

IN THE HIGH COURT OF JUDICATURE AT PATNA
ELECTION PETITION No.5 of 2020

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Gajanand Shahi Son of Late Hargovind Prasad Singh, resident of House No. 41, Ward No. 28, Dakbungalow Road (Hargovind Bhawan), Police Station- Patna Kotwali, Post - G.P.O., District - Patna.

... .. Petitioner/s

Versus

Sudarshan Kumar Son of Late Sanjay Kumar Singh, resident of Village and Post - Hathiyawan, Police Station- Sheikhpura, District - Sheikhpura.

... .. Respondent/s

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Appearance :

For the Petitioner/s	:	Mr.Shashi Bhushan Kumar Manglam
For the Respondent/s	:	Mr.Ansul, Senior Advocate
		Mr. Madhav Raj

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CORAM: HONOURABLE MR. JUSTICE NAWNEET KUMAR PANDEY

CAV JUDGMENT

Date : 07.01-2025

I have already heard Mr. S.B.K. Mangalam, the learned counsel for the petitioner as well as Mr. Ansul, learned senior counsel, assisted by learned counsel Mr. Madhav Raj for the sole respondent.

2. The petitioner has filed this election petition for setting aside the election of the sole respondent, who has been declared elected as a member of Bihar Legislative Assembly from 170, Barbigha Assembly Constituency. The election was held on 28.10.2020 and the result was declared on 10.11.2020. The ground for setting aside the election, as claimed by the petitioner, is improper acceptance of the nomination paper of the sole respondent by the Returning Officer.



3. As per the averments in the petition, altogether 11 contestants were there in the electoral fray/arena, including the petitioner and the sole respondent. On the date of scrutiny i.e. 09.10.2020, the nomination paper of Shri Ajay Kumar, an independent candidate, was found incomplete and it was rejected by the Returning Officer, but at the same time, the Returning Officer had accepted the nomination paper of the sole respondent which too was incomplete. The correct and material information were not given in the proforma of the affidavit filed by the sole respondent before the Returning Officer in Form-26. He had not filled up Part-3A of his nomination paper and on this score, his nomination paper ought to have been rejected but it was improperly accepted by the Returning Officer. On the date of election, 1,19,144 electors had exercised their electoral rights in 223 polling stations, whereas 1113 postal ballot papers were received by the Returning Officer. The sole respondent was declared elected since he had received 39878 votes including postal ballots, whereas the petitioner was declared to have received 39765 votes inclusive of postal ballots.

4. It has further been averred in the petition that the sole respondent had filed his nomination paper before the Returning Officer in two sets (Ext.1 and 1(ii)). Along with



nomination paper, he had also filed an affidavit in Form-26 in two sets, duly signed by him before the Notary Public. These two sets of the affidavit have been marked as Ext. 2 and Ext. 2 A. He also uploaded his nomination paper on the official website of Election Commission of India. The petitioner obtained the certified copy of his nomination paper and the affidavit in Form-26. All the two sets of nomination papers and the affidavits in Form-26 were suffering from several infirmities. It has been mentioned further that the sole respondent had filled up both the parts of nomination paper i.e. Part-1 and Part- 2, whereas he had to fill up only Part 1, as clear from Part-3. The sole respondent was the candidate of Janata Dal (United) political party and a candidate of a recognized political party had to fill only Part-1 and not the Part- 2. The Part-2 must have been crossed as per instruction given in paragraph-3 of the nomination papers. The second infirmity pointed out by the election petitioner, in the nomination paper of the sole respondent is that he had not made relevant description in Part- 3A of the nomination form, in which a candidate is mandatorily required to declare as to whether he has been convicted for any offences under Section 8(1)) and Section 8(2) of Representation of the People Act, 1951 (hereinafter referred to as 'the Act, 1951'), or for any other



offences for more than two years. Para-1 of the said Part-3A is blank and on this sole omission, the nomination paper of the sole respondent ought to have been rejected.

