing a cause of action, in exercise of the powers under Clause (a) of Rule 11 of Order VII CPC read with the mandatory requirements enjoined by Section 83 of the RP Act.”

33. It is well-established principle that in Election



Petition, the pleadings must be precise, specific and unambiguous. The petition must disclose a complete cause of action by setting out material facts constituting the grounds envisaged under Section 100 of the R.P. Act. Furthermore, compliance with the mandatory requirements of Sections 81 and 83 of the R.P. Act is imperative. Any omission of a single material fact, or failure to present a concise statement of material facts upon which the petitioner relies, renders the petition defective. Such a defect is fatal and would warrant rejection of the petition under Order VII Rule 11 of the Code, read with Sections 83 and 87 of the R.P. Act.

34. It is incumbent upon the election petitioner to plead all material facts i.e., those which are primary and basic facts and which form the foundation of the case and establish a complete cause of action. The legal position in this regard stands well-settled by the decision of the Hon'ble Supreme Court in **Azhar Hussain v. Rajiv Gandhi** reported in **AIR 1986 SC 1253**, wherein, relying on earlier authoritative pronouncements in **Samant N. Balkrishna & Anr. v. George Fernandez & Ors.** reported in **(1969) 3 SCC 238** and **Shri Udhav Singh v. Madhav Rao Scindia** reported in **(1977) 1 SCC 511**, it was held that an election petition which fails to disclose material



facts is not an election petition in the eyes of law. It was further observed that all facts essential to constitute a complete cause of action must be pleaded, and the omission of even one such fact constitutes non-compliance with the mandatory provisions of Section 83(1)(a), thereby justifying dismissal of the petition at the threshold. Therefore, an Election Petition that fails to disclose a cause of action is liable to be dismissed at the threshold. The cause of action for challenging the validity of an election must strictly pertain to the grounds enumerated under Section 100 of the R. P. Act. As laid down in **Bhagwati Prasad Dixit ‘Ghorewala’ v. Rajeev Gandhi** reported in (1986) 4 SCC 78 and **Dhartipakar Madan Lal Agarwal v. Rajiv Gandhi** reported in 1987 SCC OnLine SC 626, where the averments in the petition do not disclose the statutory grounds contemplated under Section 100, or fail to meet the mandatory requirements of Sections 81 and 83 of the R.P. Act, such pleadings are liable to be struck off, and the petition is liable to be rejected under Order VII Rule 11 of the Code, 1908.

35. It is not the case of the petitioner that the information furnished by respondent in said Form-26 were false in para 5 and 6 when he has already disclosed the details of all the criminal cases pending against him and details of his



property.

36. The argument of learned counsel for the petitioner that even if the election petition is liable to be dismissed ultimately, it should have been dismissed only after affording an opportunity to the election petitioner to adduce evidence in support of his allegation in the petition is not tenable. The Court trying an election petition can act in exercise of its power under Order VII Rule 11 of the Code to ensure that meaningless litigation, which is otherwise bound to prove abortive, should not be permitted to occupy the judicial time of the Courts. The pendency of an election petition is likely to inhibit the elected representative of the people in discharge of his public duties for which the electorate have reposed confidence in him.

37. It is also noteworthy that a case falling under Section 100(1)(d)(iv) requires proof of the further fact that the result of the election was materially affected by the corrupt practices. It is mandatory to state when clause (d) (iv) of Section 100 (1) is invoked as to how the result of election was materially affected by improper acceptance of the nomination form of the respondent. In the absence of such material pleadings, no cause of action is made out under Section 100(1)



(d)(iv) of the R.P. Act.

38. In the present election petition, there is no averment made as to how non-compliance of the mandate in the particulars in the affidavit of the respondent had materially affected the result of the election, so far as to attract the ground under Section 100(1)(d)(iv) of the R.P. Act, for declaring the election to be void. The omission to state such vital and basic facts has rendered the election petition liable to be dismissed under Order VII Rule 11 (a) of the Code read with Section 86 of the R.P. Act.

39. In view of the above matter and the reasons as discussed above, the I.A. No. 2 of 2024 stands allowed and hence, the Election Petition No. 1 of 2023 deserves to be dismissed.

40. The Election Petition is accordingly **dismissed**.

(Sunil Dutta Mishra, J)

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AFR/NAFR	A.F.R.
CAV DATE	19.03.2025
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