5. It has further been averred in the petition that the instruction for filling up of paragraph 4 of Form-26 was given at the footnote of that paragraph. It is mandatory for a candidate to mention his/her Permanent Account Number (for short 'the PAN') in para- 4, and in case he does not have any PAN, he has to clearly mention that he was not allotted a PAN. The sole respondent has although mentioned his PAN and also the PAN of his wife, but he had not filled up information in respect of other columns of para-4, as per instructions contained in the prescribed form. The sole respondent had concealed the relevant mandatory information in para-4 of his affidavit and therefore, his nomination paper was fit to be rejected. Similarly, para- 5 and 6 of the affidavit were left blank. The respondent has not declared in his affidavit that either no criminal case is pending against him, or there are criminal cases pending against him. Similarly, the sole respondent also did not mention in paragraph 6 of the affidavit as to whether he has been convicted or he has not been convicted in any criminal case. It has further been mentioned in the petition that as per para-7(A) of the affidavit, a



candidate has to declare his assets (movable and immovable). According to the instructions contained in the said paragraph in respect of his Insurance Policies, in the column of his spouse mentioned in sub-paragraph no. (iv) of paragraph no. 7, the sole respondent has only mentioned Rs. 2,00,000/-, Oriental Bank, Basant Kunj, Delhi, but what is the nature of the policies, the affidavit is silent and on the next page of said affidavit he has mentioned 'Shunya' i.e. '0' in all the columns of sub-paragraph no.(iv) of paragraph no. 7(A).

6. It has further been averred that the details of the motor vehicles of the sole respondent were also incomplete in affidavit as the Make, year of purchase, and the amount of purchase has not been mentioned in his affidavit. Similarly, the information given by the sole respondent in paragraph no. 7(b) of his affidavit in Form-26 does not satisfy the requirement of filling up an affidavit in prescribed format and therefore, the nomination of the sole respondent was fit to be rejected on this ground. A candidate is required to mention the location of his agricultural lands in paragraph 7(B)(1) of his affidavit and also the survey numbers, but in the survey column, the respondent has mentioned only area of the land which is not in accordance with the prescribed format/form. Similarly, regarding residential



buildings, as mentioned in paragraph no. 7B (iv), the respondent has simply mentioned two flats, a house in Sheikhpura, a flat in Patna and in Kolkata and a family house in Patna. It has also been alleged that the Returning Officer, under pressure, after improperly accepting the nomination paper of the sole respondent, had also committed gross illegality in the counting of votes. As per Rule 54A of the Conduct of Election Rules 1961, (hereinafter to be referred to as 'the Rules, 1961'), the Returning Officer has to mandatorily count the postal ballot papers first, and thereafter the counting of votes through Electronic Voting Machines (EVMS), should start, but in violation of this Rules, the postal ballot papers were counted subsequent to the votes cast through EVMS and this fact is evident from Form-20 in which the final result sheet is prepared by the Returning Officer. The details of votes through postal ballots have been mentioned subsequent to the votes through EVMs, in Form 20, which shows that the votes cast through EVMs were counted first and the postal ballots were counted thereafter.

7. The sole respondent has filed his written statement, denying the averments made in the election petition. It has been mentioned in written statement that the election petition should



be dismissed on the grounds of non-rejoinder of necessary parties as the Returning Officer against whom there is allegation of accepting the nomination paper of the sole respondent improperly, has not been impleaded as a party. The election petitioner has not come up with a case that the sole respondent has any criminal antecedent nor the case of the petitioner is that the sole respondent has any other property, movable or immovable than those which have been shown in his nomination paper or Form-26. What more details are left to be mentioned in nomination paper or Form-26 has not been clarified by the election petitioner. As per law, the nomination paper would not be rejected by the Returning Officer on the grounds of any defect which is not of substantial character. Any error or omission in the nomination paper, if it is not of a substantial character, is/are immaterial.

8. It has further been pleaded in the written statement that as per the law laid down by the Hon'ble Supreme Court, a candidate must take the minimum effort to explicitly mark as "NIL" or "not applicable" or "not known" etc. It was the reason that the sole respondent had written 'Shunya' i.e. '0' at all the places where he had nothing to show. It has further been pleaded that so far as the allegation of counting of postal ballot



papers after counting of votes through EVMs is concerned, the order of publication of votes cannot be lead to an inference that the postal ballot papers were counted subsequent to the votes cast through EVMs.

9. It has also been mentioned in the written statement that the sole respondent had filled up Part-1 and Par-2 both, but there is not the case of the petitioner that any wrong information was supplied or something misleading was there due to filling up of both the parts of the nomination form. As a matter of fact, the sole respondent had no criminal antecedent at all at the time of filing of the nomination paper and he had clearly written “Shunya” i.e. “0” against the cases conveying the meaning clearly that there is no case pending against him or he has not been convicted in any criminal case. The literal meaning of “Shunya” is nothing and it indicates absence of any case and nothing contrary can be conveyed. Similar is the position with the column relating to the criminal antecedents in his affidavit in Form-26. The sole respondent has clearly mentioned the PAN of himself and his wife in Form-26. He did not fill up the PANs of Aryan and Adir Kumar, the sons of the sole respondent, as they were minor and were not allotted PANs and it was the reason that the word “Shunya” was mentioned against the column of



PANs of Aryan and Adir Kumar. The averment in the plaint that in column 7(iv), the details of properties were not given was also denied by the sole respondent. It has been mentioned that the details of his properties, movable and immovable have clearly been shown in para-7(iv) of Form-26 and on the next page the blank spaces were filled up with “shunya” cannot convey any wrong/contrary meaning and will not hit by Section 36(4) of the Act, 1951.

10. Lastly, it has been pleaded in the written statement that so as the motor vehicles, land and houses of the sole respondent are concerned, he has furnished the entire required details and it is not the case of the election petitioner that the sole respondent has any other motor vehicles, landed properties or houses which have been declared in Form-26 appended with the nomination papers. Lastly, the sole respondent made a prayer to dismiss the election petition as it is baseless.

11. On the basis of the pleadings of the parties, the following issues have been framed for adjudication:-

- (1) Whether the nomination paper of the sole respondent should have been rejected by the Returning Officer at the time of scrutiny on the ground of infirmities enumerated in the plaint?
- (2) Whether the election of the sole respondent deserves to be set aside?



12. Both these issues are taken up together for adjudication.

13. The documentary evidences adduced by the election petitioner are the certified copies of the two sets of nomination paper filed by the sole respondent which have been marked as Ext.1 and 1(ii), respectively. The certified copies of the two sets of affidavit in Form-26, appended with the nomination paper have been marked as Ext.2 and Ext. 2(A).

14. So far as the oral evidences are concerned, the sole witness, the petitioner himself (P.W.1) was examined on behalf of the petitioner. So far as the sole respondent is concerned, three witnesses were examined on his behalf, including himself.

15. R.W.1 is the sole respondent himself. R.W.2 is one Rajesh Kumar, who is the Personal Assistant to the sole respondent and he was one of the counting agents for the sole respondent and R.W.3 is Manoj Prasad, also one of the counting agents of the sole respondent.

16. P.W.1, who is the petitioner himself has reiterated his version as mentioned in his election petition. He has deposed that the election of the elected candidate Mr. Sudarshan Kumar has been challenged on the ground that he left filling Part 3A of the nomination paper. The second ground for challenging the



election is that the postal ballot papers should have been counted first, whereas those were counted in the last. He has also challenged the election of the sole respondent on the ground of shortcomings in the affidavit filed by the sole respondent in Form-26, along with nomination paper. At the instance of this witness, the certified copies of the nomination paper and Form-26 were marked as Exhibits. This witness has deposed that although the respondent no.1 has shown criminal cases in Form-26 as '0' in column no. 5, but he had not disclosed the fact whether any case is pending against him or not as required by column no.5(i) and 5(ii). Similar is the position in respect of column no.6 of Form-26. The respondent has not mentioned his bank account number in Form-26, column 7(A)(ii) for himself and his wife. The year of purchase of the vehicle and price thereof has not been mentioned in column 7(A) (iv) of Form-26 relating to the sole respondent and his wife. In column 7 (B) (i), although the area of the land has been mentioned, but the location and plot numbers thereof have not been mentioned. Similarly, the survey numbers and location of flats mentioned in paragraph 7(B)(iv) of Form-26 are missing. In sub column of paragraph no.7(B)(iv), the candidate is required to disclose whether the properties mentioned therein are inherited or self-



acquired. The column has been filled up in affirmative. However, in next two columns, it has been mentioned that the flat details whereof disclosed in column 7(B) (iv) is purchased property of the sole respondent. This is the position in both sets of Form-26 submitted by the respondent along with his nomination paper. This witness has also deposed that the postal ballot papers were counted after counting of votes cast through electronic voting machine. In the final result sheet Form 20, firstly, the details of votes through EVM have been entered and subsequently votes cast through postal ballot have been entered.

During his cross-examination, this witness deposed that he was not aware of the reason for not mentioning PAN card numbers of the two minor children of the sole respondent. He was not aware of the fact that these minor children were not allotted PAN cards. This witness has stated further that the officer engaged in counting of votes apprised him that the postal ballot papers were counted subsequent to the counting of the votes cast through EVMs. He has also deposed that he had no knowledge about any criminal case pending against the sole respondent. He stated that within his knowledge, no specific material had been concealed by the sole respondent in column no.3A of the Form.



17. As discussed above, three witnesses have been examined on behalf of the sole respondent.

18. R.W.1 is the sole respondent Mr. Sudarshan Kumar himself. He deposed that he won the election on the ticket of Janata Dal (United) political party. A candidate fills his nomination paper with the assistance of an advocate. He deposed further that he filled the column of criminal antecedents in nomination paper as “zero” since there was no criminal antecedent against him. He has two sons and both his sons were not holding PAN card at the time of filing of the nomination paper and it was the reason that their PAN card numbers were not mentioned in the election petition. At the time of collection of certificate, none had complained regarding any malpractice in the election before the appropriate authorities. At the time of counting of votes, his counting agents, namely, Manoj Kumar (R.W.3), Rajesh Kumar (R.W.2), Diwakar Kumar and Dhiraj Kumar were present.

In his cross-examination, this witness has stated that he was a candidate of a recognized political party namely, JD (U). The nomination papers filed by him have already been marked as Exts. 1 and 1(ii) and the affidavit, Form-26 have been marked as Exts.2 and 2(A). He reached at the place of counting



after 6.00 p.m. and before his arrival at the counting place, the counting was over. He stated during his cross-examination that Rajesh Kumar (R.W.2) told him that the postal ballot papers were counted first. He had deputed Brajesh Kumar, Dhiraj Kumar and Manoj Kumar as his counting agents. He could not remember the name of his counting agent who was deputed at the table, where the postal ballot papers were counted. He could not say how many postal ballot papers were rejected.

19. RW 2 Rajesh Kumar is personal assistant to the sole respondent. He has stated that in affidavit of nomination papers, in the column of criminal antecedents, the sole respondent has mentioned 'zero'. There was no case pending against him on the date of filing of his nomination papers. At the time of declaration of result also, no objection was raised by the election petitioner complaining any kind of irregularity.

During his cross-examination, this witnesses deposed that he was present at the time of filing of the nomination papers but he did not contribute in filling up of nomination form. This witness was the counting agent of the sole respondent.

20. RW 3 is Manoj Prasad, who is also a counting agent of the sole respondent. This witness has also stated that at the time of filing of the nomination papers, there was no criminal



antecedent against Mr. Sudarshan Kumar. This witness was present at the place, where the counting of votes was going on, till conclusion of the counting. No application was filed by Mr. Gajanand Shahi (the election petitioner) complaining any kind of irregularity. At the time of counting, firstly, postal ballot papers were counted and thereafter, the votes cast through EVMs were counted.

In his cross-examination, this witness has deposed that he was deputed at table no. 1 and the postal ballots were not counted on his table. This witness could not give the total number of postal ballot papers. This witness heard the announcement of the result, but he did not see the result-sheet.

21. The learned counsel for the petitioner Mr. S.B.K. Manglam has submitted that in case of *Union of India Vs. Association For Democratic Reforms and Anr*, reported in **2002 (5) SCC 294**, the Hon'ble Supreme Court issued some guidelines. Before issuing the guidelines, the right of voters to know his candidate was taken into account by the Hon'ble Apex Court. According to the Hon'ble Supreme Court, a voter has a right to know about his candidate. The 'Right to Know', as per the Hon'ble Supreme Court, is a derivative of the freedom of speech and expression enshrined in Article 19(1)(a) of the



Constitution of India. The voters have a right to know the criminal antecedents of his candidate, his assets and liabilities, including movable and immovable properties, as well as the educational qualification. After this judgment, Section 33-A was inserted into the Representation of the People Act, 1951, hereinafter to be referred to as 'the Act, 1951', requiring a candidate to disclose his criminal antecedent, punishable with imprisonment for two years or more in a pending case in which a charge has been framed by a court of competent jurisdiction. It is also mandatory for a candidate to disclose whether he has been convicted for 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 of 'the Act, 1951' and whether he was sentenced for imprisonment for more than one year.

22. Mr. Manglam has submitted further that If a candidate fails to disclose his criminal antecedents by not properly filling up of the nomination form, it amounts to concealment of the fact and the right of voters to know his candidate, as promulgated by the Hon'ble Apex Court is infringed. If the nomination form or Form-26, in which the criminal antecedent is detailed, is improperly filled up, the voters may be in dichotomous state regarding information about the



candidate fighting the election, and if this dichotomy is created by the candidate himself, his election should be set-aside on this ground. He also relied upon the decision of **People's Union For Civil Liberties (PUCL) and Anr Vs. Union of India and Anr**, reported in **2003(4) SCC 399**, in which the Hon'ble Supreme Court though declared Section 33-B of 'the Act, 1951' as *ultra virus*, but at the same time, Section 33-A was emphasized by the Hon'ble Supreme Court. He submitted that if a candidate conceals any particular fact which is mandatory to be disclosed in the nomination paper or in Form-26, his election is liable to be set-aside. He drew my attention towards a decision of the Hon'ble Supreme Court in case of **Meirembam Prithviraj Vs. Pukhrem Sharatchandra Singh** reported in **2017(1) PLJR (SC) 50** and he submitted that the election of a candidate, who became successful in Manipur Legislative Assembly Election was set-aside merely on the ground that he filled up a false information in Form 26 about his educational qualification. In that case, the candidate mentioned in his nomination paper that he was an MBA (Master of Business Administration) from Mysore University. This information was found to be false and due to this sole reason, his election was set-aside by the Hon'ble Manipur High Court and by the Hon'ble Supreme Court as well.



His further submission is that in case of *Kisan Shankar Kathore vs Arun Dattatray Sawant & Ors*, reported in (2014) 14 SCC 162, the election of a successful candidate in the election of Legislative Assembly was set-aside by the Hon'ble Supreme Court for non-disclosure of his ownership of Bungalow No. 866 as well as the non-disclosure of Vehicle No. MH 05 AC 555 owned by his wife.

23. The learned counsel has submitted further that in the present case also, the details of the vehicles of the sole respondent have not been disclosed and the details of his landed property have also not been disclosed. It has been submitted that, on this ground, the election of the sole respondent is liable to be set-aside.

24. It has also been submitted by Mr. Mangalam that a candidate has to furnish the details of his income tax returns of 5 years, but the sole respondent has given the details of his income tax returns only for one year, i.e., 1918-19. Mr. Mangalam has further submitted that the Hon'ble Supreme Court in case of *Resurgence India vs Election Commission Of India & Anr*, reported in (2014) 14 SC 189, have been pleased to hold that filling of affidavit with blank particulars will render the affidavit as nugatory. In the present case, the sole respondent had left the



above noted columns as blank, as such, his election should be declared as nugatory.

25. On the other hand, the learner counsels for the sole respondent, Mr. Ansul and Mr. Madhav Raj have submitted that the petitioner did not indicate any particular fact or any particular material, which has been left to be mentioned in the nomination paper or in Form-26. There was no criminal case against the sole respondent at the time of filing of nomination paper. It was the reason that the word 'zero' has been mentioned in the column of criminal case. So far as the assets and liabilities of the sole respondent is concerned, the election petitioner did not put forth any information relating to any property belonging to the sole respondent other than that has been disclosed in the Form-26. Nothing was suppressed by the sole respondent. Mr. Madhav Raj, the learned counsel for the sole respondent has submitted that so far as the submission of Mr. Mangalam that the income tax returns of the sole respondent only for one year has been filled up in Form-26, is concerned, there is no specific pleading in this regard in the election petition. Neither the evidences have been led by the parties on this point. He submitted that it is the settled law that no party can raise a new point at the subsequent stage, which has not been pleaded, nor



the evidence has been led on that point. However, the learned counsel, at the time of arguments, has produced the xerox copies of income tax returns of the sole respondent for the assessment years 2014-15, 2015-16 and 2016-17, in which the gross total income of the election petitioner has been shown as Rs, 2,12,420/-, Rs. 2,68,600/- and Rs. 4,05,000/- respectively. The learned counsel Mr. Madhav Raj has submitted that the gross income of the sole respondent in the income tax returns for these assessment years are not of a huge amount and non-filling of this information would not have materially affected the result of the election. The learned counsels for the sole respondent submitted further that in case of ***Resurgence India*** (supra), the Hon'ble Supreme Court have been pleased to hold that wrong or incomplete information or suppression of material information can only be taken into account, if it is of a substantial character, otherwise it cannot be taken into account.

26. So far as the counting of votes through postal ballots subsequent to counting of votes through EVMs is concerned, the learned counsels for the sole respondent have submitted that the averment of the petitioner in this respect is far from the truth. The petitioner has to prove that the votes through EVMs were counted prior to counting of the votes through postal



ballot papers.

27. The learned counsels have submitted further that in case of ***Karim Uddin Barbhuiya Vs. Aminul Haque Laskar and others (AIR 2024 SC 2193)***, the appellant therein became successful in the election to the Legislative Assembly of Assam. An election petition was filed challenging his election on the ground that the appellant had given false declaration of his educational qualification of B.A., suppression of education qualification of Diploma in Engineering and suppression of bank loan details and suppression of unliquidated provident fund dues. The Hon'ble Supreme Court did not find these omissions as of substantial in nature and the appeal of the appellant was allowed. Para-19 & 20 of the decision in case of ***Karim Uddin Barbhuiya*** (supra) are being extracted hereinbelow:-

“19. Now, from the bare reading of the Election petition, it emerges that the respondent No. 1 has made only bald and vague allegations in the Election Petition without stating the material facts in support thereof as required to be stated under Section 83(1)(a) of the RP Act. Apart from the fact that none of the allegations with regard to the false statements, and suppression and misrepresentation of facts allegedly made by the respondent No. 1 with regard to his educational qualification or



with regard to his liability in respect of the loan availed by him for his partnership firm or with regard to his default in depositing the employer's contribution to provident fund, would fall within the definition of "Corrupt practice" of "undue influence" as envisaged in Section 123(2) of the RP Act, the Election petition also lacks concise statement of "material facts" as contemplated in Section 83(a), and lacks "full particulars" of the alleged Corrupt practice as contemplated in Section 83(b) of the RP Act.

20. So far as the allegations of "Corrupt practice" are concerned, the respondent No. 1 was required to make concise statement of material facts as to how the appellant had indulged into "Corrupt practice" of undue influence by directly or indirectly interfering or attempted to interfere with the free exercise of any electoral right. Mere bald and vague allegations without any basis would not be sufficient compliance of the requirement of making a concise statement of the "material facts" in the Election Petition. The material facts which are primary and basic facts have to be pleaded in support of the case set up by the Election petitioner to show his cause of action. Any omission of a single material fact would lead to an incomplete cause of action entitling the



returned candidate to pray for dismissal of Election petition under Order VII Rule 11(a) of CPC read with Section 83(1)(a) of the RP Act. The said legal position has been well settled by this Court in Azhar Hussain v. Rajiv Gandhi, wherein this Court after referring to the earlier pronouncements in Samant N. Balkrishna and Another v. George Fernandez and Others and Shri Udhav Singh v. Madhav Rao Scindia, observed that the omission of a single material fact would lead to incomplete cause of action, and that an Election petition without the material facts is not an Election petition at all. It was further held that all the facts which are essential to clothe the petition with complete cause of action must be pleaded and is omission of even a single material fact would amount to disobedience of the mandate of Section 83(1) (a) of the Act and an Election petition can be and must be dismissed, if it suffers from any such vice.”

28. The learned counsels for the sole respondent have also relied upon the decision of **Ravi Namboothiri Vs. K A Baiju and others** reported in **2022 Live Law (SC) 933**, in which the failure of a elected candidate to disclose in the nomination form about his conviction for an offence under Kerala Police



Act, 1960 for holding a *dharna* was not considered as substantial in nature to declare his election as void.

29. The learned counsels for the sole respondent have submitted further that the Returning Officer against whom there is allegation of improperly accepting the nomination paper of the sole respondent has not been made party, as such the election petition suffers from the defect of non-joinder of the necessary parties and on this score only, the election petition should be dismissed.

30. I have perused the materials available on record and have given my thoughtful consideration to the rival submissions advanced on behalf of the parties.

31. The Hon'ble Supreme Court, in case of *Union of India vs. Association for Democratic Reforms and another, reported in (2002) 5 SCC 294*, issued guidelines, requiring disclosure of some informations by a contesting candidate, at the time of presentation of his nomination form. The guidelines issued by the Hon'ble Supreme Court are detailed in para-48 of the said decision. Para-48 is being extracted hereinbelow:-

“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 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.”

32. As per guidelines issued by the Hon’ble Supreme Court, a candidate contesting the election has to disclose those particulars enumerated in Clause 1 to 5 of para-48 of that decision, in his nomination paper. Pursuant to that order, the Election Commission of India issued certain directions on 28-06-2002, according to which a candidate is required to furnish full and complete information in the form of an affidavit with regard to the guidelines of the Hon’ble Supreme Court as per paragraph no. 48 of the decision in ***Union of India Vs.***



Association For Democratic Reforms and Anr (Supra). In case of *People's Union of Civil Liberties (PUCL)* (supra), the Hon'ble Supreme Court reaffirmed the abovenoted decision, but also held that the direction to reject the nomination paper for furnishing wrong information by means of a summary inquiry at the time of scrutiny of nomination, cannot be justified. The Election Commission of India again issued a letter dated 2-6-2004 directing the Chief Electoral Officers of all the States and Union Territories that if any complaint regarding furnishing of false information by a candidate is submitted by anyone, it should be supported by some documentary evidences.

33. After insertion of Section 33-A in 'the Act, 1951, the information required in the decision of *Union of India Vs. Association For Democratic Reforms and Anr* (supra), a candidate has to furnish affidavit in Form-26, describing those informations, as required in para-48 of the above- noted case.

34. Section 100 of 'the Act, 1951' provides grounds for declaring the election to be void. The election of a candidate can be declared as void only on the grounds enumerated under Section 100 of 'the Act,1951'. The improper acceptance of a nomination paper by Returning Officer is one of the grounds for



declaring the election as void. If the Returning Officer accepts the nomination paper improperly, the election of the returned candidate can be declared as void, but from bare perusal of Section 100(1)(d)(i) makes it clear that for declaring an election as void on the ground of improper acceptance of the nomination paper, the result of the election of the returned candidate must have been materially affected, due to the improper acceptance of the nomination paper.

Section 100(1) of 'the Act, 1951' is being extracted hereinbelow:-

“100. Grounds for declaring election to be void.- (1) *Subject to the provisions of sub-section (2), if [the High Court] is of opinion-*

(a) that on the date of his election a returned candidate was not qualified, or was disqualified, to be chosen to fill the seat under the Constitution or this Act 23 or the Government of Union Territories Act, 1963); or

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

(c) that any nomination has been improperly rejected; or



(d) that the result of the election, insofar 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 24 [by an agent other than his election agent), or

(iii) by the improper reception, refusal or rejection of any vote or the reception of any vote which is void, or

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

35. From bare perusal of Section 100(1)(d)(i), it is evident that no election of returned candidate can be set aside or be declared as void merely by improper acceptance of the nomination papers, unless it is proved that because of the improper acceptance, the result of the election of the returned candidate has materially been affected.

36. In the instant case, the election petitioner has made averment that the sole respondent left blank the column of Part-3 of his nomination paper as well as column no. 5 of the affidavit regarding his criminal antecedent. The election



petitioner did not disclose any criminal case against the sole respondent. The sole respondent has categorically stated that there was no any case against him at the time of filling up of the nomination form and it was the reason that he mentioned 'zero' in column no.5 of his affidavit. So far as the second allegation/averment made in the election petition that the sole respondent did not disclose the PANs of his two sons is concerned, his two minor sons were not allotted with PANs and it was the reason that he did not disclose the PANs of his two minor sons. The sole respondent has described the registration number of all the four four-wheelers, he was possessing at the time of filing his nomination form, in his affidavit. The election petitioner could not disclose any other four-wheeler than those which were disclosed by the sole respondent. Non-disclosure of the Make, price and year of purchase of the vehicles cannot be considered as substantial, on the basis whereof the election of the sole respondent should be set aside. The election petitioner failed to indicate any other property other than that which has been disclosed by the sole respondent in his Form-26. As such, the election petitioner failed to bring forth any material information which was left to be mentioned in the nomination papers or Form-26 of the sole respondent. Merely because some



ommissions were crept in filling up of the nomination paper or in furnishing affidavit in Form-26, cannot render the election as void because those ommissions cannot be considered to be as substantial in nature, which might have affected the result of the election of the returned candidate materially. In the case of **Meirembam Prithviraj** (supra) the elected candidate had wrongly mentioned MBA degree from Mysore University to which he did not actually possess and it was the reason that his election was set aside by the Hon'ble Supreme Court. Similarly, in the case of *Kisan Shankar Kathore* (supra) the returned candidate has concealed his Bungalow No. 866 as well as a vehicle in the name of his wife. In the present case, nothing has been concealed by the sole respondent.

37. The Hon'ble Supreme Court in case of *Resurgence India* (supra) held that merely because an information is left or incomplete, the suppression thereof is not material unless it is found to be of substantial character. Para-3 of the said decision is extracted hereinbelow:-

“Pursuant to the above order, the Election Commission, vide order dated 28-6-2002, issued certain directions to the candidates to furnish full and complete information in the form of an affidavit, duly sworn before a Magistrate of the First Class,



with regard to the matters specified in Assn. for Democratic Reforms. It was also directed that non-furnishing of the affidavit by any candidate or furnishing of any wrong or incomplete information or suppression of any material information will result in the rejection of the nomination paper, apart from inviting penal consequences under the Penal Code, 1860. It was further clarified that only such information shall be considered to be wrong or incomplete or suppression of material information which is found to be a defect of substantial character by the Returning Officer in the summary inquiry conducted by him at the time of scrutiny of nomination papers.”

38. In the instant case, the petitioner has failed to bring forth any specific and material thing which the sole respondent suppressed in his nomination paper. Only because some commissions/irregularities crept in the nomination paper, the election of the returned candidate cannot be declared as void on this ground because the election petitioner has failed to establish that the omissions/irregularities have substantially affected the result of the election of the returned candidate.

39. The learned counsels for the sole respondent have submitted that the present election petition suffers from the



defect of non-joinder of the necessary party. The Returning Officer, against whom there is allegation of accepting the nomination paper improperly, is a necessary party. The election petitioner did not implead the Returning Officer as a party in his election petition, due to which the election petition should be dismissed.

40. This submission of the learned counsels for the sole respondent is not acceptable. Section 82 of 'the Act, 1951' makes provision as to who shall be joined as respondents in the election petition. From bare perusal of Section 82 of 'the Act, 1951', it is clear that if the election petitioner in addition to, making a prayer to declare the election of the returned candidate as void, claims a further declaration that he (the election petitioner) should be declared elected, in that case all the contesting candidates are necessary parties. If the election petitioner makes a simple prayer to declare the election of the returned candidate as void and he does not claim a relief to declare himself as elected candidate, in that case the returned candidates are the necessary parties.

41. It has been settled that the right to challenge an election by way of an election petition is a statutory right and when the Statute itself makes specific provision as to who shall



be joined as party, none other than the statutory mandatory party, can be considered as necessary party in the election petition. So this submission of the sole respondent cannot be accepted.

42. The learned counsel for the election petitioner has submitted that as per Rule 54-A of 'the Rules, 1961', the Returning Officer has to deal with the postal ballot papers first and thereafter the votes cast by the EVMs could be counted, but in the present case, firstly, the votes cast through EVMs were counted and thereafter the postal ballot papers were counted. The learned counsel has submitted that the result of the election is finally published in Form-20 and so far as the final result-sheet of the present election is concerned, the votes counted through postal ballot papers were shown subsequent to the votes cast through EVMs, in Form-20..

43. In my view, the submission of the learned counsel for the petitioner is misconceived. The election petitioner (P.W.1), during his deposition, has stated that he came to know from an officer engaged in counting of votes that postal ballot papers were counted subsequent to the counting of votes cast through EVMs. The election petitioner did not disclose the name and designation of the officer who disclosed before him



that the postal ballot papers were counted subsequent to the votes cast through EVMs. The election petitioner even did not take effort to examine that officer during the trial.

44. From the seriatim of entries entered into Form-20 (the final result-sheet), it cannot be inferred that the postal ballot papers were counted subsequent to the counting of votes through EVMs. Before making entries in Form-20, the counting of votes is completed and only after completion of counting of votes, Form-20 is filled up. In this respect, Rule 56 (7) (b) of 'the Rules, 1961' is explicit.

Rule 56 (7) of 'the Rules, 1961' is extracted hereinbelow:-

“56(7) After the counting of all ballot papers contained in all the ballots used at a polling station has been completed,-

(a) the counting supervisor shall fill in and sign Part II-Result of Counting, in Form 16, which shall also be signed by the returning officer; and

b) the returning officer shall make the entries in a result sheet in Form 20 and announce the particulars.”

45. From perusal of Rule 56(7)(b) of 'the Rules, 1961' it is clear that Form-20 is filled up after counting of votes.



Moreover, the format of Form-20 has been given at the foot of ‘the Rules, 1961’ and from bare perusal of the format, it is clear that the column of the votes recorded at the polling station has been given prior to the votes recorded on the postal ballot papers. As such, from bare perusal of the format of Form-20, it transpires that firstly the row of the entries of the votes cast through EVMs has been printed in Form-20 and subsequent thereto votes recorded on postal ballot papers has been printed in that form. Thus, the election petitioner failed to prove that the postal ballot papers were counted subsequent to the counting of votes cast through the EVMs.

46. On the basis of above-mentioned observations, both the issues are decided negatively.

47. Consequently, the election petition is dismissed.

(Nawneet Kumar Pandey, J)

HR/-

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